



MACAU'S GAMING LAW: WHEN NATIONAL SECURITY TRUMPS THE HOUSE

The Macau Gaming Law was enacted in 2001, shortly after Macau's return to China. The adoption and prioritisation of national security within Macau's gaming industry, particularly following the amendments to the Macau Gaming Law in 2022, will have profound implications for the region's socio-economic and political landscape.

On June 21, 2022, all thirty-three members of the Legislative Assembly in the Macau Special Administrative Region ("MSAR" or "Macau") came together and unanimously decided to amend a crucial piece of legislation: the legal framework for casino games of chance¹. In 2001, Law 16/2001² laid the groundwork for Macau to transform into a major player in the gaming industry and the most lucrative casino market in the world.

The Macau Gaming Law was enacted shortly after Macau's return to China, allowing its gaming sector to shift from a 40-year-old monopoly to a more competitive and liberalised market. As the 20-year gaming concessions³ from the 2001 international public tender were nearing expiration, the MSAR Government initiated a public consultation and began the legislative process to amend the industry's legal framework. After two decades, it was an opportune moment to assess the changes in the gaming landscape and introduce new regulations for any future concessionaires wanting to enter or remain in this market. In navigating the complexities of governance, the Macau Government and its lawmakers took on a solemn duty: to draft and ideally gain clear approval for legislation that holds significant implications for national security. This critical endeavour was not just a routine bureaucratic task; it reflected their commitment to the values that connect Macau with the Mainland and the Central Government, ensuring that this dynamic region continues to play a loyal role in the overarching story of national unity and security.

Public Policy in the original version of the Macau Gaming Law

The Macau Gaming Law was approved on September 24, 2001, marking the first time Macau established written public

policies for an industry that has been legal since 1849. The scope and objectives of the Macau Gaming Law were set as follows:

1. to ensure that casino games of chance operate and function properly;
2. that those involved in monitoring, managing and operating casino games of chance are suitable for the performance of these functions and assumption of these responsibilities;
3. that casino games of chance operate and function in a fair, honest manner and free from criminal influence;
4. that the interests of the MSAR in collecting taxes from casino operations are duly protected; and
5. that tourism, social stability and economic development are promoted in the MSAR.
6. The special law shall outlaw illegal gambling.⁴

A brief comparison with the original 2001 draft shows, among others, the introduction of the concept of national security, which has become recognised as the primary public policy objective of the amended Macau Gaming Law.

The fifth objective was introduced in the eleventh hour and sought to encourage social stability and foster economic growth in the MSAR through tourism. It was designed to safeguard the social benefits and interests of the public and can be seen as a precursor to the idea of

national security, as it pertains to social stability. However, the concept of national security only began to be fully considered in government policy discussions from 2019.

National Security as a new public policy objective in the Macau Gaming Law as amended by Law no. 7/2022

In 2022, the MSAR Government submitted two drafts proposals to the Legislative Assembly regarding the amendment of the Macau Gaming Law: the initial draft was dated January 14, 2022, whilst the second and final draft was dated June 14, 2022 with objectives as follows:

1. the operation of casino games of chance is carried out under the premise of safeguarding national security and the MSAR;
2. the promotion of adequate diversification and sustainable development of the MSAR's economy;
3. the operation of casino games of chance is carried out in a fair and honest manner;
4. the operation of casino games of chance free from criminal influence, ensuring that the operation of the casino align with the policies and mechanisms of the MSAR regarding the fight against the illegal cross-border flow of capital and the prevention of money laundering and terrorism;
5. that the scale and operation of casino games of chance, as well as the practice of such games, are subject to legal restrictions;
6. that the individuals involved in the supervision, management and operation of casino games of chance are suitable to perform such duties;
7. that the interests of the MSAR in the collection of taxes and other fees resulting from the operation of casinos are duly protected.

A brief comparison with the original 2001 draft shows, among others, the introduction of the concept of national security, which has become recognised as the primary public policy objective of the amended Macau Gaming Law. By positioning it first among seven key objectives, the Government of the MSAR clearly demonstrates its commitment to ensuring that gaming does not become a source of instability that could jeopardise national security and the MSAR itself.^{5,6} The Amended Macau Gaming Law re-ranked public policy objectives that transitioned from the original version with slight amendments to some of them, which I will briefly explore.

