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NEW LEGAL REGIME FOR GRANTING GAMING CREDIT IN MACAU

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Since the liberation of Macau's gaming industry around 20 years ago, gaming concessionaires – namely six operators – and gaming promoters (commonly known as junkets) have been lawfully granting credit to patrons with legally enforceable debt under legislation on gaming credit (Law no. 5/2004) passed at that time.

Gaming credit is easily confused with gaming loss. In practical terms, a lender of gaming credit allows a patron to buy gaming chips on credit, which shall be repaid after the gaming regardless of whether the borrower wins or loses.

The Legislative Assembly of Macau has now amended the gaming credit law, unanimously approving the Legal Regime for the Granting of Credit for Casino Gaming (Law no.7/2024) on 12 April 2024.

As published in the Official Gazette, the new law replaces the preceding law enacted 20 years ago (Law no. 5/2004) and will come into effect on 1 August 2024.

This change aims to further the Macau government's objective of achieving a "sustainable and healthy" gaming environment.

EXCLUSIVE RIGHT OF CONCESSIONARIES

The most significant change introduced by the new regime is that the granting of gaming credit will be legally reserved for concessionaries.

Until now, Law no.5/2004 allowed gaming promoters to extend gaming credit to players in their own name if they have signed a contract with a concessionaire specifically for that purpose.

The new law eliminates this option and only authorises concessionaries to give gaming credit.

Nevertheless, gaming promoters can continue to give gaming credit as agents or representatives of concessionaries.

The formalities that promoters and concessionaries have to abide by when entering into an agency contract remain mostly unchanged from original Law no. 5/2004.

This includes submitting the draft agency contract and ancillary documents to the Secretary for Economy and Finance (SEF) for approval prior to the signing of the contract, and notifying the Gaming Inspection and

Coordination Bureau (DICJ) of the prospective termination of any such contract at least 15 days in advance.

As an agent or representative, the gaming promoter is not the lender. The credit relationship is therefore between the concessionaire as the lender and the patron as the borrower.

DEFINITION OF CREDIT REMAINS UNCHANGED

The substance of the definition of "credit" remains the same, with the exception that now under the new law, the definition of "credit" specifically refers to concessionaries as lender, as opposed to "credit entities" – which would include gaming promoters and other intermediaries – in the old law.

As published, credit is defined as “*the transfer of the ownership of gaming chips to a third party, with the transfer not immediately paid for in cash*”.

The list of payment methods regarded as payment in cash for the purpose of this definition also remains unchanged, including electronic payment instruments and any transaction deemed to be equivalent to cash.

OBLIGATIONS OF CONCESSIONARIES AS LENDERS

Besides the general obligation to conduct business in a prudent and sensible manner, the new regime broadens the duties of concessionaires as lenders of gaming credit.

Their duties are expanded to include establishing:

1. a credit risk management system;
2. a record-keeping system for credit activities and a set of data security measures;
3. an effective customer complaint handling system; and
4. standard operating procedures for granting gaming credits.

Concessionaries also need to ensure that gaming promoters with whom they enter into agency contracts with will comply with the above-mentioned obligations.

Furthermore, similar to Law no. 5/2004, all members and agents of concessionaries have to adhere to the duty of confidentiality, though there are waivers in exceptional circumstances.

SURVEILLANCE

The DICJ is conferred with the authority to monitor compliance with the new regime, and call upon other public authorities to provide them with assistance if necessary.

Additionally, the SEF is given the power to take the following actions:

1. Suspend or set out conditions for the operation of the credit business in the scenario that continuation of the business would cause serious harm to the public interest, or a lack of competence is evident; and
2. Terminate any concessionaire's right to engage in credit business on grounds of significant public interest.

ENHANCED SANCTIONING FRAMEWORK

The new law dedicates an entire chapter to establishing a sanctioning framework for punishing those who commit offences. The offences are largely separated into two main categories:

1. Criminal offences

Conduct that qualifies as criminal offences includes refusing to cooperate with DICJ's inspections or investigations; and failing to comply with SEF orders to suspend or set out conditions for concessionaries and their agents to continue issuing gambling credit.

2. Administrative offences

Conduct that qualifies as administrative offences by the concessionaires includes:

- (a) engaging in the credit business through third parties;
- (b) transferring credit business qualifications to a third party under any name;
- (c) carrying out credit business when prohibited or suspended by the SEF;
- (d) breaching any legal obligations as the lender; and
- (e) failing to comply with the formalities required when executing or terminating agency contracts with gaming promoters.

It should also be noted that gaming promoters continuing to engage in the credit business when their principal is prohibited or suspended commit an administrative offence and would be fined.

In determining the fines and penalties, consideration would be given to the seriousness of the offence, the damage caused, the fault of the offender and the benefits gained, as well as the offender's economic status and past conduct.

TRANSITIONAL AND SUPPLEMENTARY PROVISIONS

Lastly, Law no.7/2024 clarifies that any rights and acts arising from credit-granting operations will continue to be governed by Law no. 5/2004 until 1 August 2024.

This provides time for gaming promoters and concessionaries to adapt to the new regime.

To address matters not specifically regulated by the new regime and ensure consistency between the different laws applicable to the gaming industry, Law no. 7/2024 also includes a provision listing the supplementary sources that would help bridge any potential gaps in the new regime.

ENFORCEMENT OF GAMING CREDIT IN HONG KONG

Although casino gaming is not legal in Hong Kong, given the proximity between Macau and Hong Kong – and that many credit patrons of Macau casinos have connections to Hong Kong – the Hong Kong courts have been a common forum for enforcement of gaming credit granted in Macau (and also other major gaming jurisdictions such as Las Vegas and Singapore).

Unlike some jurisdictions which are more conservative or restricted by public policies, the Hong Kong courts allow the enforcement of gaming credit as a legal debt provided it is granted lawfully in the jurisdiction of its inception.

Invariably, patrons will try to resist enforcement by raising issues in relation to the underlying law, or arguing

Hong Kong is not the convenient forum. The good news to gaming operators worldwide is that such challenges rarely succeed. In all such cases handled by our Firm on behalf of gaming operators, the lenders always prevail.

As far as the concessionaires are concerned, while they will have more regulatory obligations under the new law, the definition of credit remains the same and it does not appear its legality will be invalidated by any lapse in compliance under the new law.

Therefore, it is expected the new law will not give rise to new grounds upon which a credit high roller may rely to resist enforcement.

KEY TAKEAWAYS

Under the new regime, concessionaires are given more responsibilities and compliance obligations.

The Macau gaming industry will be keenly observing how the SEF and DICJ exercise their supervision authority of gaming credit under the new law.

Nevertheless, it is expected the enforceability of gaming credit in Hong Kong will not be impacted, provided that the credit was legally granted in the foreign jurisdiction.

Hence, concessionaires will continue to file legal action in Hong Kong against patrons who reside in or have assets in the jurisdiction – and more cases are likely amid continuous growth of gaming revenue in Macau.

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