The Prevention of Money Laundering in the Macau Gaming Industry

Macau’s Gaming Inspection & Coordination Bureau (DICJ) issued Instruction 1/2016 in April 2016, in force 13 May 2016, which replaced Instruction 2/2006, regarding the prevention of money laundering in its casino industry.

This discussion is a preliminary overview of DICJ Instruction 1/2016. While various aspects remain unchanged, others were significantly expanded. Overall, there are a number of major changes to be noted, although the following can only highlight the main novelties.

a) All segments of the Macau gaming industry are covered by a comprehensive set of legal duties for the prevention and detection of money laundering and financing of terrorism, which apply not just to sub/concessionaires of casino games of chance but also to the horse racing and greyhound racing operators, to instant lotteries and to the Pacapio lottery, to the monopoly sports betting operator, and to the many gaming promoters working with the casinos.

The prevention mechanisms for the gaming sector were first enacted in 1998. A major revision of the entire legal framework took place in 2006, covering the four relevant sources: Law 2/2006, of April 3 (crime of money laundering), Law 3/2006, of April 10 (terrorism crimes), Administrative Regulation 7/2006, of May 15 (key elements of the preventive procedures), and finally DICJ Instruction 2/2006, covering the gaming sector.

A new DICJ Instruction was issued in 2016. It left the higher layers of regulation unchanged. This has already happened in the banking field and may raise issues of compatibility between the various multi-level sources applicable, a topic which shall not be addressed here.

b) There continues to be a requirement, including for gaming promoters, to have internal rules or procedures, which are now wider in scope and nature. These must comply with all applicable legal rules and be subject to prior approval by DICJ, which can require amendments or additions.

At a broad level, the main new policy input is that a risk-based approach should be adopted in the gaming industry. This new focus is a recognition that the regulation can be heavy and should be applied in a flexible manner. A risk-based approach logically means the possibility to have simplified due diligence for low risks and, conversely, the need to apply enhanced due diligence for higher risks, such as those posed by politically exposed persons (PEPs). A risk-based approach surely is not a license to do less. It is a call for compliance to be done in a more efficient manner, allocating resources more effectively, focusing on where it matters most. This approach now adopted by the 2016 DICJ Instruction was already in force in the banking area. Therefore, in complying with legal requirements and obligations there

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is room for adjustments or modulations, depending on the risk. In connection with this shift in approach, an exercise for the identification, evaluation and understanding of the risks should be done, and updated every two years, and lead to the adoption of effective measures.

A risk matrix will take into account all relevant variables and classify each case as no risk, low risk, medium risk or high risk. Several risk factors are exemplified by DICJ: country risk, client risk, service/product risk, type of business or type of transaction risk, channels of distribution risk, new technologies risk. Others may be or become relevant. Operators should also pay close attention to risk assessments and advisories issued by relevant local and international supervision authorities and agencies including the United Nations and the FATF.

Internal control systems should be evaluated periodically, to guarantee that they work and serve their purpose. In summary, the nature of the work carried out by the compliance function envisaged by DICJ has been transformed from static and mechanic to dynamic and flexible.

c) The basic aspects of customer due diligence remain of course unchanged. There is an obligation to check and record the identity of the customer whenever a transaction is above a certain amount (MOP$500,000 or equivalent) or is suspicious. The novelty is the introduction of this requirement also where there are “stable business relations”, irrespective of the amounts at issue. No anonymous transactions are allowed in all these cases and there is an obligation to refuse to execute the transactions where no credible identification is provided.

The transactions covered by the regulation run the gamut in gaming: placing bets and paying winnings, the purchase and sale of chips, tickets and tokens, also granting and collecting credit for gaming and, of course, gaming promotion activities.

d) The rules on transactions reporting were not changed by DICJ Instruction 1/2016 and a complex régime continues to be in place whereby there are two entirely separate types of reporting obligations (suspicion-based and also threshold-based), with two different agencies to report to (GIF, the Macau Financial Intelligence Unit, for suspicious transactions; and DICJ for transactions above a certain amount).

The requirement to report suspicious transactions irrespective of the amount involved arises from general law; it is no different from any other economic sector. Reports done in good faith do not generate liability of any kind. A concept of suspicious transaction is found in DICJ Instruction: “operation relating to the practice of gaming or wagering which, given its nature, unusual character or complexity, may indicate an activity of money laundering or terrorist financing.”

