

Gaming 2019

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Gaming

2019

Contributing editor**Behnam Dayanim****Paul Hastings LLP**

Lexology Getting The Deal Through is delighted to publish the second edition of *Gaming*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Japan.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Behnam Dayanim of Paul Hastings LLP, the contributing editor, for his assistance in devising and editing this volume.

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Macao

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INTRODUCTION

Legal definition of 'gambling'

1 | What are the legal elements required for an activity to be regarded as gambling?

According to Macao Special Administrative Region (SAR) Law No. 16/2001 (the Macao Gaming Law), the elements of a game that constitute gambling depend on which category the game falls under:

- Games of chance: a game of chance is defined as that in which the outcome is contingent, as it depends exclusively or predominantly on a player's luck.
- Pari-mutuel betting: a form of betting on animal races or sports competitions in which the winners divide the pool of bets among themselves (minus commissions, fees and taxes) in proportion to the amount individually bet.
- Online gaming: online gaming is referred to as 'interactive gaming' and defined as the play of games of chance that meet the following criteria:
 - they are offered in Macao casinos in the form of table games or gaming machines;
 - they offer a prize in cash or in kind that can be won in accordance with their respective rules;
 - their players participate by means of telecommunications (including telephone, fax, internet, data networks and video or digital data transmission); and
 - their players make, or agree to make, payments in cash or in kind to play the game.
- Raffles, lotteries and lucky draws: the Macao Gaming Law generally refers to other gambling services as 'operations offered to the public' that are defined as those in which the players' expectation of winning relies exclusively on chance (eg, lotteries, raffles and lucky draws).

Remote activity

2 | With respect to remote or other cross-border activity, where is the wager deemed to take place?

Not applicable (see question 16).

Age restrictions

3 | What is the minimum age for participating in lawful gambling?

Entrance to casinos is restricted to individuals who are 21 or older.

Penalties

4 | What are the penalties for offering unlawful gambling?

The Illegal Gaming Law (Law No. 8/96/M) covers the unlicensed supply of games of chance. It prohibits all forms of operation, promotion or assistance to gaming outside the areas that have been approved as casino or gaming areas, as well as fraudulent gaming in approved areas and unlicensed gaming credit to players. Depending on the specific crime, penalties vary, from fines to imprisonment for up to eight years. Accessory penalties include prohibition from entering casinos, apprehension, and reversion to Macao of all gaming materials and monies or other values used for illegal gaming.

The Illegal Gaming Law recognises a number of other unlawful administrative acts, the penalties of which can go from 300 patacas up to 10,000 patacas.

Law No. 9/96/M covers criminal offences related to animal races. Depending on the specific crime, penalties from fines to imprisonment for up to three years may be imposed.

5 | Does the law penalise the gambler directly for participating in unlawful gambling?

Yes. The Illegal Gaming Law foresees fines of up to 180,000 patacas to gamblers who are found playing outside the areas that have been approved as casinos or gaming areas.

Social and non-profit gambling

6 | Are there exceptions for social gambling, or charitable or non-profit gambling?

Social gambling, or charitable or non-profit gambling is not criminalised under Macao law.

Regulatory authorities

7 | What entity regulates land-based and remote gambling, and what are the regulator's powers?

The regulatory authority is the Gaming Inspection and Coordination Bureau (DICJ).

The main powers of the DICJ are to:

- cooperate in defining, coordinating and executing economic policies relating to the commercial operation of casino games of chance, wagering and other gaming products offered to the public;
- supervise and monitor the activity of gaming concessionaires, particularly regarding compliance with their legal, regulatory and contractual obligations;
- supervise and monitor the suitability and the financial soundness of gaming concessionaires and of other entities or individuals as determined by law;

- assist the government in classifying premises as casino venues;
- authorise and certify all gaming equipment allocated by gaming concessionaires for the operation of their respective concessions;
- license gaming promoters and supervise and monitor their activity, particularly regarding compliance with their legal, regulatory and contractual obligations;
- supervise and monitor the suitability of gaming promoters and their collaborators and key employees;
- determine breaches of the applicable laws and apply the relevant penalties;
- ensure that the relationships between the government and the gaming concessionaires, and between the concessionaires and the general public, develop in an appropriate manner and in accordance with the best interests of Macao; and
- perform, as determined by the Chief Executive or under the applicable laws, any other duties not included in the preceding paragraphs that by their nature fall within the general scope of its responsibilities.

Anti-money laundering regulations

- 8 | Are gambling licensees considered financial institutions for purposes of anti-money-laundering and similar financial services regulatory requirements or are they otherwise subject to such requirements?

