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## CHAPTER 1

## Gaming and Betting in the 1999 Macau Civil Code and Enforceability of Obligations

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## A. INTRODUCTION

Gaming and betting are nominate contracts<sup>2</sup> that have been regulated by the 1999 Macau Civil Code<sup>3</sup> along with the other contracts provided for in this

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<sup>2</sup> The Portuguese and Chinese versions of this article, with main differences, were published in the Bulletin of the Faculty of Law of the University of Macau (Boletim da Faculdade de Direito da Universidade de Macau) no 25, 2008, p 65 ff, under the corresponding title in Portuguese (and Chinese), 'O jogo e a aposta no Código Civil de Macau de 1999 e a eficácia das obrigações'. The present text essentially corresponds to the second part of a more extensive study on contracts in special and gaming and betting contracts in the 1999 Macau Civil Code, which has already been published in the Portuguese language in the book *Estudos de Homenagem ao Professor Doutor António Ferrer Correia, ao Professor Doutor Vasco Lobo Xavier e ao Professor Doutor Orlando de Carvalho*, of the Faculty of Law of the University of Coimbra, Vol III, 2007. It now follows for publication in English, along with this introductory note and some necessary adjustments; however, it should be noted that this text was written in an attempt to cover the issues raised in both studies.

<sup>3</sup> The Macau Civil Code was approved on 3 August 1999, and came into force on 1 November of the same year, less than two months before the transfer of sovereignty of Macau from the Portuguese Republic to the People's Republic of China, which took place on 20 December 1999, with the establishment of the Macau Special Administrative Region and with the entering into force of the Basic Law of the Macau Special Administrative Region and, among others, the Reunification Law.

In accordance with Arts 3 and 8 respectively of the abovementioned statutes, the laws, decrees, administrative regulations and other normative acts previously in force in Macau shall be maintained and adopted as legislation of the Macau Special Administrative Region, except for any that contravene the Basic Law of the Macau Special Administrative Region, the same happening in relation to the Civil Code.

The 1999 Macau Civil Code replaced the 1966 Macau Civil Code, which, by chance, followed from the 1966 Portuguese Civil Code, approved by Decree-Law no 47377, of November 25, 1966, extended to Macau by Administrative Regulation no 22869, of September 4, 1967, published in the BOM (Official Gazette of Macau) no 46 (second supplement), of November 23, 1967, along with the subsequent modifications that were extended to Macau and with the approved alterations that were only in force in Macau. See Civil Code, text in force in Macau, coordinated by JG Marques, Macau Foundation, 1997, as well as our *Lições Preliminares de Direito das Obrigações*, 3.º Ano do Curso de Direito de 1997–1998, 1.3., and 'O Direito Civil em Macau', *Perspectivas*, 1997, no 2, p 175 ff.



statute,<sup>4</sup> although the legal regulations applicable to these contracts go beyond the civil sphere.

Following modifications undergone by gaming and betting contracts in the Civil Code, a number of profound changes have also taken place in relation to the rules applicable to the gaming concession in Macau. Further to alterations introduced by the Civil Code and special legislation, but still considering the essence of the contracts, an ongoing discussion has taken place in the local doctrine in order to determine whether gaming and betting are sources of legally enforceable obligations or, instead, natural obligations. Taking into account the general and special regulations applicable to gaming and betting contracts, the abovementioned discussion seems worthy of some special consideration.

We shall address the gaming and betting regulations as they appear in the Macau Civil Code both before and after 1999 with the purpose of pointing out the relevant rules and the modifications made to these rules, by referring to some general aspects of gaming and betting contracts, as well as aspects that have been regulated in the special legislation applicable to gaming and betting. We shall address, in particular, the issue of enforceability of the obligations that result from gaming and betting arrangements, and whether these obligations are civil or natural obligations, since only civil obligations are legally enforceable obligations.

## B. GAMING AND BETTING CONTRACTS IN LIGHT OF THE 1966 MACAU CIVIL CODE

Gaming and betting<sup>5</sup> are nominate contracts that have been regulated by the law.

4 In the subject 'Law of Obligations', taught in the Portuguese language in the Faculty of Law of the University of Macau, we briefly address this issue, which is part of our plan of study, and of M Trigo et al *Lições Preliminares de Direito das Obrigações*, used by law students in their 3rd year since 1997–98, still only available as a roneoed text, but that we certainly hope to revise and update.

On contracts in special, see our *Dos contratos em especial e do jogo e aposta no Código Civil de Macau de 1999* and the bibliographical references made therein, in respect both to Macau and Portugal: R de Alarcão, *Direito das Obrigações*, roneoed text, Coimbra, 1978–79, pp 17–30; A Varela, *Das Obrigações em geral*, Vol I, 10th ed, revised and updated, 3rd reprint of the 2000 ed, Almedina, Coimbra, 2005, pp 221, 279; and P de Lima and A Varela, *Código Civil Anotado*, Vol I, 3rd ed, revised and updated, with the collaboration of MH Mesquita, 1982, p 345 ff, and Vol II, 3rd ed, revised and updated, 1986. See also CM Pinto, AP Monteiro and PM Pinto, *Teoria Geral do Direito Civil*, 4th ed, Coimbra Editora, 2005, p 102 ff, 397 ff and 645 ff; A Costa, *Direito das Obrigações*, 10th ed, Almedina, Coimbra, 2006, p 197 ff, 228 ff, and 357 ff; G Teles, *Direito das Obrigações*, 6th ed, revised and updated, Coimbra Editora, 1989, p 53 ff; AM Cordeiro, *Direito das Obrigações*, Vol III, AAFDL, 1991; LM Leitão, *Direito das Obrigações*, Vol III, *Contratos em Especial*, 4th ed, Almedina, Coimbra, 2006.

5 On gaming and betting contracts, see A Varela, *Das obrigações em geral*, Vol I, 8th ed, revised and updated, pp 737–738; P de Lima and A Varela, *Código Civil Anotado*, Vol II, 3rd ed, revised and updated, pp 851–855; and M Pinto, P Monteiro and C da Silva, *Jogo e Aposta – Subsídios de Fundamentação Ética e Histórico-Jurídica*, roneoed text, Lisboa, Universidade Católica Portuguesa; and still A Neto, *Código Civil Anotado*, 9th ed, revised and updated, 1995, p 796. In Portugal, see A Rento and A Laureano, *Direito do Jogo (Legislação Anotada)*, Quid Juris, 1991.

On gaming and betting regulations, with further developments and multiple information, from a perspective both of historical evolution and of special legislation in force in Macau,

Gaming is of great economic and social importance to Macau,<sup>6</sup> as it is still one of the preponderant activities – if not the most important one – of the Territory. For this reason, it is relevant to study this topic from a contract law perspective and taking into account the question if the obligations created are legally enforceable or, rather, mere natural obligations. Although an important part of the regulations on gaming and betting fall within branches of public law, particularly administrative and tax law and even criminal law, the rules regarding the law of obligations still plays a significant role in this scenario.

Considering the framework for bilateral and onerous contracts, it is possible to distinguish between commutative contracts that generate certain performances for both parties, and aleatory contracts, where both parties face a certain risk. Gaming and betting contracts are aleatory contracts in that both parties take the risk or assume the possibility of either winning or losing.

Since the law does not provide a definition for gaming and betting contracts, it seems important to establish some common and distinctive traits between them. These contracts have in common the fact that they are both onerous and aleatory, are both regulated among the contracts in special and are subject to the same legal framework. However, taking into account the differences between these contracts, a game only gains legal relevance where there is an economic interest related to it, while a bet, from the outset and due to its nature, has relevance in itself and does not necessarily need to be associated with a game to take effect. Yet, the law does not distinguish between these contracts, but rather puts them on par by subjecting them to a common regime.

