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LEGAL UPDATE

New Law on Illegal Gambling Activities

Overview

The Macau Legislative Assembly approved the new “Law on Illegal Gambling Activities”. The new law replaces the previous law in force (law 8/96/M), dated from 1996, and will become effective on the 29th of October 2024.

The fundamental objectives of the new law are the improvement of: (i) the definitions of illegal gambling activities, (ii) of its penalty framework and (iii) of the means of criminal investigation.

The new law not only refines the previous definitions of criminal and administrative offences, but also creates new types of criminal offences, such as “illegal online gambling” (article 7) and “operation of illegal foreign exchange for gambling” (article 11).

The definition of the several types of criminal offences prescribed in the law is based on the typical classification/division of gambling into (i) games of chance; (ii) mutual betting; and (iii) lotteries¹. From this

¹ Similarly to Law 8/96/M, the new law further criminalizes the illegal operation of “mah-jong” (cf. article 14).

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perspective, the criminalization of illegal online gaming provides a *hybrid* criminal offence that may include the operation of games of chance and/or mutual betting.

Illegal online gambling

- 1. Operation of illegal online gambling** - The operation, promotion or organization, without authorization, of online games of chance or online betting in Macau is expressly and autonomously stipulated as a criminal offence, irrespective of the offender conducting such activities in a habitual manner. The law further provides a definition of online gambling and online betting focused on three fundamental features: (i) games of chance and mutual betting (ii) which are played or wagered remotely, (iii) using electronic, computer, telematic or interactive systems or any other means, regardless of the servers and devices being located in Macau. Significantly, and as opposed to the other crimes of illegal gambling, negligent conduct is punishable by law.

The law includes no “territorial provisions” defining when the operation, promotion or organization of online gaming or online betting is considered to take place in Macau. The absence of specific territorial rules means that determination on whether a certain infringement takes place in Macau will be made under the general provisions of the Criminal Code. Considering the nature of online gaming, this will result in significant ambiguity and enforcement challenges. The fact that the offence can be committed by mere negligence will add to the potential for controversial enforcement outcomes.

The offence is punishable with imprisonment from 1 to 8 years.

Illegal games of chance

The criminal conducts associated with illegal gambling include both the illegal operation of games of chance and the practice of such illegal games. The law provides three types of criminal offences related to illegal games of chance:

- 2. Illegal operation of games of chance** - which consists of operating, without being legally authorized, a game of chance

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or presiding over such activity, irrespectively of doing so in a habitual manner. The definition provided under the new law expressly provides that *side betting* or *under-the-table betting* practices (also known as *multiplier* practices) are also included in the criminal offence. The offence is punishable with imprisonment from 1 to 8 years.

- Those who do not operate or preside over illegal gambling activities but collaborate or participate in any form in the operation of illegal games of chance, may be subject to imprisonment for up to 3 years or a fine.
 - A particular issue that remains unresolved is whether the operation by casino concessionaires of certain games of chance which (i) have not been legally authorized (and therefore are not included in their respective concessions) or (ii) although authorized, are operated in breach of the respective approved rules, may constitute a criminal offence (irrespective of being sanctioned as an administrative offence pursuant to article 48-C of Law 16/2001).
3. **Wagering on illegal games of chance** – consisting of participating in the games of chance illegally operated.
 4. **Presence in a place of illegal operation of games of chance** - consisting of being found, by reasons related to such games of chance, in a location where these are illegally operated.

Illegal mutual betting

The new law expressly and autonomously provides the following criminal offences associated with mutual betting:

5. **Illegal operation of mutual betting** - which consists of operating, without being legally authorized, mutual betting, irrespectively of doing so in a habitual manner.
6. **Illegal betting** - consisting of placing bets in illegal mutual betting operations. Although this appears as a new criminal offence, the conduct described therein was arguably already included in law 8/96/M.

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Illegal Lotteries

Two criminal offences related to illegal lotteries are provided:

7. **Illegal operation of lotteries** - which consists of operating lotteries without being legally authorized. The offence is subject to imprisonment for up to 3 years or a fine.
8. **Illegal sale of lottery tickets** - which consists of selling lottery tickets without being legally authorized. The offence is subject to imprisonment for up to 2 years or a fine.
9. **Counterfeiting or tainting lottery tickets** - which consists of counterfeiting or tainting lottery tickets or selling or using such tickets. The offence is subject to imprisonment for up to 3 years or a fine.