Gaming concessionaires are not per se considered financial institutions.

However, casino concessionaires, gaming promoters and other gaming concessionaires must comply with a comprehensive set of obligations aimed at curbing money laundering activities in the gaming industry.

The requirements and obligations are set out in the DICJ Instructions No. 1/2016 (subsequently amended by DICJ Instruction No. 1/2019), and under the applicable anti-money laundering regulations (Law No. 2/2006 and Administrative Regulation No. 7/2006 amended by Law No. 3/2017 and Administrative Regulation No. 17/2017 respectively). These obligations applicable to casino concessionaires, gaming promoters and other gaming concessionaires include:

- customer due diligence obligations;
- enhanced monitoring of play by politically exposed persons;
- identification and reporting of suspicious transactions;
- the obligation to refuse to carry out transactions when mandatory information is not provided; and
- record-keeping obligations.

LAND-BASED GAMBLING

Types

- 9 | What types of land-based gambling are permitted in your jurisdiction, and is gambling regulated at a national or subnational level?

The commercial operation of gambling services in Macao is statutorily reserved to the government. It may only be pursued by privately owned entities that have been awarded a concession to that effect, by entering a concession contract with the government.

The government has entered concession contracts with operators to provide the following gambling services:

- casino gambling – there are currently three concessionaires (Sociedade de Jogos de Macau SA (SJM), Wynn Resorts (Macao) SA and Galaxy Casino SA) and three sub-concessionaires (Venetian Macao SA, MGM Grand Paradise SA and Melco Resorts (Macao) SA) allowed to offer games of chance in casinos (in the form of table games and electronic gaming machines);

- sports betting – sports betting (in soccer and basketball) is pursued on an exclusive basis by one single operator, Sociedade de Lotarias e Apostas Mútuas de Macao (SLOT);
- horse race betting – betting on horse races is offered on an exclusive basis by the Macao Horse Racing Company Limited; and
- lottery – the operation of lotteries in Macao is allowed both in the form of an instant lottery and in the form of a Chinese lottery (popularly known as Pacapio). Instant lotteries are operated on an exclusive basis by SLOT. The Chinese lottery is also operated on an exclusive basis by Sociedade de Lotarias Wing Hing Limitada.

Establishment licensing

- 10 | Please describe the licensing criteria to operate land-based gambling of each type or classification. Does your jurisdiction limit the number of available licences?

The commercial operation of casino games of chance (either in the form of table games or gaming machines) can only be pursued by one of the three operators that were granted a gaming concession following an international public tender launched in 2001 and governed by the International Gaming Tender Regulation (Regulation No. 26/2001). Subsequently, the Macao government authorised these 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 on 2022. Until then, the casino market is closed to new concessionaires.

The granting of gaming concessions is made through a public tender launched by the government. The rules of the first (and only) public tender launched since the approval of the Macao Gaming Law were set out in Regulation No. 26/2001 and in the Chief Executive's Decision No. 217/2001, which officially opened the tender. In this tender, the bidders, their qualified shareholders (that is, shareholders holding, directly or indirectly, 5 per cent or more of the company's share capital), and their directors and key employees, were subject to a suitability investigation conducted by the DICJ, which verified their experience, reputation and probity. The bidders and their qualified shareholders also had to demonstrate an adequate financial capacity and were subject to investigations into their financial background. The bidders covered all costs incurred for the suitability and financial investigations, which were deducted from their bidding bonds set at 1 million patacas (approximate equivalent of US\$125,000).

Only joint stock companies incorporated under the laws of Macao that have the operation of games of chance as their exclusive scope of business can bid for a casino concession. At least 10 per cent of the registered share capital of a casino concessionaire and of a casino sub-concessionaire must be held by its managing director, who must be a permanent resident of Macao.

A special committee appointed by the Macao Chief Executive conducted the public tender. A tender programme defined the minimum requirements of qualification, the information the bidders were expected to disclose and the mandatory elements of the proposals to be submitted.

The 2001 tender (for which a total of 18 bidders qualified) led to the award of the three casino concessions that are currently in force. The awarding criteria were the following:

- total concession premium amount offered;
- amount offered as contribution to a public foundation for the promotion of the cultural, scientific, social, economic and educational development of Macao;
- amount offered as contribution to the urban development, tourism promotion and social security of Macao;
- operational experience;
- investment project;

- development of casino premises and contribution to tourism diversification; and
- contribution to the creation of jobs in the gaming industry and to the training of its professionals.

Pari-mutuels and operations offered to the public were granted on an exclusive basis to a single operator (see question 9).