The law distinguishes between legal and illegal gaming and betting. Gaming and betting contracts are considered legal when they rely both on the luck and the skills of the player. Conversely, they are regarded as illegal when they rely exclusively on luck. Illegal gaming and betting contracts are invalid and generate neither civil nor natural obligations.<sup>7</sup> On the other hand, legal gaming and betting contracts (which depend upon luck and skills of the player) are sources of natural obligations.<sup>8</sup>

In this case, however, if any other factor under the general rules of law gives rise to a contract that is either void or voidable, or if the creditor resorts to fraud in its execution, no natural obligation shall be created. The voidable nature of these contracts can emerge from the lack of legal capacity of the debtor, or from situations in which the creditor resorts to fraud in its execution. That is the case, for example, when a gambler in a card-game adulterates the cards or by any other means disrespects the applicable rules by acting in a deceitful manner.

see *Inspecção dos Contratos de Jogos*, Macau Government, *O Jogo em Macau*, 1985, to be read with attention to the subsequent legal developments in this area.

6 In 1998, in Trigo, *supra* note 4, §9.4, we examined this matter in a summarised way, taking into account the legislation in force at the time and the most relevant doctrine available in the Portuguese language, and we now essentially follow what was written there, although with some slight corrections and modifications. It should be noted that the regulations on gaming and betting contracts in the 1966 Civil Code have not changed in Portugal.

7 Article 1245(1) of the Macau Civil Code.

8 Article 1245(2) of the Macau Civil Code.



Exceptionally, in accordance with the rules of law, gaming and betting arrangements can generate valid contracts that are sources of legally enforceable obligations, even in the case of games of fortune. As stated in Art 1246 of the Macau Civil Code, this is true in relation to those who take part in sports competitions, in that bets placed between competitors are both valid and sources of civil obligations. This is what happens, for instance, when competitors in a soccer championship bet among each other on who will be the top scorer or the steadiest player in the championship. The prizes awarded to the competitors or to the teams they represent are not included herein, as it does not seem justifiable to exclude them, taking into account that they are legal and valid and should be treated as unilateral transactions.<sup>9</sup>

Secondly, whenever a special law so provides, according to Art 1247 of the Macau Civil Code, gaming and betting contracts are considered valid and sources of legally enforceable obligations – even in case of games of fortune, which depend entirely on luck.<sup>10</sup> Therefore, similarly to what happens to all other contracts under the general rules applicable to the contracts, gaming and betting arrangements produce effects as civil obligations.<sup>11</sup>

The gaming contract has been dealt with by the law for a long time and, according to relevant legal regulations, games of fortune are allowed and the concession for their operation lies exclusively in the hands of the concessionaires that are supervised by the Macau government. The relevant regulations are Legislative Act (*Diploma Legislativo*) no 1496, of July 4, 1961, partially altered by Legislative Act (*Diploma Legislativo*) no 1649, of December 25, 1964, and, more recently, under the terms of Law no 6/82/M, of May 29, altered by Law no 10/86/M, of September 22. In 1961, the operation of games of fortune in Macau was awarded exclusively to STDM (*Sociedade de Turismo e Diversões de Macau*), but since then the terms of the concession contract for exclusive operation of games of fortune in the Territory of Macau have been subject to a number of revisions.<sup>12</sup> Games that have been regulated and whose operation has been authorised include fantan, baccarat, *banca francesa*, black-jack, roulette and slot-machines (among others foreseen in Art 8 of Law no 6/82/M), and their respective regulations were approved by administrative rules, such as the Baccarat

9 See Trigo, *supra* note 4, §2.3.2.2, as well as A Varela, *Das obrigações em geral*, Vol I, 8th ed, revised and updated, pp 737–738, and P de Lima and A Varela, *Código Civil Anotado*, Vol II, 3rd ed, revised and updated, pp 851–855, and V Serra, *Obrigações naturais*, Boletim do Ministério da Justiça, no 53, p 116; arguing against this view, G Telles, *Contratos Cíveis*, Boletim do Ministério da Justiça, no 83, p 82.

10 As foreseen in Art 2 of Law no 6/82/M, of May 29, games of fortune are the ones in which the result depends exclusively upon luck. In Portugal, the definition provided by Decree-Law no 48 912, of March 18, 1969, was identical to the definition provided in Law no 6/82/M. However, Decree-Law no 422/89, of December 2, in a more accurate way, broadened its definition to cover those situations in which winning a game may also depend on some skills of the players. Thus, Art 1 of this statute considers as games of fortune those which rely exclusively or mainly on luck.

11 That is how De Lima and Varela, *supra* note 9, p 853 view these obligations; and that is also the conclusion reached by Pinto, Monteiro and Da Silva, *supra* note 5, p 25 ff, p 26 (19, 2nd paragraph) and pp 30–31 (23).

12 See 'Contrato de concessão de exclusivo dos jogos de fortuna ou azar', *Imprensa Oficial de Macau*, 1998.

Regulation, approved by Administrative Rule (*Portaria*) no 169/75, of October 4. As established in Art 2(2), of Law no 6/82/M, mutual bets are not considered as games of fortune, nor are operations offered to the general public in which the expectation of winning basically relies on luck, such as lotteries, raffles, tombolas and draws.<sup>13</sup>

Law no 8/96/M, of July 22, which revoked Law no 9/77/M, of August 27, approved the legal regime dealing with illegal games and usury in casinos, including games, lotteries and mutual bets, establishing and punishing the respective criminal and administrative offences.

Finally it should be noted that gaming and betting arrangements follow the general regulations applicable to contracts and relevant special laws, including their respective regulations.

## C. GAMING AND BETTING CONTRACTS IN LIGHT OF THE 1999 MACAU CIVIL CODE

### 1. Nullity, validity and enforceability

With the entry into force of the Macau Civil Code, gaming and betting contracts are now regulated by Art 1171, the sole article of Chapter XIII of Title II, Contracts in Special. Chapter XIII incorporates in a single article the rules that were previously foreseen in Arts 1245, 1246 and 1247, Chapter XV, of the former Civil Code.

The numbers of the chapters that comprise this Title II were altered as a result of the suppression of the chapters concerning the partnership agreement and the agistment contract. Furthermore, the regulations for gaming and betting contracts were concentrated in one sole article (Art 1171), similarly to what happened with the employment contract (Art 1079). Although these contracts cover different matters, both are nominate contracts, contemplated by the Civil Code, which have also been regulated by special legislation. With regard to employment contracts, the law provides a definition for them and subjects such contracts to special legislation. As for gaming and betting contracts, the law does not define them, but states the general rules applicable and draws attention to the special legislation existent on this subject-matter (see Art 1079(2) and Art 1171(3)).

On the other hand, the epigraph of Art 1171, which sets the general rules for gaming and betting contracts in the Macau Civil Code, has also been altered, changing from 'nullity of the contract' (Art 1245 of the 1966 Civil Code) to 'enforcement' (Art 1171 of the 1999 Civil Code). This alteration is noteworthy in itself – less because of the introduction of the term 'enforcement', although it is a concept that brings along with it a positive perspective – but more due to the suppression of the phrase 'nullity of the contract', which clearly conveys a negative idea in our everyday language and in relation to both concepts and their

13 Mutual bets were only regulated further for greyhound racing in 1963, basque pelota in 1971 and finally horse racing. The operation of instantaneous lotteries was first regulated by Law no 76/84, of June 14. Instantaneous lotteries are the ones in which the prize can be totally or at least partially determined upon the issue of the respective tickets (Art 1). On this topic, see the abovementioned 'Inspeção dos Contratos de Jogos', Governo de Macau, 'O jogo em Macau', and subsequent legislation.



legal meanings, particularly in a legal system such as the one of Macau, in which gaming and betting contracts have extraordinary economic and social relevance.