Other gaming-related crimes and administrative infringements

The Law further prohibits several conducts which, although not directly consisting of (illegal) gaming activities, are gaming related and express a wrongdoing that is found to require respective criminalization, including illegal lending for gambling and illegal foreign exchange for gambling. The fundamental novelty in this field is the criminalisation of illegal foreign exchange for gambling which was not include in Law 8/96/M.

10. The new criminal offence of illegal foreign exchange for gambling

- The new law now criminalizes the operation of illegal foreign exchange for gambling, consisting of operating the business of foreign exchange, without being legally authorized to do so (excluding therefore licensed foreign exchange operators). The key elements of the criminal offence are that: (i) the foreign exchange is operated commercially, i.e. in a stable and profitable manner (excluding, therefore, ad hoc transactions between relatives

or friends) and (ii) that the exchange was made with the purpose of gambling. Using the same technique used under the previous Law 8/96/M for illegal lending, the law dictates a *presumption of gaming purpose* if the conduct takes place in a casino, considering as such, also, *all adjacent areas where activities of an artistic, cultural, recreational or commercial nature or connected to the hotel industry* are carried out, which effectively includes the areas opened to public in integrated resorts and other casino complexes. The crime is punishable with a prison sentence of up to 5 years.

Changes to the penalty framework

The Law brings the following fundamental changes to the penalty framework:

- 11. General revision of the penalties applicable** - the new law generally aggravates the penalty framework for most of the criminal and administrative offences. In addition, the range of accessory penalties applicable, which was previously limited to the prohibition from entering gambling facilities under Law 8/96/M, is significantly expanded, and includes, for example, the prohibition from carrying out a certain profession or activity, or, for non-residents, the prohibition from entering Macau, in both cases for a period up to 10 years.
- 12. Criminal liability of corporations and other legal entities** - in addition to the individual liability of the agents committing the offences, legal entities and other collective bodies without legal personality are now liable for the criminal offences committed on their behalf by the members of their bodies, representatives or agents acting under the authority of the bodies or representatives. Legal entities are subject to fines that can range from **MOP25,000** to **MOP18,000,000** and judicial winding up.
- 13. Joint and several liability of the directors and representatives** - significantly, the directors and representatives of the legal entity may be jointly and severally liable for the payment of the fines applicable to the legal entities provided that are found to be responsible for committing the offence. If a fine is applied to an entity without legal personality, the associates or members of

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such entity are liable for the payment of the fines provided that the common assets are not sufficient to do so.

Criminal investigation measures

The new law provides a set of new measures with the purpose of strengthening investigation procedures in order to circumvent the evasive nature of the evidence necessary to prove these types of conducts:

- 14. Undercover agents** - undercover agents are allowed to investigate the offences and their own actions that may represent an offence are not punishable provided they act proportionally to the purpose. These agents cannot act, however, as *agent provocateurs*, i.e. by inciting or enticing someone to commit an offence. In such cases, their actions will be punishable as criminal offences.
- 15. Protection to informants** - significantly, enforcement agents and witnesses are not required to disclose the identity of any informant or person that otherwise may have cooperated with the investigations. The protection of informants may be lifted during trial if the court believes the informant has provided false information.
- 16. Domicile night searches** - searches at a person's domicile between 9 pm and 7 am are generally not allowed, even with a court warrant. Under the new Law, this time limitation will not apply to the crimes of illegal operation of games of chance, illegal operation of mutual betting and illegal online gambling, considering the predominantly nocturnal nature of these crimes (the need for a prior supporting search warrant remains unchanged).
- 17. Organized crime** - the crimes of illegal operation of games of chance, illegal operation of mutual betting and illegal online gambling, illegal operation of lotteries, illegal lending for gambling, illegal foreign exchange for gambling, coercion for gambling and gambling fraud will be added to the definition of *highly organized criminality* and, in cases involving these crimes, paving the way to the application of temporary contact restrictions to those under investigation, and to an extension of

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the maximum duration ordinarily allowed for pre-trial detention.

- 18. Pre-trial detention** - the new law expresses an intention that the gambling offences added to the definition of highly organized criminality be considered for the purposes of applying the pre-trial detention, pursuant to article 193 of the Criminal Procedure's code. However, we believe there may have been an oversight from a technical perspective, as pre-trial detention is only applicable pursuant to such provision if the penalty framework provides for imprisonment for more than 8 years, which is not the case of any of the offences under the new Law, without prejudice of pre-trial detention being applicable pursuant to the general provision of article 186.

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