



Gaming promoters in Macau: what changes lie ahead?



Jorge Godinho*

Ease of travel to very large integrated resorts, the rise of gaming promoters and the VIP Baccarat market were the main drivers of the very substantial increase in gaming revenue in Macau that took place during what can be described as an extremely successful “boom decade” that ended in 2013.

The regulations on gaming promoters were passed initially in 2002. Then in 2004 casinos and promoters were authorized to grant credit. Competition for promoters then became quite intense and, as a result, the commissions payable to them rose to the point where a cap had to be imposed by law in 2009, which was set at 1.25 percent of net rolling revenue.

Recently, the situation has been changing fast. The casino mass market is still generally rising. However, after peaking in 2013, since 2014 the revenue of the VIP sector has been slowing, due to a series of factors. These include a general economic downturn, a tightened smoke ban in Macau, and more anti-money laundering controls and enforcement in mainland China on the flow of funds.

As a result, the revenue generated by the VIP sector may never return to where it was or, if it does, that will take many years to happen. A qualitative change has effectively materialized and continues to be underway. Some gaming promoters have closed their operations. There are only around 140 licensed gaming promoters at the moment, sharply down from more than 200 licensed promoters just a few years ago.

Adding to the troubles of the VIP sector, in mid-2015 a scandal broke out after funds allegedly disappeared from one large gaming promoter. In September 2015, immediately after the scandal, the regulator (DICJ) took action and announced its intention to advance a substantial legal reform

of the current regulations applicable to gaming promoters.

The reforms that were announced do not focus only on points relating directly to this case and are intended to have a broader scope. At the same time, a new regulation for the prevention and detection of money laundering in the gaming sector is being prepared. It is well known that Macau is constantly under pressure from the Asia Pacific Group on money laundering and financing of terrorism issues. Meetings with the association of licensed gaming promoters are also taking place. In other words, reform is definitely in the air.

Reform agenda

What exactly are the points of the regulation that will change? A number of reform topics were succinctly mentioned by the regulator late last year in a press release:

- new requirements relating to capital and shares, guarantee deposit, accounting and auditing;
- increase of public disclosure and transparency, namely a list of directors, shareholders, key employees and employees;
- to consider employees of gaming promoters who exercise functions of a financial nature as key employees.

Some comments are in order on what some of these announced reform issues may mean.

Currently gaming promoters may have various business



forms: sole proprietorship, private company, single shareholder private company or public company. Standard company law rules apply to the capital of gaming promoters. These include minimal capital requirements in relation to private companies and single shareholder private companies. Therefore, the reform will surely consist in setting the bar much higher on capital standards. Heightened financial capital requirements certainly seem appropriate.

The need for a guarantee deposit was also mentioned as a possible future requirement. This could be a system like that currently in force for travel agents, who are required to effect a cash payment or to provide a bank guarantee on first demand to the Government. This money may be used to accommodate emergency situations and deal with disgruntled clients if the need arises, so that clients do not have to wait for the result of possibly protracted litigation or risk receiving nothing. The question on this front will be on the amount that will be required.

The proposal to consider employees of gaming promoters who exercise functions of a financial nature as key employees clearly has the purpose of subjecting them to suitability investigations, which are already required for the directors and shareholders of gaming promoters.

Overall, it remains to be seen whether this announced package of amendments to the law will effectively amount to a major expansion of the existing regulation. In general, further development of the regulation is justified and probably should have been done a few years ago already, immediately after gaming promoters were allowed to legally grant credit, an activity of a financial nature that should trigger an appropriate regulatory framework.

It is clear that gaming promoters are indispensable for the Macau gaming market and will always be, as a necessary network of agents and credit granters who bear risks. In this context, the way forward is to improve and expand the regulation. This goes together with a stricter enforcement of the money laundering laws.

The legislative process does not yet have a timeline so it is not clear whether it will unfold in the coming months. One of the doubts is whether it shall be carried out by means of a Law of the Legislative Assembly or via Administrative Regulation of the Chief Executive. If changes are needed

to Law 16/2001 (the main gaming piece of legislation), or to criminal law provisions, the Legislative Assembly will have exclusive competence on these aspects and the process may or may not take longer.

Conclusion

In the opinion of this writer, the opportunity should be taken to reform other points. Perhaps it would be appropriate to revise the definition of gaming promoter, who are today described as organizers of gambling trips, without reference to their key power to grant credit. Another point to consider would be the possible desirability of having different categories of gaming promoters ('big' vs 'small') instead of a one-size-fits-all solution, as there may be a vast range of situations.

The opportunity could be also taken to refine the rules on the liability of the casino gaming sub/concessionaires for the activity of gaming promoters. Current law states that there is an obligation by sub-concessionaires to supervise the activities of the gaming promoters with whom they work, so that if things go wrong then the concessionaires are liable for the activity of gaming promoters. However, it is not clear whether this liability is administrative only or also contractual. The interdisciplinary nature of gaming law is a constant source of hesitations of this kind. The law and a clause of the concession contracts both say that such liability is "towards the Government", which seems to mean that this liability is limited to administrative and regulatory issues (including the payment of fines) and does not extend to contract law matters, but the matter is disputed.

*About the author

Jorge Godinho is a visiting professor at the Faculty of Law of the University of Macau, where he coordinates the Master and postgraduate program in International Business Law. Jorge joined the Faculty of Law as full-time assistant professor in 2004 and became an associate professor in September 2009. His current academic interest is now gaming law. He holds a PhD from the European University Institute in Florence, Italy, and a Masters degree in Law at the University of Macau, with a thesis on the crime of money laundering. Prior to embarking on an academic career, he has practiced law in Portugal and Macau, and has worked in the Government in Macau, in the Legal Affairs Dept and in the Monetary Authority.