In line with the modification of the epigraph 'nullity of the contract', the provision of Art 1245 of the 1966 Civil Code was set aside, as well as the general rule according to which gaming and betting do not generate valid contracts nor can they be considered as sources of civil obligations. This does not mean that we shall now understand that gaming and betting contracts are always valid and sources of civil obligations, but for legislative, economic and social reasons the main emphasis has now been placed on the enforceability, as opposed to the nullity, which essentially reduced the subject under discussion to a question of lawfulness or unlawfulness, bringing along with it moral and ethical concerns.<sup>14</sup>

In effect, we can conclude that the general provision on the invalidity of gaming and betting contracts was subtracted from the Civil Code and its regime is now centered on evaluating whether gaming and betting arrangements are lawful or unlawful and, when deemed legal, whether to grant them effects either as civil or natural obligations.<sup>15</sup>

14 In fact, it should be said that the discussion regarding the nullity or validity and the enforceability of such obligations was previously argued by Telles, *supra* note 9 in *Contratos civis, ob cit*, p 182, 'In respect to the traditions and to comprehensible moral reasons, it was established that gaming and betting arrangements do not generate valid contracts. These contracts are not seen as a plausible means of acquisition. They are not protected by law because their purpose and aim are not justifiable. Thus, they do not produce legal effects, nor can they be considered as sources of civil obligations: the contracting party who wins cannot judicially claim what the other one lost'. 'A similar principle remains true and applicable, regardless of the game or bet being considered allowed or forbidden, lawful or unlawful. When unlawful, the gamblers shall be subject to the legal penalties; when lawful, these contracts still stand as indifferent to the law, in a way that, although they might not be prohibited, the law does not deal with them either. Therefore, in one case or the other, the contract is not enforceable, as that would imply in the existence of bonds related to its aim and in the certainty of the proposed legal effects. It is up to the special legislation to determine in which cases gaming and betting contracts are allowed and in which cases these arrangements are forbidden'. And still further, see Serra, *supra* note 9, *Obrigações naturais*, particularly in pp 102–103 and note 216. For more information on the debate that revolves around this topic, see Pinto, Monteiro and Da Silva, *supra* note 5, particularly 'Considerações conclusivas', p 51 ff, as well as the other bibliographical references listed in note 4 *supra*, and in notes 21, 24 and 33 below.

15 This conclusion was not taken for granted by the Temporary Commission in charge of Following-up and Participating in the Elaboration of the Bill Related to the Civil, Civil Procedure and Commercial Codes, Opinion (*Parecer*) no 2/99, available at <www.al.gov.mo/lei/codigo/civil/po/2.htm> p 12, which we here quote, given its interest to the analysis of the regulations in force and to the debate raised over the issues in cause: '68. Finally, the current rules on gaming and betting (Arts 1245 to 1247) integrate one sole article (Art 1171 of the Bill), which reflects a considerable change of perspective from the legislator in attention to this activity. Once the precepts are appropriately confronted, it is possible to notice that the reform is apparently subtle; in terms of substance, the law continues essentially the same. Hence – notwithstanding the improvement made regarding the systematisation and the consequential economy of the precept –, the Commission argues whether the modification carried out is useful or advantageous. Eventually, the real extent of the legislator's intention would have been more easily comprehended if the first part of Art 1171(1), established that «gaming and betting are only sources of civil obligations when special laws so provide»'.

## 2. General and special gaming and betting regulations

The gaming and betting regulations foreseen in the 1966 Civil Code,<sup>16</sup> which have been adjusted as aforesaid, create a 'general regime' and a 'special regime'.<sup>17</sup> The 'general regime' comprises at least three rules.

- (1) The first part of Art 1245(1) of the Macau Civil Code states that 'gaming and betting are neither valid contracts nor sources of civil obligations'. As invalid contracts, gaming and betting arrangements are not recognised nor protected, because they are illegal (see Art 1245(2)), forbidden and void.
- (2) 'Gaming and betting are lawful and sources of natural obligations', except if any other reason under the general rules of law renders such contracts void or voidable, or if the creditor resorts to fraud in its execution. According to Art 1245(2), gaming and betting arrangements are lawful and tolerated, although they are not sources of civil obligations (this perspective is quite different from the first part of the same precept);
- (3) The third rule, laid down in Art 1246 and as an exception to the previous rules – is that 'gaming and betting are valid contracts and sources of civil obligations in sports competitions in relation to the ones taking part in them'. These are cases of legal gaming and betting agreements specifically appointed by the civil law.

The 'special regime' applicable to gaming and betting contracts is the one foreseen in special legislation, since according to Art 1247, in addition to the general regime, special laws can regulate matters covered by this chapter. Thus, where such contracts are allowed and regulated under special law they shall be considered lawful and valid (unless void or voidable under the general rules

16 Please note that the 1966 Civil Code, which was in force in Macau under the terms referred to in note 2, is still in force in Portugal and on this point remains basically unaltered, as the special gaming regulations have been modified and adjusted, when necessary, in order to regulate this activity and its operation; see J Pinheiro, *Lei do Jogo Anotada e Comentada*, Almedina, 2006. As a result, although the 1966 Civil Code is no longer in force in Macau, this text still takes into account a regime which is in force.

17 See De Lima and Varela, *supra* note 9, p 853 (no 5 in respect to Art 1245), 'General-rule-of-law' which is the term adopted in face of an 'exceptional law', or we should better say a 'general-regulation' in face of a 'special regulation'. See also, A Costa, *Noções Fundamentais de Direito Civil*, 4th ed, revised and updated, with the collaboration of Henrique Sousa Antunes, 2001, pp 386–389; M Pinto, P Monteiro and C da Silva, *Jogo e Aposta*, *supra* note 5, p 25 ff, and 'Regime jurídico do jogo e aposta'; G Telles, 'Contratos Civis (Projecto completo de um título do futuro Código Civil português e respectiva exposição de motivos)', *Boletim do Ministério da Justiça*, no 82, pp 181–183; and V Serra, *Obrigações Naturais*, *supra* note 9, p 115 (114 to 121).

Following this train of thought, with regard to the relation between civil general law and special law, we prefer to address this topic by contrasting the terms 'general regulations' with 'special regulations', particularly to integrate the general law established in the civil law and distinguish between the general regulations established by the civil law as opposed to the special legislations referred in the same, which have been evolving with attention to a more contemporary perspective – both legal and ethical – of what should be understood by gaming and betting, as demonstrated by M Pinto, P Monteiro and C da Silva, *Jogo e Aposta*, *supra* note 5, and in recent studies carried out in Macau by A Pereira, *Casino Gaming Law in Macau*, with special attention to the sensitive nature of gaming, pp 142–144.

## CHAPTER 4

### Regulation of Gaming Companies in Macau

Salvatore Mancuso<sup>1</sup>

#### A. INTRODUCTION

It is well known that the gaming business and the related tourism industry are the core parts of the economy of the Macau Special Administrative Region (SAR). This results from the fact that Macau is largely a services-based economy with tourism and gaming as its main pillars. The gaming legal framework of Macau provides a wide field for study and research, since the gaming industry impacts on a series of different areas of law. Among these laws, contract law, administrative law, criminal law, company law, tax law and labor law are surely the most relevant ones.

Today's affirmed role of the gaming industry in Macau and its extreme importance well known even outside of the region has developed an increasing interest in understanding the legal environment in the area.

This essay intends to first examine the basic elements of Macau company law, considered as an essential requirement to better understand the second part of the essay which focuses on the examination of the specific rules under Macau Law for companies that intend to operate in the gaming sector.

#### B. MACAU COMPANY LAW: A BRIEF INTRODUCTION

##### 1. Notion and elements of a company

The regulation of company law is contained in the Commercial Code of Macau<sup>2</sup> and is undoubtedly affected by the transplanted Portuguese pattern, and consequently by its formulation as a civil law legal system.

