



ICLG

The International Comparative Legal Guide to:

Gambling 2016

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A practical cross-border insight into gambling law

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Macau

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Rui Pinto Proença



1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Macau Chief Executive is the ultimate government authority in determining policy, licensing and regulating the operation of casino games of chance and other gambling activities in Macau. In exercising such powers, the Macau Chief Executive is assisted by the Gaming Inspection and Coordination Bureau, best known for its Portuguese acronym “DICJ”.

In its role as a policy advisory body, DICJ is entrusted with assisting the Macau Chief Executive in defining, coordinating and executing economic policies in respect of the gaming industry. Additionally, DICJ has been vested with licensing powers, making it responsible for licensing gaming promoters and gaming equipment manufacturers, as well as gaming machines, systems and other gaming equipment. The DICJ also advises the Government in licensing and classifying premises as casino venues.

In its supervisory role, DICJ is responsible for overseeing the activities of Gaming Concessionaires, promoters and equipment manufacturers, and for monitoring their suitability and financial capacity. Atop of this, DICJ also verifies the suitability of their qualified shareholders, directors and key employees.

1.2 Specify all legislation which impacts upon any gambling activity (including skill and social games), and specify in broad terms whether it permits or prohibits gambling.

The commercial operation of gambling in Macau is statutorily reserved to the Macau Government and may only be pursued by privately-owned entities that have been granted a concession to such effect by means of entering into a concession contract with the Government. The main piece of legislation governing the operation of gambling is the Macau Gaming Law (Law 16/2001), which defines games of chance as those in which the outcome is contingent as it depends exclusively or predominantly on the player’s luck. The commercial operation of casino games of chance – either in the form of table games or of gaming machines – may only be pursued by one of the three operators that were granted a gaming concession following a public tender launched in 2001 and governed by Regulation 26/2001. Subsequently, the Macau Government has authorised the awarded concessionaires to enter into one sub-concession agreement each, therefore raising the total number of casino operators to six. All concession and

sub-concession contracts are due to expire between 2020 and 2022, and until such dates the casino market is virtually closed to new operators. Throughout this chapter, reference to a ‘Gaming Concession’ or a ‘Gaming Concessionaire’ shall be construed as including, respectively, a reference to a gaming sub-concession or a gaming sub-concessionaire, unless the context determines otherwise. Other material rules governing the operation of casino gambling may be found in the following legislation: (i) the Illegal Gaming Act, which determines and punishes unregulated supply (Law 8/96/M); Regulation 6/2002, which governs the licensing and activity of gaming promoters (also known as “junkets”); Regulation 23/2003, which determines the by-laws of DICJ; the Gaming Credit Law (Law 5/2004), which regulates the granting of gaming credit by casino operators and junkets; Regulation 27/2009, which imposes limitations to the commissions paid to gaming promoters; Regulation Law 10/2012, which governs gaming participation and entrance in casinos; and Regulation 16/2012, which regulates electronic gaming machines, systems and other gaming equipment, etc.

Other gaming activities such as horse and greyhound racing, sports betting and lotteries may also be pursued by entities that have been previously granted a concession to that effect. Each said activity has been historically pursued on an exclusive basis by only one operator, the concession contracts of which have been renewed on a yearly basis.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

A public tender process must precede the granting of a concession to operate games of chance. The maximum number of concessions awarded at a given moment is limited to three. Although not determined by statute, the Macau Government has *de facto* authorised the current concessionaires to enter into one sub-concession agreement each, therefore raising the total number of casino operators to six. Only joint-stock companies (*sociedades anónimas*) incorporated under the laws of Macau, to which the exclusive scope of business is the operation of games of chance, are allowed to bid for a gaming concession. At least 10% of the registered share capital of a gaming concessionaire must be held by its managing director (*administrador-delegado*), who must be a Macau permanent resident. Apart from such restrictions there are no other general limitations to who can apply for a gaming concession and there are no other material foreign ownership restrictions.

2.2 Who or what entity must apply for a licence and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Besides the Gaming Concessionaires and the operators of sports betting, wagering (horse and greyhound racing) and lotteries, gaming promoters (also known as “junket operators”) and manufacturers of electronic gaming machines, equipment and systems (“EGM Manufacturers”) must also hold a licence in order to legally operate in Macau. Junket Operators and EGM Manufacturers must undergo an extensive review and file a substantial amount of forms prior to obtaining a licence. Such reviews include undergoing a probity check that extends to their shareholders holding 5% or more of its share capital (“Qualified Shareholders”), directors and key employees (as applicable). Any changes to these elements throughout the duration of the licence must be disclosed to DICJ with the exception of the transfer of shares and of corporate rights in a licensed junket company, which must be approved beforehand.

2.3 What restrictions are placed upon any licensee?

The operation of games of chance may only be pursued in venues previously approved as casinos. Furthermore, a Gaming Concessionaire, as well as Qualified Shareholders, may not hold, directly or indirectly, 5% or more of the share capital of another Gaming Concessionaire. A Gaming Concessionaire is not prevented from operating or investing in overseas casinos, but it’s obliged to disclose such operation and investments, as well as the ones of its directors and of its shareholders holding more than 10% of its share capital.

