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## LEGAL UPDATE

*The New “Legal Framework for the Granting of Credit for Casino Gaming”*

### Key Takeaways

1. Credit for gaming an exclusive of casino concessionaires
2. Gaming promoters allowed only to act as credit agents
3. Concessionaires’ duties as lenders densified
4. New supervision and sanctions framework
5. New Law effective on August 1<sup>st</sup> 2024

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## Introduction

The Legislative Assembly of the Macau SAR (AL) has unanimously approved a new law, Law no. 7/2024, governing granting of credit for casino games of chance in Macau. The new law is poised to repeal and replace entirely the preceding law, enacted around twenty years before (Law no. 5/2004). It was published in the Official Gazette on 22 April 2024 and will come into effect on 1 August 2024. The final version of the bill preceding the new law, submitted to the AL on 2 April 2024, includes certain substantial amendments vis-à-vis the initial version, originally submitted on 21 April 2023. The policy rationale for these amendments is explained in the opinion released by the AL 2nd Permanent Committee dated 5 April 2024.

## A legal exclusive of the casino concessionaires

The most impactful change introduced by the new law (and which had not been contemplated in the bill's initial version) consists of limiting the capacity to extend credit for gaming to the Macau casino concessionaires. In accordance with Law no. 5/2004, gaming promoters were allowed to, in their own name, extend credit for gaming to players, if authorized to do so under a contract signed specifically for this purpose with a concessionaire (an *authorization contract*). The new law eliminates this prerogative, in what is perceived as another serious setback to gaming promoters. With this legislative option, said to be taken to pursue the objectives of *healthy and sustainable development of the gaming sector*, the granting of credit for gaming will be legally reserved to the casino concessionaires.

## Definition of credit for casino gaming

This option impacts the very definition of gaming credit, which now includes a specific reference to the concessionaires, but otherwise remains in substance the same: the *transfer to a third party (a borrower) of the ownership of gaming chips without the immediate payment, in cash, in consideration of such transfer*. The list of different payment methods that qualify as *payment in cash* for the purposes of this definition also remains unchanged.

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## Gaming promoters as credit agents

The only role that, under the new law, the gaming promoters remain entitled to perform is limited to being a representative or agent of a casino concessionaire in the context of the latter's credit granting activities. This means that, subject to signing a written agreement for such purpose with the concessionaire for which it (exclusively) operates, a gaming promoter will continue to be able to extend gaming credit to players for and on behalf of such casino concessionaire. Under this framework the credit relationship is established only between the concessionaire, as lender, and the player, as borrower, with the gaming promoter acting as an attorney-in-fact or an agent of the casino operator.

The contractual relationship between principal and attorney-in-fact and between principal and agent are both legally typified, in the Macau Civil Code and in the Macau Commercial Code (MCC) respectively, with the main rights and obligations of the parties defined and regulated therein. As an example, under the MCC, the parties to an agency contract may agree that the agent will collect debts on behalf of the principal and/or that the agent will guarantee the payment of debts arising from contracts that it entered on behalf of the principal. The agent will be entitled to a commission for the contracts it enters on behalf of the principal and may claim compensation for the clientele generated to the principal, upon termination of the agency agreement.

In its role as credit agent, a gaming promoter may be paid a consideration, as commission or otherwise, which could be different, including in respect of the basis for its calculation, from the commission received under a gaming promotion agreement, which is levied not on the amount lent to a player but over its total net rolling.

The set of mandatory formalities that these *agency contracts* are subject to - and that under Law no. 5/2004 applied also to the now defunct *authorization contracts* - remains largely unchanged under the new law. This set of formalities includes, most importantly, a requirement that the contract templates and its ancillary documents be approved by the Secretary for Economy and Finance (SEF) and that the a concessionaire informs DICJ of the prospective termination of any such contract, with a minimum 15-day prior notice period.