The notion of the company is actually provided in the Civil Code where companies are defined as legal persons whose members bind them to contribute with goods or services to the common exercise of a given economic activity, which is not of simple enjoyment, to share the profits deriving from such activity

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<sup>2</sup> Unless otherwise specified herein, all references to Articles in the course of the present paragraph refer to the Commercial Code of Macau of 1999, as amended by Decree-Law no 6/2000 of April 27.



or to gain savings.<sup>3</sup> Companies can be civil or commercial companies,<sup>4</sup> with civil companies being the ones whose objective is not the exercise of a commercial enterprise and whose type is not necessarily one of those listed in the Commercial Code, and commercial companies are all the others.<sup>5</sup> The Civil Code expressly refers to a specific law (the Commercial Code) for the regulation of commercial companies.<sup>6</sup>

From the abovementioned definition of a company we can determine four essential characteristics of a company: (i) its members, who can be natural or legal persons and have legal personality distinct from the one of the company that they create; (ii) the assets, that correspond originally to the contributions made by the founders and can be represented by goods (tangibles or intangibles like patents, trademarks or know-how) or services economically appraisable and capable of use in the pursuit of the corporate object, and that are owned directly by the company; (iii) the joint exercise of an economic activity suitable to make profits and not of mere fruition; and (iv) the intention of making profits to be shared among the members.<sup>7</sup>

## 2. Types of commercial companies

The Commercial Code contains the regulation of commercial companies in its Volume II Part I. The regulation is based on the principle of *numerus clausus*: according to Art 174(1) the only admitted commercial companies are unlimited partnerships, limited partnerships, private companies and public companies.<sup>8</sup> The consequence drawn out in the same Article is that any company organised in one of these four ways is considered a commercial company, irrespective of whether its corporate object is a commercial enterprise or not.

Therefore whoever desires to establish a commercial enterprise jointly with other people is free to choose the form that is the most suitable for their interests, but they shall select one of the abovementioned four types of companies. The reasons for introducing the principle of *numerus clausus* have been individuated on the need for security of the legal system and on the interest of third parties entering into agreements with the companies, with particular reference to cases of limited liability.<sup>9</sup>

3 Article 184(1) of the Civil Code.

4 Article 184(2) of the Civil Code.

5 Article 184(3) of the Civil Code.

6 Article 185(1) of the Civil Code.

7 On the characteristics of companies see *amplius* AT Garcia, 'A brief presentation of Macao's commercial companies system', in *Cadernos de Ciência Jurídica, Faculdade de Direito, Universidade de Macau*, vol. 1, Macau, 2005, p 155, who does not include the members as an essential characteristic; and AL Dias Pereira, *Business law: a code study. The commercial code of Macau*, Almedina, Coimbra, 2004, p 37, who also includes the submission of losses as additional characteristic of a company.

8 For the sake of convenience this work will follow the translation of the *Código Comercial* commanded and published by the Macau *Imprensa Oficial*, even if sometimes not exactly appropriate. See *Commercial Code*, Ed DS Assuntos de Justiça, Macau 2003, also available at [www.imprensa.macao.gov.mo/bo/i/99/31/codcomen/default.asp](http://www.imprensa.macao.gov.mo/bo/i/99/31/codcomen/default.asp).

9 See Garcia, *supra* note 7, p 155; Dias Pereira, *supra* note 7.

There are specific features for each of these companies, even if the main distinction relates to the one between private (limited) and public companies.<sup>10</sup>

With regard to the liability of the partners, in private limited companies the quota holders are not personally liable for the debts of the company unless a personal liability of one or more of the partners is expressly provided for in the articles of association.<sup>11</sup> Moreover, the members are jointly and severally liable for the payment of all the quotas of the company.<sup>12</sup> In public companies the liability of each shareholder is limited to the payment of the shares he subscribed, and he is not liable in any case towards the creditors of the company.<sup>13</sup>

With reference to the transfer of shares, in private limited companies it is essentially free,<sup>14</sup> unless otherwise provided in the articles of association,<sup>15</sup> but it shall be communicated to the company that is affected by the transfer.<sup>16</sup> In public companies the transfer of shares – that must be incorporated into negotiable instruments – is free and takes effect with the simple delivery (*traditio*) of the negotiable instrument whereby the shares are incorporated,<sup>17</sup> while for nominative shares the transfer is made by written endorsement of the related negotiable instrument and registration in the company shareholders' book.<sup>18</sup>

Another difference between private limited companies and public companies is that of their corporate bodies. The bodies that all the commercial companies have are listed in Art 214. All of them have a meeting of shareholders that takes decisions at least on the matters indicated in Art 216 (Art 381 for the private limited companies), and a company secretary whose competences are defined in Art 238. With reference to the administration, private limited companies can have a single director or a board of directors,<sup>19</sup> while public companies must have a board of directors composed of an odd number of members.<sup>20</sup> The directors can be individuals or legal persons, and in the latter case the legal person shall appoint an individual from the company as acting director on its behalf.<sup>21</sup> The directors bind the company when acting on its behalf in the ambit of the powers conferred upon them by the law, regardless of any limitation of such powers arising from the articles of association or any resolution of the company, even if publicised<sup>22</sup> unless the company can prove that the third party knew about the director's lack

10 Specific rules related to unlimited and limited partnership are set forth in Chapter II (Arts 331 ff) and Chapter III (Art 348 ff) of Book II, Title I of the Commercial Code respectively. Since these kinds of companies are rarely used in the commercial practice and do not directly interest gaming activities, they will not be part of the present work.

11 Article 357 of the Commercial Code.

12 Articles 356(1) and 362 of the Commercial Code.

13 Articles 393(1) and 410(1) of the Commercial Code.

14 Article 366 of the Commercial Code requires a written form for the transfer deed with the signature of the contracting parties certified by a notary.

15 Article 367 of the Commercial Code.

16 Article 366(3) of the Commercial Code.

17 Article 424(3) of the Commercial Code.

18 Article 424(2) of the Commercial Code.

19 Article 383 of the Commercial Code.

20 Article 454 of the Commercial Code.

21 In this case the legal person is jointly and severally liable with the individual for the acts he made as director of the company (Art 234(3) of the Commercial Code).

22 Article 236(1) of the Commercial Code.



of power. Both private limited companies and public companies shall have a supervisory entity, namely either a single supervisor or a supervisory board,<sup>23</sup> whose competences are set forth in Art 243 of the Commercial Code.

Finally, private limited companies can be formed even by a single quota holder<sup>24</sup> and require a minimum corporate capital of MOP\$25,000,<sup>25</sup> while public companies must be formed by at least three shareholders and require a minimum corporate capital of MOP\$1 million.<sup>26</sup>

### 3. Incorporation of companies

Since the present work deals with gaming activities and since only public companies can be authorised to exercise such gaming activities, this essay will focus on public companies in describing the 'life' of these companies from their incorporation to their dissolution, while reference to private limited companies will be made whenever deemed necessary.<sup>27</sup>

The Commercial Code contains the regulation of public companies in Chapter V, Title I of Book II. These specific rules shall be combined with the general rules related to all companies set forth in Chapter I, Title I of the same Book II.

The minimum requirements related to the form and the content of the act of incorporation valid for all kinds of commercial companies are listed in Art 179 of the Commercial Code,<sup>28</sup> and for public companies such requirements shall be

23 Article 239 of the Commercial Code.

24 Article 390 of the Commercial Code.

25 Article 359(2) of the Commercial Code.

26 Article 393 of the Commercial Code.

27 For a wider description of Macau company law system see JAF Godinho, *Macau Business Law and Legal System*, LexisNexis Butterworths, Hong Kong, 2007.

28 In its English version Art 179, titled 'Form and minimum content of the act of incorporation' provides as follows:

1. The creation of a company shall be done by means of a written document, with certification of the signatures of the shareholders, unless another form is required by the nature of the goods with which the shareholders contribute to the company.
2. A copy of the act of incorporation shall be filed with a notary.
3. The act of incorporation must mention:
  - a) the date of its conclusion;
  - b) the identity of the shareholders and that of their representatives in such act;
  - c) the declaration of the shareholders' intention to create a company of one of the types mentioned by the law;
  - d) the capital subscribed by each shareholder;
  - e) the articles of association that shall regulate the functioning of the company;
  - f) the appointment of the administrators and, if they exist, the single supervisor or the members of the supervisory board, and the company secretary;
  - g) if made by means of a private document, a declaration issued by a lawyer, stating that, having followed all the process of incorporation, he verified the absence of any irregularities in it.
4. The articles of association must mention:
  - a) the type and the firm of the company;
  - b) the object of the company;
  - c) the registered office of the company;
  - d) the company capital, with indication of the method and the time limit of its payment;

completed with the others listed in Art 395.<sup>29</sup> Basically the act of incorporation of the company shall be written in one of the two official languages of the Macau SAR (Chinese or Portuguese) and the signature of the initial partners shall be certified by a notary. The so-called 'act of incorporation' shall include all the basic information related to the formation of the company (date of conclusion, identity of the founding partners, capital subscribed by each of them) and the 'articles of association' shall be attached to it, mentioning the type and name of the company, its corporate objective, capital and registered office, and the composition of the corporate bodies.<sup>30</sup> Since the above mentioned requirements are the minimum ones, it is possible to add other elements in the 'articles of association', like the duration of the company, pre-emption rights in favor of the shareholders or the company, and special kinds of shares or rights in favor of some or all shareholders.