For details on interactive gaming, see question 16.

Director, officer and owner licensing

11 | Must individual directors, officers or owners of licensees also be licensed or reviewed for suitability?

Yes. Under the Gaming Law and the gaming concession contracts, the gaming concessionaire, its qualified shareholders (that is, shareholders holding, directly or indirectly, 5 per cent or more of the company's share capital), directors and key employees, are subject to a suitability investigation conducted by the DICJ, which verifies their experience, reputation and probity. These entities or individuals, and also the gaming concessionaire, shall remain suitable throughout the concession period.

Also, the management company (that may take over management duties in relation to the gaming concessionaire) and its directors and key employees are subject to the same obligations.

The verification of the suitability process consists of the analysis of the reputation and experience (and character, where applicable) of the entities or individuals identified above. They are further subject to continuous and long-term supervision and control of the government.

Location

12 | May a gambling location be part of a resort, restaurant or other multi-purpose location? What limitations apply?

The Gaming Law defines 'casino' as a place authorised by the Macao government for such gambling purposes (see question 27). Such specific location may be located within a resort, hotel or other multi-purpose location.

However, there are some specific conditions under which gambling is permitted outside casinos, as for situations of vessels, aircraft and at the Macao International Airport.

Passive/institutional ownership

13 | Are there provisions for passive or institutional ownership that allow for exemption or modification of licensing requirements?

Not applicable.

Responsible gambling

14 | What responsible gambling obligations apply to licensees?

Following the enactment of Law No. 10/2012 (subsequently amended by Law No. 17/2018) (which determines the restrictions to participation), the DICJ has implemented 'self-exclusion' and 'third-party exclusion' procedures. Casino concessionaires must set up adequate control procedures to ensure compliance with the statutory restrictions to participation.

Pursuant to the new amendments of the Gaming Participation Law (Law No. 10/2012 subsequently amended by Law No. 17/2018), from 27 December 2019 onwards, when off-duty, the employees of a casino concessionaire are banned from entering into casinos, including the staff that are not directly involved with gaming operations, such as cashiers, cage staff, food and beverage outlet workers, cleaners and those connected to surveillance operations.

Taxes

15 | What type of tax and what tax rate applies to each form of lawful land-based gambling activity?

For players, winnings from gambling activities are not taxable.

The gaming concessionaires and sub-concessionaires shall pay a special gaming tax of 35 per cent, which is levied on the gross operating revenues of the game. Furthermore, they must pay the following contributions to:

- the Macao Foundation, a public foundation responsible for promoting the cultural, scientific, social, economic and educational development of Macao (1.6 per cent of gross gaming revenue); and
- the government for urban development, tourism promotion and social security (2.4 per cent of gross gaming revenue for all casino concessionaires except SJM, which, for historical reasons related to services provided to the government, is subject to a 1.4 per cent rate).

Although casino concessionaires are legally subject to profit tax (locally named complementary tax), they have been historically exempted from payment pursuant to an order of the Chief Executive issued under the provisions of the Macao Gaming Law.

Casino concessionaires must also pay an annual concession premium comprising:

- a fixed amount of 30 million patacas (about US\$3.8 million); and
- a variable amount levied on the number of table games and gaming machines at the following approximate rates:
 - for each VIP table game: 300,000 patacas (about US\$37,500);
 - for each mass-market table game: 150,000 patacas (about US\$18,800); and
 - for each gaming machine: 1,000 patacas (about US\$125).

As to the other forms of land-based gambling activity identified in question 1, the type of taxes and other levies applicable depends on respective concession contracts.

REMOTE GAMBLING

Types

16 | Is remote gambling permitted and, if so, what types?

The commercial operation of online gambling can only be pursued by privately owned entities that have been granted a concession to that effect, through entering into a concession contract with the government.

However, unlike for land-based games of chance, the government has not issued regulations governing the concession and operation of online gambling (defined in the Macao Gaming Law as interactive gaming (see question 1) and has not launched a tender to grant these concessions. Additionally, concessionaires of casino games of chance cannot operate interactive games.

The exclusive operators of horse racing (Macao Horse Racing Company Limited) and sports betting (SLOT) can offer online wagering limited to the competitions they offer.

Licensing

17 | What are the criteria for obtaining a licence to operate remote gambling?

Not applicable (see question 16).

18 | How do the licensing criteria for remote gambling operators differ from those applicable to land-based operators?

Not applicable (see question 16).

Cross-border gambling

19 | May operators located in other countries offer internet gambling to consumers in your jurisdiction without obtaining a licence there?