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## Concessionaires' duties as lenders

In addition to a general duty to conduct business in a prudent and disciplined manner, the new law densified the duties of casino concessionaires when acting as lenders of credit for gaming. These include the duties to:

- (1) establish a credit risk management system.
- (2) create a record-keeping system and a set of data protection measures.
- (3) establish an enhanced customer handling complaint management system.
- (4) define standard operational procedures for the granting of gaming credit.

The concessionaires will enjoy relative flexibility when effectively devising and implementing these systems, measures, and procedures. While the existing internal processes of most operators will already comply with the new requirements, aspects such as data protection measures or the management of customer complaints may require adopting new proceedings or enhancing existing ones. At the same time, concessionaires will need to ensure that gaming promoters cooperate in complying with such obligations when acting as credit agents.

The provisions that contemplate the duty of secrecy and confidentiality (as applied to all employees and agents of the concessionaires) and the exceptions allowed remain largely unchanged.

## Supervision

The new law confers to the SEF two new prerogatives, in the context of its supervisory authority: (1) in situations of breach or infringement, and on an interim basis and as a preventative or conservatory measure, suspending or setting out conditions for the exercise of concession of credit for gaming by a concessionaire, or the credit agency prerogatives of a gaming promoter; and (2) for reasons of *significant public interest*, and irrespective of breach or infringement of the law, simply withdraw, or terminate, any given concessionaire's

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right to extend credit. What *significant public interest* might constitute is left unspecified.

## **New Sanctioning Regime**

The new law includes an entirely new chapter devoted to setting up a sanctioning framework to punish infringements in matters of concession of credit for gaming. This falls in line with a broader trend of upgrading the Macau gaming legal system by aggravating existing sanctions or implementing new ones, also visible in the amendments to the Gaming Law approved pursuant to Law 7/2022, the separate enactment of Law 16/2022 or the bill of “Law to Combat Gambling Crimes”, presently under discussion at the AL.

### **Criminal offences**

Conducts newly qualified under the new law as criminal offences include the lack of cooperation with DICJ’s inspections or investigations (simple disobedience), and the failure to abide by a determination from the SEF to suspend or set out conditions for the activities of concession of credit by the concessionaires or execution of agency acts by the gaming promoters (qualified disobedience).

### **Administrative Infractions**

Conducts newly qualified under the new law as administrative infractions include the breach, by the concessionaire, of: (1) the prohibition from extending credit through a third party, (2) of the prohibition from assigning (in the capacity of lender) a loan to a third party; (3) a determination from the SEF to suspend or set out conditions for the activities of concession of credit; (4) any of the new business conduct duties mentioned above; and (5) the failure, by the concessionaire, to observe the various formalities required in connection with the execution and termination of the *agency contracts* with the gaming promoters. They also include a breach, by the gaming promoter, of any temporary impediment for executing *agency acts* (and for which there may be, legally, different reasons). These infractions are grouped under three categories, according to the severity of the monetary penalties applicable, which may range from \$100,000 (the minimum amount in the lower threshold) up to \$5,000,000 (the maximum amount in the higher threshold).

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## Consistency across different gaming laws

The new law also adds several new provisions that essentially replicate equivalent provisions found in the Gaming Law (Law 16/2001, as amended by Law 7/2022) and/or in Law 16/2022, and that complement the ones specifically contemplating the crimes and administrative infractions mentioned above. They address procedural aspects or aspects of substance to clarify responsibilities associated with the same, and all serve to ensure consistency across the different laws relevant for the industry.

## Transitory provisions

Finally, the new law, effective from 1 August 2024, clarifies that the effect of any acts or transactions carried out or executed before then will remain governed by Law no. 5/2004. This means, for example, that any rights or credits arising of acts or contracts of credit for gaming extended to players by a gaming promoter before 1 August 2024 will remain fully valid and enforceable even after this date.

## Our Contributors:



**Rui Pinto Proença**  
**Partner**  
[rui.proenca@mdme.com](mailto:rui.proenca@mdme.com)  
Visit Profile



**Francisco Sá da Bandeira**  
**Counsel**  
[francisco.bandeira@mdme.com](mailto:francisco.bandeira@mdme.com)  
Visit Profile