Shareholders' agreements are considered valid and binding upon the shareholders entering into them, but the validity of the corporate acts cannot be challenged by such agreements. Shareholders' agreements by which a shareholder undertakes to always vote in accordance with the instructions of the company or of one of its organs, to always vote for the approval of the proposals presented by them, or to exercise or refrain from exercising the right to vote in exchange for special advantages are void.<sup>31</sup>

Within 15 days from the incorporation of the company the directors of the company or the company secretary shall apply for the registration of the company<sup>32</sup> and registration gives legal personality to the company itself.<sup>33</sup> In case of company activities prior to its registration, the people who acted on behalf of the company, as well as the shareholders who authorised the acts, will bear personal and unlimited liability for these acts.<sup>34</sup>

- e) the composition of the administration and, in cases in which it should exist, that of the supervision of the company.

5. The act of incorporation shall be signed by a number of shareholders equal at least to the minimum legally required for each type of company.

6. The act of incorporation shall be drafted in one of the official languages.

- 29 Article 395 of the Commercial Code provides that:

'Shareholders shall intervene in the act of incorporation, unless the company is created by public subscription; in addition to the requirements stated in paragraph 5 of article 179, the following shall be mentioned in the articles of association:

- a) the nominal value and number of the shares;
- b) the nature of the instruments representing the shares, either nominative or to bearer, and rules of conversion;
- c) the authorisation for the issue of bonds, if it exists;
- d) the amount up to which the administration can raise the company capital without the need for a resolution by shareholders;
- e) the types of shares, ordinary or preference, if they are different;
- f) the various categories of ordinary shares, if equal rights do not attach to all of them.'

- 30 Here the translation seems to be inaccurate. Maybe the expression 'articles of association' could have been identified as an 'act of incorporation', and 'by-laws' by what the translator has called 'articles of association'.

31 Article 185 of the Commercial Code.

32 Article 187 of the Commercial Code.

33 Article 176 of the Commercial Code.

34 Article 190 of the Commercial Code.



Public companies can also be created through public subscription, and in this case the capital can only be paid in money.<sup>35</sup> The Commercial Code sets forth all the steps to be taken to incorporate a public company using this procedure.<sup>36</sup> The promoters shall pay 20% of the total corporate capital in advance (or MOP\$1 million depending which value is lower), with the remaining to be offered through public subscription. Then the promoters shall prepare a prospectus of the future company containing the information listed in Art 397(1) of the Commercial Code,<sup>37</sup> and they are personally liable for the accuracy of the information provided.<sup>38</sup> The offer for the subscription and the project shall be registered and published<sup>39</sup> and anyone who wants to join the future company shall agree with the offer and the prospectus and indicate the number of shares he wants to subscribe. The offer is made through financial institutions and the company can be incorporated if at least 75% of the shares offered are subscribed.<sup>40</sup> If such percentage is not reached, the promoters – who shall convene a general meeting within five days from the expiration of the deadline for subscription<sup>41</sup> – can reformulate the project or lower the corporate capital.<sup>42</sup>

#### 4. Corporate capital

The Commercial Code does not contain a definition of corporate capital, that is, the amount representing the total value of the shares of the company. The corporate capital of a company represents the guarantee of repayment for the creditors of the company, it provides the company with the financial instruments to operate and it reflects the position of each shareholder within the company.

35 Article 401 of the Commercial Code.

36 The rules are in Art 396 ff of the Commercial Code.

37 According to Art 397(1), '[T]he promoters shall prepare a project mentioning:

- a) the full draft articles of association, precisely specifying the company object;
- b) the number of shares for public subscription as well as their nature, nominal value and the issue premium, if it exists;
- c) the estimated amount of the costs paid by the promoters, if these are to be refunded by the company in accordance with paragraph 2 of article 188;
- d) the time limit for subscription and the credit institutions at which it can be done;
- e) the time limit within which the incorporating meeting shall take place;
- f) a technical, economic and financial study forecasting the evolution of the company for three years, prepared on the basis of faithful and complete data and taking into account the known circumstances and forecasts available at that date, in order to inform clearly any persons possibly interested in the subscription;
- g) rules on the allocation of the subscription, in case it becomes necessary;
- h) the conditions under which the company shall be created if the public subscription is incomplete, or a mention that, in such case, it shall not be created;
- i) the amount of capital subscribed that must be paid in the act of subscription, the time limit for payment of the remainder, and the time limit for refund of such amount if the company is not created'.

38 Article 398 of the Commercial Code.

39 Articles 399 and 400 of the Commercial Code.

40 Article 402 of the Commercial Code.

41 Article 402 of the Commercial Code.

42 Articles 403 and 404 of the Commercial Code.

When the net value of the company falls below half of the value of the corporate capital, the shareholders shall restore the assets of the company by paying an amount equal to what is necessary to reach the full value of the corporate capital; failing which the corporate capital shall be reduced consequently or the company shall be liquidated.<sup>43</sup> In case of losses arising from the approved balance sheet, legal reserves shall be used to cover them unless other reserves can be used.<sup>44</sup>

When the company is incorporated it has its corporate capital.<sup>45</sup> When the capital is fully paid, the shareholders can decide to increase it, and the increase can be made through new contributions or by using the available reserve.<sup>46</sup> Shareholders can also decide to reduce the corporate capital in case of losses or to establish or increase the legal reserve, but in any case the resolution shall mention whether the reduction is made by reduction of the value of the shares or by extinction of specific shares that shall be expressly mentioned.<sup>47</sup> The resolution by which the corporate capital is reduced shall be published and is effective only after its registration;<sup>48</sup> creditors of the company reducing its capital are entitled to obtain specific guarantees unless the reduction is motivated by losses or by creation or replenishment of legal reserves.<sup>49</sup>

#### 5. Shares

A share represents the contribution of a shareholder to the corporate capital and the consequent rights and obligations (present and future) belonging to him. When a company is incorporated in Macau, all the corporate capital shall be divided among the shareholders.

In private companies the value of the shares can be different and it must be expressed in MOP, must be equal or higher than MOP\$1,000, and shall be a multiple of 100.<sup>50</sup> Shares cannot be embodied in negotiable instruments and

43 Article 206 of the Commercial Code.

44 See Art 377(3) for private companies and Art 432(4) for public companies.

45 According to Art 359 the corporate capital of a private company shall be at least MOP\$25,000, while according to Art 393 the corporate capital of a public company cannot be less than MOP\$1 million.

46 Article 261 of the Commercial Code. Article 262 of the Commercial Code lists the elements that shall be inserted in the resolution by which the shareholders decide to increase the corporate capital:

- a) the type and the amount of the increase of capital;
- b) the nominal value of the new company participations;
- c) the time limits for the payment of the capital participations arising from the increase;
- d) the reserves to incorporate, if the increase of capital is done by incorporation of reserves;
- e) whether only shareholders participate in the increase and under what conditions, or if it will be open to third parties, namely through a public offer;
- f) if new shares are created or if the nominal value of the existing ones is increased.

47 According to Art 265(2) Of the Commercial Code, '[A] reduction not motivated by losses can only be approved if the net worth of the company will become at least 20% in excess of the sum of the capital, the legal reserve and the compulsory reserves created in accordance with the articles of association, certified through a report to be prepared by an accounting auditor or firm of auditors, which shall be attached to the resolution'.