Macao does not restrict the access to overseas gaming or wagering websites by players that are Macao residents or are located in Macao and does not currently impose any geo-blocking or other similar obligations to operators or to internet service providers.

20 | May operators licensed in your jurisdiction offer internet gambling to consumers in other countries?

Not applicable (see question 16).

Taxes

21 | What tax rate applies to each form of remote gambling?

Not applicable (see question 16).

INTELLECTUAL PROPERTY

Patents

22 | Are gambling games – land-based or remote – patentable in your jurisdiction?

Under the Macao Industrial Property Code, only inventions meeting the patentability requirements set forth in such law can be protected by patent. Although there is no statutory definition of invention, it is implicit in certain provisions that the legal concept of invention refers to technological arts only; in other words, to a technical solution to a technical problem.

In view of such a definition, the object of a Macao patent is always (and only) the technical solution involved. Therefore, any social functions, business or gaming methods or other non-technical features either resulting from or implied by the invention are not, in principle, covered by its scope of protection.

Trademarks

23 | Are there limitations on how brands, logos or other types of marks may be used in promoting gambling games?

No.

ADVERTISING

Restrictions

24 | What types of restrictions apply to advertising gambling games?

The advertising of gambling is regulated by Law No. 7/89/M (the Advertising Law), which prohibits any type of marketing activity that depicts games of chance or their play as the essential element of the advertisement.

The prohibition of gambling advertising is complemented by a set of instructions issued by the Macao Economic Services (MES), which is the government department generally responsible for the supervision and enforcement of the Advertising Law. The MES issued these

instructions with the aim of facilitating the interpretation of the prohibition. The instructions detail the types of advertising activities that are considered illegal by the MES and give practical examples of illegal activities. The prohibition applies to all types of marketing conducted in Macao and encompasses games of chance played offline and online. However, the prohibition does not appear to cover the types of gambling that do not qualify as games of chance, such as sports betting, horse or greyhound races, and lotteries.

Whether or not the advertisement message is generated in Macao is irrelevant. As long as the gaming advertising message is displayed specifically in Macao – made available specifically to Macao residents and with a relevant connection to Macao – in any format or support, it will be considered a violation of the Advertising Law.

SUPPLIERS

Licensing

25 | What types of suppliers to gambling operators require licences?

Administrative Regulation No. 26/2012 (the EGM Regulation), regulates the approval of electronic gaming machines (EGMs), central monitoring systems and other gaming equipment (eg, linked jackpot arrangements, mobile gaming systems), and sets out the licensing procedures for manufacturers and suppliers.

Authorisation granted by the DICJ is necessary for the manufacturers and suppliers to supply such products in Macao.

Gaming machines shall also be approved by the DICJ, and shall fulfil the following requisites:

- accordance with the Macao Technical Standards for Gaming Machines;
- compliance with minimum requirements foreseen under the EGM Regulation;
- submission of a list of authorised technicians to provide technical servicing or maintenance of gaming machines; and
- issuance of a certificate by a gaming machines testing laboratory recognised by the Macao government.

Registration

26 | If licensing is not required, is there a registration or other process suppliers are subject to, and what triggers that process?

Not applicable (see question 25).

CASINO PROJECTS

Casino development

27 | What considerations arise in developing a casino resort project that are not typical to other resort development?

The operation of games of chance may only take place within premises authorised as casinos by the Macao government. This rule has some exceptions, notably the slot machine parlours known as 'Mocha Clubs'.

The applicable law does not provide any criteria or guidelines as to what is required to classify and authorise any given space as a casino. This means that the government has substantial discretionary powers to proceed with such classification.

The characteristics, location and house rules of the casino location shall be defined in administrative regulation or in the concession contracts. In any event, a casino area shall be within a specific limited zone, with specific entrances.

LABOUR AND EMPLOYMENT

Wage and hour rules

28 | Are there particular rules governing hours and wage treatment for casino employees?

No.

Collective labour

29 | Must casino employees be members of labour unions or similar organisations?

No. In Macao, the existence of labour unions is not yet legally recognised. However, there are associations to represent the interests of the gaming industry workers.

ACQUISITIONS AND CHANGES OF CONTROL

Change of control

30 | How are licensee changes of control, and substantial changes in shareholdings of licensees, addressed?

According to Gaming Law, the transfer or encumbering, for any reason, of the property or other right in rem of the gaming concessionaire's shares or the carrying out of any act that may involve the granting of the right to vote or other social rights to a person other than the holder, requires the authorisation of the government, otherwise it shall be considered null and void. Communication to the DICJ within 30 days must also be made.