2.4 What is the process of applying for a gambling licence?

The granting of gaming concessions is made by means of a public tender launched by the Macau Government. The rules of the first (and only) public tender launched since the approval of the Macau Gaming Law were determined by Regulation 26/2001 and by the Chief Executive’s decision no. 217/2001, which officially opened the tender. In such tender, the bidders and their Qualified Shareholders, as well as their directors and key employees, were subject to a suitability investigation conducted by DICJ that verified their experience, reputation and probity. The bidders and their Qualified Shareholders were also bound to demonstrate an adequate financial capacity and were subject to investigations on their financial background. All costs incurred with the suitability and financial investigations were borne by the bidders and deducted from their bidding bonds (set at approximately USD\$125,000 at today’s rate).

The tender was conducted by a tender committee, appointed by the Macau Chief Executive. A tender programme defined the minimum requisites of qualification, the information the bidders were bound to disclose, as well as the mandatory elements of the proposals to be submitted. The 2001 tender – for which a total of 18 bidders qualified – awarded the three Gaming Concessions that exist today. The awarding criteria were the following: (i) total concession premium amount offered; (ii) amount offered to be contributed to a public foundation for the promotion of the cultural, scientific, social, economic and educational development of Macau; (iii) amount offered to be contributed to the urban development, tourism promotion and social security of Macau; (iv) operational experience;

(v) investment project; (vi) development of casino premises and contribution to tourism diversification; and (vii) contribution to the creation of jobs in the gaming industry and the training of its professionals.

2.5 Please give a summary of applicable time limits and revocation.

A gaming concession has a maximum initial duration of 20 years. In case a gaming concession has been granted for a lesser period of time it may be extended, one or more times, until a maximum of 20 years. The maximum duration of a concession may be extended beyond the 20-year term, one or more times, for a maximum of five years. Such extension may only be granted on an exceptional basis by means of a justified decision of the Chief Executive.

A gaming concession may be unilaterally terminated by the government with two main grounds: (i) by the concessionaire’s breach of a material statutory or contractual obligation; or (ii) by reasons of public interest. A concessionaire is deemed to have breached a material obligation, amongst others, when it has (a) suspended or abandoned its operations without due justification, (b) wholly or partially assigned its operations (either permanently or temporarily) in breach of the applicable laws and regulations or of its concession contract, and/or (c) failed to pay taxes, concession premiums or any other consideration owed to the Government under the terms of its concession contract.

In case of termination by the Government under the above circumstances, the ownership of the concessionaire’s casinos will revert to the Government, together with their equipment and all rights and assets as determined by its concession contract. A reversion will be against no consideration in case of termination by breach of contract, and against fair compensation in case of termination by reasons of public interest. Such compensation will be calculated based on the outstanding concession period, as well as on the concessionaire’s investments up to the time of reversion.

2.6 By product, what are the key limits on providing services to customers?

A Gaming Concessionaire may only offer the games of chance that are listed in the Gaming Law (24 types of games in total) or that have been further approved as such by the Government. Approved games may be offered in the form of table games or gaming machines. A Gaming Concessionaire is prevented from operating interactive gaming, sports betting and wagering, and, unless specifically authorised, may not offer lotteries, raffles, lucky draws and similar operations. These products may not be offered by any operator within the casino premises.

There are no general limits to local participation in gaming, but the entrance into casinos is restricted to persons that are 21 years or older. With certain exceptions, local civil servants are also restricted from entering casinos. The employees of a Gaming Concessionaire are prohibited from participating in gaming offered by the Gaming Concessionaire to which they work for.

A Gaming Concessionaire may engage the services of gaming promoters, however, the turnover-based commissions payable to junkets have been capped at 1.25% of the rolling chip by decision no. 83/2009 of the Secretary for Economy and Finance. The Government has also capped the annual increase of the number of gaming tables at 3% of the total number of gaming tables available in Macau. The Government has pledged to keep the table cap in force until the year 2022.

2.7 What are the tax and other compulsory levies?

The *Special Gaming Tax* is the largest source of gaming tax revenue. It applies to Gaming Concessionaires and it is levied over their gross gaming revenue at a rate of 35%. Moreover, the Gaming Concessionaires are also subject to the payment of a contribution to the *Macau Foundation*, a public foundation that promotes the cultural, scientific, social, economic and educational development of Macau (1.6% over gross gaming revenue), as well as a contribution to the Government for urban development, tourism promotion and social security (2.4% over gross gaming revenue for all Gaming Concessionaires except one that is subject to 1.4% only).

The Gaming Concessionaires are also subject to the payment of an annual concession premium composed by a fixed amount of approximately USD\$3.8 million, and a variable amount levied over the number of table games and gaming machines at the following approximate rates: per VIP table (USD\$37,500.00); per mass-market table (USD\$18,800.00); and per gaming machine (USD\$125.00). Although the Gaming Concessionaires are also subject to profit tax, historically they have been exempted from payment pursuant to dispatches of the Chief Executive issued under the provisions of the Gaming Law.