48 See Arts 266 and 267 of the Commercial Code.

49 See Arts 268 and 269 of the Commercial Code.

50 Article 360 of the Commercial Code.



	2004	2005	2006	2007	2008	2009	2010	2011 (JAN-NOV)
<b>Conducts Punishable in Public Places</b>	0	0	0	0	0	0	1	1
<b>Illicit Exploitation of Gambling in Authorised Places</b>	3	1	4	19	14	16	18	23
<b>Money Laundering</b>	3	1	1	26	33	23	27	31
<b>Association or Secret Society</b>	0	1	0	2	3	3	2	5

\*General case numbers but not only casino crimes. However for disobedience, a great majority (estimated at more than 60%) are casino disobedience. For abuse of confidence and deception it is estimated that less than 50% occur in casinos.

## CHAPTER 7

## Taxation of Gaming in Macau

Luís Pessanha<sup>1</sup>

## A. TAXATION IN MACAU

## 1. Introduction

Tax law can tentatively be described as the framework of legislation and regulations that deals with government levies, charges or other duties collected from private ownership of property or financial transactions. A tax is a monetary charge (in Macau, as a rule, taxes are payable in cash) imposed on the income of individuals or profits of companies, business transactions or the ownership of assets to generate public revenue. Hence, taxes are enforced private contributions from income, wealth or the sale of certain products, required by the government in order to raise sufficient money to finance ongoing public expenditures.<sup>2</sup> Usually, the greater the level of social protection, services and goods (namely, public infrastructures, education, transportation, security, health care and other social services) that the public expects the government to provide, the higher the taxation level necessary to finance such expenses. There are few exceptions to this classic dilemma, where high public expenditures can be financed without a heavy fiscal burden being imposed on taxpayers, and Macau is probably one of these few very special places, thanks to the considerable revenues generated by the local gaming industry.<sup>3</sup> Another well-known fact about taxation is that it has a negative effect on economic growth, as it makes certain commercial transactions and financial operations no longer profitable and may even, at least to some extent, provoke capital flight to other jurisdictions with lower taxation.

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<sup>2</sup> Standard literature on Portuguese taxation (main source of Macau taxation) includes, JC Nabais, *Direito Fiscal* (Tax Law), 3rd ed, Almedina, 2005; L de Campos and ML de Campos, *Direito Tributário* (Taxation Law), 2nd ed, Almedina, 2000; S Martínez, *Direito Fiscal* (Tax Law), 10th ed, Almedina, 2003; JL Saldanha Sanches, *Manual de Direito Fiscal* (Tax Law Manual), 2nd ed, Coimbra Editora, 2002.

<sup>3</sup> C Nabais, 'O princípio da Legalidade Fiscal e os actuais desafios da tributação' (The Principle of Fiscal Legality and the present challenges of taxation), *Boletim da Faculdade de Direito da Universidade de Coimbra*, Special Edition, 2002, p 4 ff.



Indeed, Macau is also a remarkable case study with regard to taxation policy, as the Macau Special Administrative Region (SAR) dutifully carries on with the esteemed local tradition of maintaining a low tax system in the Territory.<sup>4</sup> Historically an important international trade centre, 'free port'<sup>5</sup> and strategic entry gate to the broader Chinese mainland market, and to this day still a rather remarkable link between the European (mainly, Portuguese) and Chinese cultures, Macau has always had a low tax policy. In line with this tradition, the Macau legislator has in the recent past made considerable effort to sustain the international tax competitiveness and ensure that the local fiscal system maintains stable low rates in order to attract investment from Hong Kong and abroad.<sup>6</sup>

4 Today's tax regime of Macau is quite different from the tax regime in effect in Mainland China (or Hong Kong), and prior to the handover in 1999 that regime was quite distinct from the Portuguese tax regime that has applied at least as early as 1961. As in almost everything else, the principle of continuity (see Art 5 of the Basic Law of Macau) implied that the tax system of Macau was only to undergo minor changes and amendments in the last couple of years and continues essentially to follow the same legal framework which was in effect before the transfer of sovereignty (the tax regime of Macau was fundamentally reviewed last in the 1970s). Still, some relevant changes were recently made that might be worth mentioning, namely, the introduction of tax on the incomes of public servants under the Professional Income Tax by Law no 12/2003, of August 11 (which has been so far unsuccessfully challenged in the local courts; see Decision of the Court of Second Instance of 24 November 2005, Case no 106/2004; Decision of the Court of Last Instance of 25 October 2006, Case no 9/2006) and the review of the old and impractical tax rate of the Complementary Income Tax by Law no 4/2005, of July 18, which mainly applies to the profits of commercial companies. For further reading on the tax framework presently applicable in Macau, see HR Rainha, 'Reflexões sobre o sistema fiscal de Macau: evolução e perspectivas' (Reflections about the tax system of Macau: evolution and perspectives), *ARAPM*, Vol V, no 15, May 1992, p 57 ff; HR Rainha, 'Receitas públicas do Território de Macau: origem e evolução (1980–1989)' (Public revenues of the Territory of Macau: origin and evolution (1980–1989)), *ARAPM*, no 10, December 1990, p 761; HR Rainha, *Apostamentos de Direito Fiscal* (Notes on Tax Law), Fundação Macau, Macau 1996; HR Rainha, *Impostos de Macau (Macau's Taxes)*, Fundação Macau, 1997; HR Rainha, 'Noções Gerais de Direito Fiscal de Macau' (General Notions of the Tax law of Macau), *Boletim da Faculdade de Direito da Universidade de Macau*, annum VIII, no 17, 2004, pp 231–244; JNC da Silva, *Direito Fiscal (Visão Geral)* (Tax Law (General Vision)), Study Notes, Macau 2003/2004, unpublished; C Noronha, *The Law and Practice of Macau Taxation*, Prentice Hall, 2004; LHM Va, *Macau Master Tax Guide*, CCH, 5th ed, 2010/11, JAF Godinho, *Macau Business Law and Legal System*, LexisNexis, Hong Kong, 2007, pp 6–7.

5 This was explicitly recognised by the constitutional legislator, since the Macau SAR is expected to 'maintain the status of a free port', not to 'impose any tariffs unless otherwise prescribed by law' (Art 110 of the Basic Law of Macau) and to continue to 'pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital' (Art 111 of the Basic Law of Macau). Macau is essentially seen as a liberal open market economy, as one can expect from an historical trade center.

6 One just needs to read the forewords for some of the tax laws presently in force in Macau to find these key guiding principles again and again. The Macau legislator stated, namely, the great importance of 'maintaining a taxation level which shall not be higher than that of other territories in our geographic area' (preamble to Law no 15/77/M, of December 31, that approved the Industrial Contribution) or that 'Therefore, the taxation of the profits obtained in the Territory shall be maintained at a level substantially lower than the territories and countries in our geographical area' (preamble to Law no 21/78/M, of September 9, that approved the Complementary Income Tax). Unfortunately, lately the Macau legislator has mysteriously ceased to draft preambles for the laws and regulations that are enacted, and presently the local legal community is no longer provided with the formerly customary forewords by which the

Nevertheless, Macau has always been able to carefully avoid being labelled as an international 'tax haven', probably to some extent because it was never really that successful at attracting foreign investment as an international low taxation jurisdiction. Currently the Macau SAR is making considerable efforts to comply with OCDE standards on the exchange of tax information with other jurisdictions.

To discuss the tax legal framework applicable in Macau one must offer proper consideration to the considerable public revenues generated by the taxation of the gaming industry: the main local industry, employer and engine of local development. Indeed, one can even go so far as to suggest that the Macau SAR depends significantly on gaming revenues,<sup>7</sup> which is not entirely surprising considering the paramount importance that the gaming industry occupies and fulfils at all levels of the local economy and life of Macau.

