



Vietnam - an emerging gaming jurisdiction



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Objectives and structure of gaming legislation regarding the operation of casino games of chance.

As Vietnam takes its steps to address gaming as a new industry serving the development of tourism and a number of ancillary services-focused business segments, and with the focus of political discussions centred around the Gaming Decree, it is critical at this stage to highlight the need for a comprehensive legal framework that regulates specific areas and nuances of the gaming industry in order to make it work, attract investment, develop the economy but, above all, in doing so, ensure that we follow international standards in terms of the gaming regulatory regime.

Currently the only gaming legislation in force in Vietnam is the Decree 86/2013 on Business of Electronic Gaming for Foreigners (which regulates the so called “slot parlors”), supplemented by a Circular No.15/2014/TT-NHNN issued by the State Bank of Vietnam containing instructions on the Management of Foreign Exchange for the Gambling Business for Foreigners and a Circular No. 11/2014/TT-BTC issued by the Ministry of Finance, regulating some of the provisions of Decree 86. Most of these rules are operational in nature and fall short of establishing a regulatory framework that could be extensive to other forms of gaming.

The legal backbone of the gaming industry should be the Gaming Decree (to be approved) containing the basic structure for the operation of casino games of chance.

Other relevant gaming rules should be contained in additional rules and regulations, of which we believe the more important and necessary for the system completeness are:

1. Gaming tax specific rules and regulations. There should be a special set of rules for the gaming industry that addresses very particular forms of revenue and

losses linked with the operation of casinos which include, amongst others, the specific nature of gaming promotion services provided by the International Tour Operators (“ITO”s in bringing foreign players, the difficulties in collecting gaming debts, the concurrent taxation of other forms of corporate revenue ancillary to the gaming industry, etc., etc.

It is quite relevant and much needed that specific tax legislation enacted for the gaming industry considers and accommodates the right level of taxation of gaming revenues in order to represent a stable source of government revenue but at the same time contribute to promoting the development in the tourism sector of the economy without running the risk of stifling economic growth.

2. ITOs. It is fundamental to address the specific nature of gaming promotion activities through a special set of rules containing the licensing regime applicable to the ITOs.

The gaming promoters’ rules and regulations set forth the requirements and procedures to engage and operate casino gaming promotion activities which consists mainly in recruiting high-net-worth individuals (the so called “high-rollers”) and introducing them to the casinos where they play.

The gaming promotion business has been nuclear to the gaming industry in Macau as it channels to the casinos in Macau around 50 percent (it used to be close to 75 percent, a couple of years ago) of the total Macau gross gaming revenue (GGR).

2. Gaming credit law. It is necessary to issue specific rules concerning the gaming credit in order to allow proper enforcement of gaming debts.



Most of the civil law systems determine that “gaming and betting are sources of civil obligations whenever special laws so provide, as well as in sports competitions in relation to the persons taking part on them; otherwise, if lawful, gaming and betting are a mere source of natural obligations”¹.

The possibility of enforcing gaming debts constitutes an exception to the normal regime under civil law systems, which qualify gaming debts as “natural obligations,” as opposed to “civil obligations.”

A “natural obligation” may be defined as an obligation that does not give rise to an action to enforce it, but that does have some cognizable legal effects. In fact, if the debtor pays the debt, such payment is recognized as extinguishing the obligation although the creditor was not entitled to obtain fulfilment of such obligation by the debtor.

On the other hand, civil obligations can be defined as the ones which bind in law and which may be enforced in a court of justice.

It is very important for gaming jurisdictions that the fulfilment of gaming debts is not left to a “moral or social duty”, as one can easily understand, as it could undermine the basis of the gaming industry’s business rationale and “harmonious” development and sustainability.

The most common form of undertaking gaming debts arises out of the concession of credit for gaming purposes: in fact, it is quite normal across the gaming industry for gaming operators to grant credit to their players in the form of making available gaming chips without receiving in money their face value as it happens with an ordinary purchase of chips.

A proper gaming credit law should, therefore, address the following legal topics:

- Recognizing that from the concession of credit for gaming purposes emerge civil obligations;
- The determination that the only form of gaming credit allowed is through the provision of gaming chips without a payment of the respective face value;

Not many other jurisdictions will recognize gaming debts and will allow for judicial enforcement of such gaming related arrangements which raises a number of hurdles and legal

obstacles in enforcing judgments that recognize the obligation to pay the gaming debts.

In Hong Kong, the courts recognized the enforceability of a gaming debt, in a “greenfield” decision, which awarded Wynn Macau the right to obtain payment from one of its gambling debtors.