2.8 What are the broad social responsibility requirements?

Macau does not impose operators the same level of social responsibility requirements as seen in other matured gaming markets. Following the approval of Law 10/2012 (which determines the restrictions to participation), DICJ has implemented “self-exclusion” and “third-party exclusion” proceedings. The Gaming Concessionaires must set up adequate control proceedings to assure compliance with the statutory restrictions to participation.

2.9 How do any AML financial services regulations or payment restrictions restrict or impact on entities supplying gambling?

The current anti-money laundering regime was introduced by Law 2/2006 and was further complemented by Regulation 7/2006 and, specifically in respect of gaming operators, by DICJ instruction no.2/2006.

Under the applicable AML regulations, the Gaming Concessionaires, promoters and other operators must comply with a comprehensive set of obligations aimed at curbing money-laundering activities in the gaming industry. These include *know your client* obligations, identification and reporting of suspicious transactions, the obligation to refuse the completion of transactions when mandatory information is not provided, record-keeping, etc. The entity responsible for receiving and processing AML reports and information is the Macau Financial Intelligence Office. DICJ is responsible for supervising the industry’s compliance with its AML duties.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

The Macau Gaming Law defines *Interactive Games* as those games of chance offered by Macau casinos in the form of table games or

gaming machines to which a prize (in cash or in kind) is offered or may be won in accordance to their respective rules, where the player enters or participates in the game by means of telecommunication (namely by telephone, telefax, via internet, data networks or video or digital data transmission) and makes or agrees to make payments (in cash or in kind). Gaming Concessionaires are prohibited to offer interactive games and the operation of such games is subject to the granting of separate concessions. On the contrary to land-based casino games, the Macau Government has not issued regulations governing the concession and operation of interactive games and has not launched a tender to grant such concessions. The exclusive operators of horse racing (the “Macau Jockey Club”), greyhound racing (the “Yat Yuen Canidrome Club”) and sports betting (the “Macau SLOT”) are authorised to accept online wagering in the competitions they promote or offer.

3.2 What other restrictions have an impact on online supplies?

Macau does not restrict the access to overseas gaming or wagering websites and does not impose any blocking obligations on internet service providers.

3.3 What terminal/machine-based gaming is permitted and where?

The operation of electronic gaming machines, including electronic table games, is only allowed within the gaming areas of casinos and other authorised venues operated under one of the Gaming Concessions. Their operation may also be authorised in the departures area of the Macau International Airport and in Macau-registered vessels and aircrafts when operating touristic routes outside Macau. All electronic gaming machines and electronic table games must be authorised by DICJ upon being certified by a recognised gaming testing laboratory and shall comply with the *Macau Electronic Gaming Machines* and *Electronic Table Games Technical Standards*. The supply of electronic gaming machines in Macau may only be pursued by manufacturers previously approved by DICJ. The licensing and operation of mobile gaming devices has been foreseen by Regulation 16/2012, which restricts their usage to venues and Gaming Concessionaires previously approved by DICJ. To the best of our knowledge no such authorisations have been issued up to the date of this publication.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

The Macau Government, through DICJ, handles violations of the gaming laws and regulations, and breaches of the concession contracts by the Gaming Concessionaires. The Government may impose fines and suspend, redeem or terminate a Gaming Concession. The shareholders holding more than 10% of the share capital of a Gaming Concessionaire are jointly liable for the payment of all regulatory fines. DICJ also handles violations of the gaming laws, regulations and breaches of the respective licences by junket operators and EGM manufacturers. A Gaming Concessionaire or licensee may seek judicial review with the administrative justice courts for any penalty imposed by the Government.

4.2 What is the approach of authorities to unregulated supplies?

The unlicensed supply of gaming and wagering is governed by the Illegal Gaming Act, which criminalises the offer, promotion and participation in gaming outside of approved establishments. The Illegal Gaming Act also criminalises fraudulent gaming practices, the offer and participation of gaming by unlicensed individuals within approved establishments, the offer of and participation in unlicensed wagers and lotteries, and the extension of loans for gaming by unlicensed individuals. All gaming-related crimes are investigated by the Gaming-related Crimes Division of the Criminal Investigation Police (*Polícia Judiciária*) and are ultimately prosecuted by public prosecutors in the criminal justice courts.

4.3 Do other non-national laws impact upon enforcement?

No, there are no applicable non-national laws.

4.4 Are gambling debts enforceable in your jurisdiction?

Gaming debts are only enforceable in Macau when the credit for gaming is granted by a Gaming Concessionaire or licensed gaming promoter.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?

With the steady decrease of gross gaming revenue following China's anti-corruption campaign, some of Macau junket operators have been struggling to keep their businesses afloat. Amidst a background of financial difficulties a series of alleged fraudulent practices have surfaced, prompting DICJ to announce the revision of gaming promoter's licensing rules and the improvement of probity checks. At the same time, the *Association of Gaming and Entertainment Promoters of Macau* has revealed that it has been working on a code of ethics, which it hopes will set the standard for industry best practices.



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