## 2. Background

Any casual traveler that by a happy coincidence visits Macau these days will surely notice the tremendous weight that the gaming industry has in Macau, from the casinos that dominate the city skyline,<sup>8</sup> that keep the night at bay with their bright neon-lights, from the many private buses owned by gaming operators that

intentions, purposes and legislative solutions were introduced, clarified and explained. In our view, this goes back to a misunderstanding of Art 4(1)(1) of Law no 1/1999, December 20, that stated that 'The preambles (...) are not part of the legislation in force in the Macau SAR' (our translation). However, this appears to be rather obvious, as the preambles of legal diplomas were never considered to be legally binding, as they serve solely to guide, support or clarify in the interpretation of the relevant legal provisions and should offer a better understanding of the legislative agenda at the time. In our legal system, the interpretation of the laws can and should consider the intentions of the original legislator, but is not limited to the historical context in which the laws were enacted, as it must also consider the 'specific conditions of the time in which (the law) is applied' (see Art 8(1) of the Civil Code of Macau) (our translation). For further reading, see JAF Godinho, *Macau Business Law and Legal System*, LexisNexis, Hong Kong, 2007, pp 19–20. Hence, it is unclear why the Macau legislator at some point in time decided to no longer provide the traditional summary and introduction to the relevant legal provisions that are the preambles to laws, as they are helpful and not binding.

7 It should be pointed out that the dependency on local public coffers of the gaming revenues has been gradually increasing, and the percentage of the public revenues generated by the Special Tax on Gaming made up around 80% of the total tax amounts raised by the Macau SAR as of 2011 (in 1999, the Special Tax on Gaming made up only 47% of the total public revenues of the Territory). Moreover, this huge percentage of the total tax income made up by the Special Tax on Gaming does not consider the significant indirect economic impact of the gaming industry in the Territory, since a substantial part of the remaining tax income collected in Macau goes back to wealth generated by gaming and redistributed through the local economy. Hence, it can be said that Macau shares much of the risks and problems of all economies that depend essentially on a single industry or economic activity (monoculture) and it is therefore especially sensitive to any impact felt in the tourism sector (or over the freedom of circulation of persons in greater China or in Southeast Asia).

8 The number and size of the casinos in Macau has increased substantially in the last few years, from 11 casinos in 2002 to 34 as of the 4th Quarter of 2011 (see <www.dicj.gov.mo/web/en/information/DadosEstat/2011/content.html#n5>). One must also stress that the changes that the local gaming industry has undergone are not just quantitative, but also qualitative, as the quality of the casino venues has clearly improved with the increasingly fierce competition in the gaming market of the Macau SAR.



bring a steady flow of gambling tourists from the border and ferry terminals to the many casinos of Macau,<sup>9</sup> to a way of life that is distinctively orientated towards making money and a more or less generalised belief in good luck or chance as a gateway to happiness.<sup>10</sup>

Macau lives essentially from the gaming industry, and has done so to a great extent at least since the end of the 19th century, when the Territory first became widely known as the 'Monte Carlo of the Orient'. However, since 2001/2002, after the start of the ongoing somewhat cautious liberalisation of the local gaming market and the entry of a set of reputable US casino operators, Macau has gone on to become better known as the 'Las Vegas of the Orient'. Whatever the more widespread reference is at a given moment in time, the fact is that Macau has for a long time been and still is one of the most important gaming jurisdictions in the world (presently even the most profitable of all). New and old casinos have expanded operations in the Region and a vast number of sizable new investments have been committed in the last few years. One can say that Macau is going through a phase of economic expansion and growth without parallel, as more and more new gaming properties open doors as soon and quickly as possible (sometimes casinos start gaming operations even before construction is fully completed<sup>11</sup>), as time is money, given the considerable productivity of the gaming floor in Macau.<sup>12</sup>

9 It can probably be said that the gaming industry of Macau overwhelmingly depends on tourism from Mainland China and Hong Kong. The number and the importance of Mainland China tourism has increased exponentially in the last few years (since the single visa policy was introduced by China). As of January to December 2004 the total number of tourists was 16,672,556, 57.16% of which came from Mainland China, 30.30% from the Hong Kong SAR and 7.72% from Taiwan. In the analog period between January and December 2011, the total number of tourists increased to a total of 28,002,279, of which 57.7% came from Mainland China, 27.1% from the Hong Kong SAR and 4.3% from Taiwan. The main problem of the local tourism industry is that most tourists do not choose to stay overnight in Macau, but simply arrive to play in the casino and return home directly thereafter (in 2005, 51.83% of the visitors returned on the same day and only 48.17% stayed overnight in Macau; as of January-November 2011, 53.9% of the visitors returned in the same day and only 46.1% stayed overnight in Macau). For more information with regard to the tourism and visitors data to Macau, see the homepage of the Macau Government Tourist Office available at <[www.macautourism.gov.mo/en/index.php](http://www.macautourism.gov.mo/en/index.php)>.

10 In Macau, one can truly claim that 'to get rich is glorious' (Deng Xiao-Ping).

11 It is easy to point out three major casinos that originally started operating in Macau, while still partially under construction: (i) Casino Grand Lisboa; (ii) the first Crown Casino (currently Altira Casino); and (iii) the Sands Casino. In all these venues the gaming space were already operating (at least partially), while the hotel and other leisure facilities were still being built. One could also add the Wynn Casino to this list, that went through some extensive transformation work (with the aim of increasing the gaming floor) after opening. One should, however, understand that the completion of periodic construction work, mainly before the Chinese New Year, is a widespread social practice in Macau and is considered to bring luck, which might help to explain why so much construction work is always carried out.

12 In accordance with some studies, the return of capital from the gaming floor (average table productivity) in Macau in 2004/2005 was around seven times higher than in Las Vegas (Vide, Z Gu and J Zhicheng Gao, 'Financial Competitiveness of Macau in Comparison with Other Gaming Destinations', *UNLV Gaming Research & Review Journal*, Las Vegas, 2006, Vol 10, no 2; pp 1-13). However, this high asset productivity is explained by the relative low number of tables (and slots) offered, considering the great demand for gaming in the booming local market,

It should be of little surprise that in the last few years the Macau government has shifted its focus from simply attracting and promoting foreign investment<sup>13</sup> (which lately has shown to be easy enough to accomplish<sup>14</sup>) to trying to ensure that the quality of the new investment projects truly add value or bring something fresh to the Territory. The aim has been to develop and grow the local gaming and tourism market and to gradually achieve a revenue balance as other entertainment products and services, retail, lodging and conferences gain greater importance,<sup>15</sup> as is common in more advanced or mature gaming jurisdictions that use integrated casino resorts to diversify their source of revenues.<sup>16</sup>

which may gradually suffer a certain degree of erosion, as more and more new casino venues open their doors.

13 In accordance with some of the investment plans agreed upon: (i) Sociedade de Jogos de Macau, SA ('SJM') shall make investments totaling at least MOP\$4,737,480,000 (around USD\$91,698,471.07) until 2012 (see the Annex to the Concession Contract of SJM); (ii) Wynn Resorts (Macau), SA ('Wynn Macau') shall make investments totaling at least MOP\$4 billion (around USD\$499,589,208) until 2009 (see the Annex to the Concession Contract of Wynn); and (iii) Galaxy Casino, SA ('Galaxy') shall make investments totaling at least MOP\$8.8 billion (around USD\$1,099,096,259) until 2009 (see the Annex to the Concession Contract of Galaxy). It should be stressed that these figures represent only a fraction of the total investments that these three gaming operators will certainly commit to the local gaming market and that further expansion of ongoing operations and casino venues throughout the duration of each concession can be expected (as is necessary to maintain competitiveness and increase revenues).

14 It was amply covered by the international press that the gaming revenues of Macau surpassed the revenues of Las Vegas in 2006, since the Macau gaming market generated revenues of MOP\$55.9 billion (around USD\$6.95 billion), compared with approximately USD\$6.6 billion of the Las Vegas Strip (see D Barboza, 'Macau Surpasses Las Vegas as the Gambling Capital', *New York Times*, 24 January 2007; P Doocey, 'Asia rising', *International Gaming & Wagering Business*, March 2007). Even if the quite different accountancy rules and guidelines applicable in these two gaming jurisdictions make such comparisons especially delicate at the time (see H Stutz, 'Macau's gaming win swells', *Las Vegas Review-Journal*, 24 January 2007). It is estimated that Macau generated more than five times the gambling revenue of the Las Vegas Strip in 2011 (<[online.wsj.com/article/BT-CO-20120201-703083.html](http://online.wsj.com/article/BT-CO-20120201-703083.html)>).