The Hong Kong court recognized that the debtor received a certain amount of money under a credit arrangement and signed a Marker for the same amount and that (i) the debtor has no connection with Macau apart from the fact that he gambles there (ii) the fact that the debtor has voluntarily submitted to the Macau jurisdiction is a factor which carries less weight when contrasted with the fact that the debtor has a close connection to Hong Kong (iii) the issues of Macanese law arising in such collection proceedings in Hong Kong do not give rise to a real risk that injustice would result from a Hong Kong court reaching the wrong conclusion.

3. Electronic gaming machine manufacturers approval process. In order to ensure the integrity of the electronic gaming machines (slot machines) we consider a critical point to have a set of rules concerning the approval of gaming manufacturers and the approval of electronic gaming machines and related equipment and gaming systems being supplied to the Vietnam market.

The legal definition of gaming equipment includes all devices, programs or software that operate totally or partially by electronic and/or mechanical means and are conceived, adapted or programmed to run or store games of chance in which the player may receive a payment in cash or in equivalent tokens or values as the result of a bet placed.

The supply of slot machines and related equipment to the gaming operators, as well as slot machine distributors, should be reserved to approved (licensed) manufacturers.

There are four main principles that should shape the legal framework of slot machines’ regulations: (i) the institution of an approval/licensing procedure for all gaming manufacturers doing business in Vietnam; (ii) a gaming manufacturer’s corporate suitability check; (iii) an approval process for all the slot machines and related equipment being supplied in Vietnam; and (iv) a set of on-going regulatory compliance obligations imposed on the gaming manufacturers.

1. Article 1171 of the Macau Civil Code.



4. Responsible Gaming. Responsible Gaming programs are growing in importance and constitute, today, a major milestone in developing the gaming industry towards a true entertainment environment.

All gaming operators should develop and implement responsible gaming programs and training in order to provide employees with important information related to problem gambling that might affect employees themselves, patrons, and the business so as to establish a responsible gaming environment and to minimize the negative impact associated with problem gambling on the community.

Responsible gaming is, therefore, a legal and a policy issue that requires the government and the gaming operators to work together to minimize the social issues of problem gaming.

Players' information, control on advertising, upholding ethical and responsible marketing, providing the tools to determine an emerging problem, self-exclusion procedures are all important topics that should guide policy making and legislation in order to ensure a responsible gaming environment to which most of the gaming operators are committed these days by ensuring that gambling services are offered in a responsible manner.

5. Casino Games of Fortune Operational Rules. Each of the casino games of fortune or games of other forms is subject to a specific set of operational rules. The operating rules for the casino games of fortune are approved by the government upon proposal by the gaming regulator.

6. Anti-Money Laundering Regulations. Growing in importance worldwide and within the gaming industry as well are the anti-money laundering provisions and internal control requirements imposed on the day-to-day gaming operations.

There should be a special set of rules for the gaming industry, issued by the gaming regulator to define the minimal compulsory duties, rules and procedures for gaming operators, including corporate entities entrusted by their management, lottery or sports betting operators, and gaming promoters. Any breach of these duties can result in fines or administrative action from the gaming regulator.

7. Establishing a gaming regulator. In building a gaming industry framework and providing the structure for subsequent developments of the gaming legal regime, it is critical to establish a specific body, within the Government

structure that should provide guidance and assistance to government on the definition and execution of the economic policies for the operations of the casino games of fortune or other ways of gaming.

The duties and competences of the gaming regulator should include, amongst others:

1) To collaborate in the definition, co-ordination and execution of the economic policies for the operations of the casino games of fortune or other ways of gaming;

2) To examine, supervise and monitor the activities of the gaming operators, especially on their compliance with the legal, statutory and contractual obligations;

3) To examine, supervise and monitor the eligibility and financial capability of the gaming operators or other parties stipulated by the law;

4) To authorize and certify all the equipment and utensils used by the operations of the gaming operators approved in the respective concession;

5) To examine, supervise and monitor the activities and promotions of the ITOs, especially on their compliance with the legal, statutory and contractual obligations, and other responsibilities stipulated in the applicable legislation.

8. Advertising. A specific regime should be established for advertising gaming. To what extent is the advertising of gambling permitted in this jurisdiction? To the extent that advertising is permitted, how is it regulated? I believe that it is important to institute a regime that protects responsible gaming and imposes adequate responsibility in formulating the advertising message.

***About the author**

Luis has a wealth of over 23 years of experience during which he has assumed a broad range of legal roles, extending from teaching law to advisory positions at the highest level of government., senior corporate executive positions and private practice. For the last 12 years he has focused his practice in gaming law at a corporate level or in private practice. He was a government lawyer for the Macau Legislative Modernization Commission, legal advisor to the President of the Macau Legislative Assembly and legal advisor for the Minister of Economy of Portugal. Currently he is the Chief Legal Officer for Asian Coast Development Ltd., an international development company specializing in integrated resort destinations.