Any transfer, in any manner, of the share capital of the gaming concessionaire shareholders, and so on successively until the ultimate shareholders, where such shareholding corresponds, directly or indirectly, to 5 per cent or more of the share capital of the concessionaire, must be submitted to the government for approval, except in the case of corporations whose shares are listed on the stock exchange.

Limitations to the cross-shareholding between gaming concessionaires are also foreseen once the gaming concessionaires, as well as the shareholders that hold 5 per cent or more of respective capital, cannot own, directly or indirectly, an equal or higher percentage in the share capital of another gaming concessionaire.

Bankruptcy

31 | How are gambling licences treated in bankruptcy?

Under the Gaming Law (and the gaming concession contracts), in the event the gaming concessionaire fails to perform its basic obligations prescribed by law or the contract, the government may unilaterally terminate the concession on grounds of non-fulfilment.

Under the gaming concession contracts, one of the causes for unilateral termination is the circumstance of the concessionaire going bankrupt or insolvent.

In such circumstances, the government may notify the concessionaire to fully perform its obligations and correct or offset the results arising from its act within a specified time limit, except for an irreparable violation. Should the concessionaire fail to perform its obligation, correct or offset the results arising from its actions, according to the provisions prescribed by the government, the government may unilaterally terminate the concession contract.

In the event of unilateral termination, the ownership of the concessionaire's casinos will revert to the government, together with their equipment and all rights and assets as determined by the concession contract. No compensation will be due to the concessionaire in the case of termination for breach of contract.

Compensation for damages arising from breach of contract may also be sought by the government.

QUASI-GAMBLING

Regulation

32 | How are forms of 'quasi-gambling' regulated? Are any treated as 'gambling', and what triggers such treatment?

There is no statutory definition of 'quasi-gambling'. Social gaming or quasi-gambling per se is not a regulated activity, there being no specific rules that address and regulate the new realities of social gaming.

Social gaming offered through the web or through online mobile platforms may qualify as interactive gaming. Therefore, the definition of interactive gaming may effectively place limitations on how social casino games can be legally operated in Macao through those platforms.

An online casino game that is free to play and does not award players the possibility of winning prizes or tokens exchangeable for real-world rewards does not qualify as an interactive game and can be freely offered in Macao.

Licensing

33 | Does your jurisdiction license quasi-gambling operators?

Not applicable (see question 32).

Other restrictions

34 | Does your jurisdiction impose other restrictions on the conduct of quasi-gambling activity, including restrictions on advertising, age of participation, limitations on prizes, etc?

Not applicable (see question 32).

LITIGATION

Recent cases

35 | What, if any, significant litigation involving the gambling or quasi-gambling sectors has your jurisdiction seen in recent years?

In a recent decision from the Macao First Instance Court, a Macao Gaming Concessionaire was considered jointly liable with a gaming promoter carrying activities in its casinos (to obtain any illegal funds to maintain the operation of the VIP gaming room) for the damages the latter caused to third parties. This Court decision clarifies that with Administrative Regulation No. 6/2002 (setting the gaming promoters' licensing rules), the legislator intention is also to give more responsibility to concessionaires in controlling activities carried out in their casinos by the gaming promoters, their directors and collaborators. Therefore, it concluded it is reasonable and logical to require them to supervise these activities, as well as to assume a joint responsibility with the gaming promoters, their directors and collaborators in event of liability arising from the acts performed by them. If the gaming concessionaire does not fulfil its supervisory duty, allowing or tolerating the gaming promoter to develop this kind of activity in its casinos, joint responsibility for the damages caused by that activity shall not be excluded. Such decision is not yet final and further developments are expected.

UPDATE AND TRENDS**Developments**

36 | Highlight any noteworthy developments or trends in the gambling or quasi-gambling sectors (legal or business) and their potential implications.

The extension of the current gaming concessions (set to expire in 2022) is a current hot topic and possible developments are likely to be up for discussion by the Macao SAR government in 2019. Indeed, the government may decide on the possibility of exceptional extension of current concession contracts and/or on the launch of a new public tender and respective conditions, in particular the number of concessions to be granted.

The DICJ announced the revision of the gaming promoters' licensing rules (currently governed by Regulation No. 6/2002) to improve the suitability and financial soundness of operators. It is widely expected that these changes will be enacted in the short term.

Revision of the Electronic Gaming Machines (EGMs) Regulation (Regulation No. 26/2012), which regulates electronic gaming machines and systems and other gaming equipment, is also underway, in particular with regards to the licensing procedures for EGM manufacturers, suppliers, distributors and laboratories.

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