15 The Macau legislator has made abundantly clear that it desires the 'transformation of the development model of Macau' and of the 'industrial local sector, which is essentially dependent on the gaming sector', with the aim that the local economy shall be 'gradually sustained in a multi-sector entertainment industry, that includes gaming, events, conferences and entertainment tourism' (see the *Report on Future Lines of Government Action in the Areas of Economy and Finance* (Linha de Acção Governativa da Área da Economia e Finanças) for the year of 2007, p 58). However, in our view, so far little has been seen of such family friendly tourism entertainment, even if all gaming operators often claim to be committed to offer more than just gaming to the general public.

16 In Las Vegas, widely recognised as an advanced and mature gaming jurisdiction, the casinos often function together with other leisure, entertainment and retail services, thanks to the 'integration' of the gaming space with other activities provided in a single resort (one sometimes speaks of 'integrated resorts' to illustrate this development model in which the casino attracts tourists and customers for a vast array of entertainment products and services provided at a certain venue). In some cases, the moneys generated by the non-gaming commercial activities can rival or even surpass the pure gaming revenues of a certain resort. This was the development model adopted by Singapore that recently allowed for the opening of two integrated casino resorts.



### 3. Macau's gaming market

The local gaming industry is quite diversified and offers much more than only casino gaming,<sup>17</sup> even if sometimes one can get this impression, considering the enormous importance of the casino concessions for the rest of the local gaming industry. Indeed, in Macau there are individual and separate exclusive gaming concessions for the exploitation of: (i) sports betting (in soccer and basketball matches); (ii) horse racing pari-mutuels; (iii) greyhound racing pari-mutuels; and (iv) traditional Chinese lotteries.<sup>18</sup>

However, as a matter of fact, presently the overwhelming majority of the gross gaming revenues of Macau (and therefore of the gaming tax revenues) are generated by the exploitation of the casino gaming sub/concessions, to the point where the financial relevance of the other types of gaming concessions<sup>19</sup> is sometimes marginalised and their economic viability is not entirely certain (the future of the Macau Jockey Club, for example, is uncertain), even if the local gaming market is presently booming.

17 One of the many possible implications resulting from the fact that the casino concessions are just one of the various types of gaming concessions in Macau is that each local gaming sub/concessionaire cannot offer the types of games of chance that are to be exploited by (or are an exclusive of) another gaming concession. Therefore, the exclusive concession of the commercial exploitation of games of chance works not only to exclude third parties not authorised to offer the gaming activity in question (see Art 3(1) of Law no 16/2001), but also internally among the various sub/concessionaires, limiting the precise scope that each of the sub/concessions is authorised to lawfully exploit in Macau (see Art 3(6) of Law no 16/2001). Furthermore, in the ambit of each of the gaming concessions, the types of games of chance that can be lawfully exploited must be offered to the public in accordance with the detailed regulations and rules applicable to each game of chance (as approved by the government through the DICJ and updated periodically), and the sub/concessionaires cannot introduce, as they see fit, new games of chance to the public without prior regulation and approval (such regulations obviously aim at assuring that the rules of the games offered are fair, that the probabilities of winning are reasonable and that there is sufficient transparency in the local gaming market). Hence, the casino gaming sub/concessionaires can only offer table games (see Art 3(3) and (4) of Law no 16/2001), in accordance with the applicable official regulation that can be consulted at the official homepage of the DICJ (see <[www.dicj.gov.mo/web/en/frontpage/index.html](http://www.dicj.gov.mo/web/en/frontpage/index.html)>), and mechanical or electronic slot machines ('slot machines' or 'slots'), in 'accordance with the law' (see, Art 3(8) of Law no 16/2001) (specific legal regulations on the operation of slot machines is so far still pending).

18 It should be pointed out that in Macau there is no concession for 'interactive gaming' (commonly known as 'online gaming') (see Art 2(1)(c) of Law no 16/2001), nor can the casino gaming sub/concessionaires exploit interactive gaming under their respective sub/concessions (see Art 4(1) of Law no 16/2001), be it through the internet or any other means of remote communication. Everything points to the fact that, given sufficient time, an autonomous interactive gaming concession shall be awarded (see Art 4(2) of Law no 16/2001), even if presently the world market for online gaming is going through a phase of high uncertainty (due to strong repressive efforts by many jurisdictions – starting with the United State of America – to prevent gaming from being offered to their nationals through the use of the internet).

19 It should be noted that the Macau SAR disposes only of a proper gaming exclusive in greater China as far as casino gaming is concerned, and not over the other types of gambling offered to the public, where the local gaming market is subjected to strong competition from other jurisdictions in China, such as Hong Kong (namely, as far as the pari-mutuels, sports betting and lotteries there offered).

The gross gaming revenues generated between 2005 and 2011:<sup>20</sup>

Types of Game	2005	2006	2007	2008	2009	2010	2011
Casino Games of Fortune	46,047	56,623	83,022	108,772	119,369	188,343	267,867
Greyhound Racing	67	67	98	186	327	340	297
Horse Racing	636	437	403	501	333	439	440
Chinese Lottery	7	7	6	6	6	6	6
Instant Lottery	0.03	0.03	0.00024	0.003	0.0024	0.0023	0.0036
Sports Betting – Football	333	327	380	304	279	380	362
Sports Betting – Basketball	44	60	79	57	69	79	86
<b>Total</b>	<b>47,134</b>	<b>57,521</b>	<b>83,847</b>	<b>109,826</b>	<b>120,383</b>	<b>189,588</b>	<b>269,058</b>

(Amounts above are presented in millions of Patacas;  
MOP\$1 = approximately USD0.12)

A brief overview of the financial data of 2011 above (last complete year) shows that the casino gaming revenues generate around 99.55% of the total gaming income of the Macau SAR. It might also be worth mentioning that in 2011 approximately 72.89% of the casino gaming revenues were generated in the 'VIP' gaming rooms (special gaming rooms).<sup>21</sup>

20 Data is available at the official webpage of the gaming inspection of the Macau SAR (*Direcção de Inspeção e Coordenação de Jogos Direcção da Região Administrativa Especial de Macau 'DICJ'*) at <[www.dicj.gov.mo/web/en/information/DadosEstat/2011/content.html#n1](http://www.dicj.gov.mo/web/en/information/DadosEstat/2011/content.html#n1)>. It must be said that this fundamental financial data on the gaming industry of Macau made available is frequently reviewed, corrected and amended.

21 To be precise, the main bulk of the revenues obtained through the exploitation of games of chance is generated by the 'VIP' rooms of the casinos, where premium players are invited to risk great amounts of money in table games (usually, the game of chance of choice is Baccarat). The gross gaming revenues of 'Baccarat VIP' were of 10,790 in 2000; 12,755 in 2001; 16,340 in 2002; 22,178 in 2003; 29,783 in 2004; 28,864 in 2005; 36,783 in 2006; 55,762 in 2007; 73,772 in 2008; 79,834 in 2009; 135,648 in 2010 and 196,126 in 2011 (amounts in MOP millions). Gaming statistics collected from the official home page of the DICJ (see <[www.dicj.gov.mo/web/en/information/DadosEstat/2011/content.html#n1](http://www.dicj.gov.mo/web/en/information/DadosEstat/2011/content.html#n1)>). Even if the importance of the mass market is growing, as the casino gaming sub/concessionaires are starting to allocate additional gaming floor to offer gaming to a vast number of small players simultaneously there are some who consider the mass market to be potentially the more profitable, since the premium players at the 'VIP' rooms usually can count on rather generous freebies, courtesy gifts, free entertainment and lodging and sometimes even more favorable gaming odds that are provided by the casinos to