Threshold-based reporting continues to be unique in Macau anti-money laundering law. It only exists in gaming, not in banking or any other economic sector. The specified threshold amount was set in 2006 at MOP/HKD 500,000 (USD 62,500) and remains unchanged after the 2016 regulation despite some international criticism and pressure to lower it. It includes multiple transactions that exceed the limit in 24-hours periods.

The role of gaming sub/concessionaires in relation to gaming promoters is of prime concern. It covers various aspects. First, sub/concessionaires should report suspected money laundering activities in relation to gaming promoters. Second, they should exercise “special control” on suspicious transaction reports (STRs) prepared by gaming promoters, keep a daily record of the number of STRs filed by gaming promoters and monitor compliance with the law by promoters. Third, threshold-based reports (above $500,000) prepared by promoters should be reviewed and signed by the compliance officer of the sub/concessionaire, who should verify that legal duties have been complied with. As a result of these obligations, there is a comprehensive set of mechanisms that place the gaming promoters in a double relation: with the government and the sub/concessionaire with whom they work.

e) Enhanced due diligence is specifically required in five instances.

The first is in relation to politically exposed persons (PEPs), clearly due to a higher risk of corruption-derived funds. The main novelty on PEPs is that the 2016 Instruction now separates between two types of PEPs: foreign (defined as those from mainland China, Hong Kong and other countries) and domestic (from Macau). Previously PEPs were defined as those from foreign countries or territories. This is a welcome development, as it could be argued that the politically exposed persons from Macau, mainland China and Hong Kong are of higher interest. Operators should determine whether a patron is a PEP. Relations with PEPs should be authorized by senior management and there should be increased due diligence, especially to determine the origin of the funds and identify the customer profile.
Enhanced due diligence is also specifically required in recognized high-risk instances, such as where the increased risk has been declared by government authorities, the FATF, the United Nations or other relevant entities.

Third, there is an entirely new regulation of intra-company relations. The Instruction requires enhanced due diligence in connection with the transfer of funds or credits, or collections, between companies that belong to the same group, and their branches, agents and representatives. As is well known, some companies operate gaming across various jurisdictions. Regulations vary among jurisdictions and may not be equivalent or of the same standard. The main purpose is to ensure that a Macau concessionaire does not rely blindly on due diligence supposedly already done abroad to a standard that is satisfactory for Macau, only to discover later that that was not the case. A Macau concessionaire must at all times be capable of becoming fully aware of the background of any intra-company transactions and the parties to it, namely by obtaining all documents necessary. If customer due diligence abroad is found to be lacking, appropriate measures should be adopted. It remains to be seen how this sensitive area will develop.

Fourth, the issue and handling of cheques and negotiable instruments in general is regulated in detail, so as to keep the paper trail intact.

Finally, a similar principle applies to electronic fund transfers when enhanced due diligence is required, for stable business relations, where transfers of an amount of MOP$120,000 or higher take place. For sporadic transactions the limit was set much lower, at MOP$8,000.

f) Record-keeping requirements remain unchanged as per Administrative Regulation 7/2006 which requires retention for 5 years. Records can be kept in microfilm or in digital form.

g) Issues specific for the detection of financing of terrorism include the need to use technology, especially terrorism databases, for the detection of blacklisted persons. There is a duty to verify whether a patron is included in a terrorism database. It is compulsory to have an automated system to detect blacklisted clients or to use specialized service providers. There are many service vendors on the market. Such databases or services should be made available by the sub/concessionaires to the gaming promoters working with them for free, to avoid a duplication of costs.

h) The last point to highlight in this overview is compliance, on which there are many novelties. An independent compliance function should be established, to ensure that laws are observed and procedures properly followed. This applies to gaming promoters too. The compliance function should have the necessary resources and means to execute its job, especially access to information on high-value and suspicious transactions. A compliance officer should be appointed. He or she must have appropriate experience and functional autonomy, and good knowledge of Macau law. DICJ may veto the person or request his or her replacement if reasons related to suitability or technical capacity so require. The compliance officer may be subject to a written exam by the DICJ if deemed necessary to determine preparedness. The compliance officer, being an interface with regulators, is especially tasked with reviewing, evaluating, following up on both types of reports, on a daily basis, and with submitting STRs to GIF. Beyond this, it is now stated that there should be a “compliance culture”: companies should create an internal environment for obeying the law and acting in an ethical manner.

j) The rules stated in DICJ Instruction are described as the minimum obligatory duties, rules and procedures. Operators may apply other more stringent procedures, if not incompatible with those mandated by the DICJ Instruction.

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