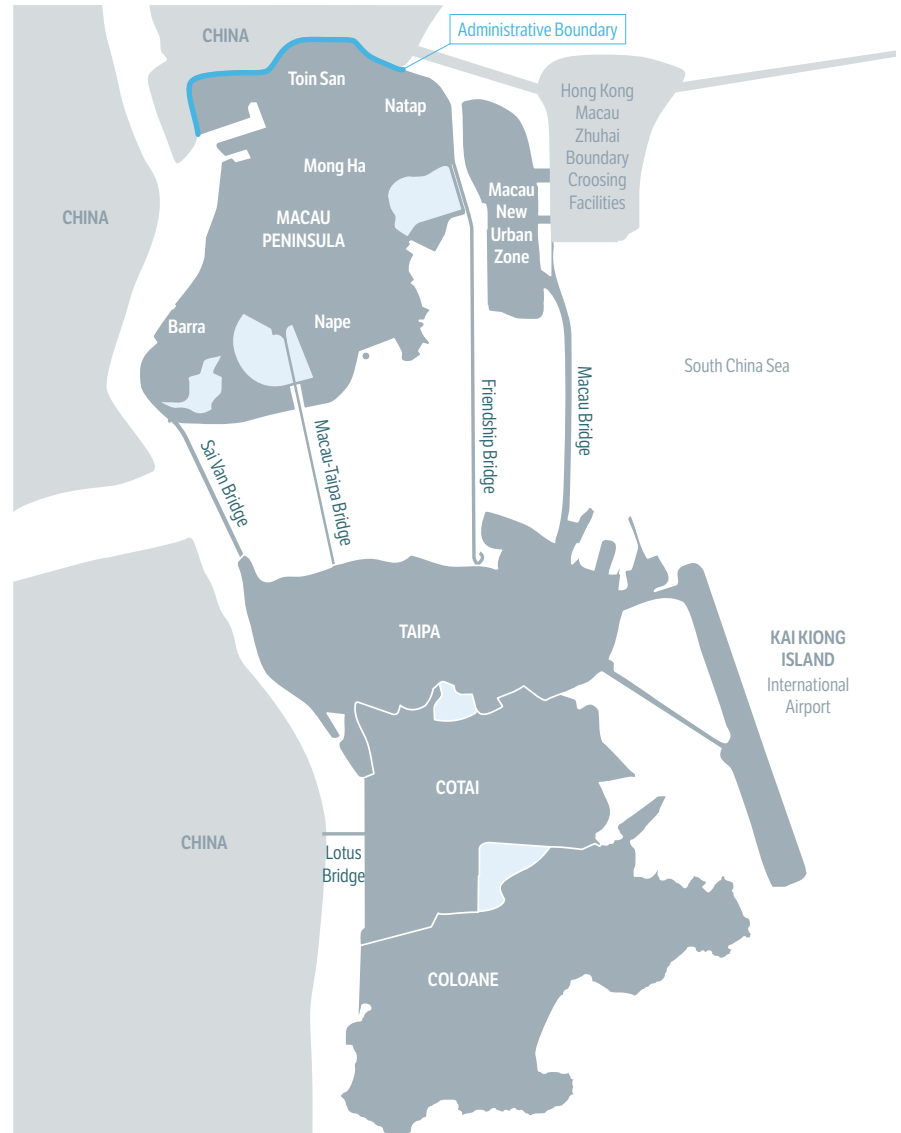
Objective 2 appears as the second most important objective and embodies the political guidelines issued by the PRC's Central Government that Macau must not be over reliant on its gaming industry and promote a healthy economic diversification of its economy.

Objective 4 links to Macau's reputation as having been deemed to facilitate capital flight, allowing illicit funds to be moved offshore, undermining China's strict capital controls. Capital controls capped at US\$50,000 annually per individual are a bid to stabilise the currency and prevent excessive capital flight. However, they also lead individuals and businesses to seek ways to circumvent the restrictions, resulting in illegal outflows with casinos presenting opportunities for money laundering. The Chinese government views illegal capital cross-border flows not only as an economic issue but also as a significant national security risk. As a result, authorities have implemented stringent measures to monitor and control these flows, aiming to safeguard the country's financial system and maintain stability.⁷

One immediate effect of the newly established primary objective was the need for the legislator to amend provisions concerning the termination of gaming concessions. Article 45 previously titled "Extinction" foresaw different manners by which a gaming concession could terminate, whether by expiration, agreement between the Government and the concessionaire, redemption, or termination either by breach or reasons of public interest. With the introduction of the concept of national security the legislator had to amend and add a new cause of extinc-

FIGURE 1. MACAU POLITICAL MAP: SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE WORLD'S LARGEST GAMBLING CENTRE

Source: Internet.



tion of concessions. Thus, Article 45 was amended and re-titled "Termination and Extinction".

Unsurprisingly in its list of termination triggers, national security is listed first, reflecting the legislator's view that it is the most important and severe cause for termination. Unlike the termination for reasons of public interest, a termination due to threats to national security or the MSAR implies the free and unencumbered transfer of all casinos of the concessionaire, along with all their equipment and furnishings, as well as any other assets or rights that are required to revert at the end of the concession pursuant to the law and the concession contract (Article 47.3, applicable ex-vi Article 48.2 Amended MGL).⁸ Apart from the threats involving such matters that are explicitly referenced in Article

1-A of the Macau Gaming Law, such as over-reliance on the gaming industry or involvement with organised crime, we can underscore two main areas of concern: cybersecurity risks and political risks related to Sino-American Relations.

Macau casinos handle vast amounts of sensitive customer data, including financial details and personally identifiable information (PII). Data breaches can lead to identify theft and financial fraud, not only affecting individuals but also potentially compromising national security by exposing vulnerabilities in the financial system. These can in turn be leveraged by hostile actors seeking to undermine national security through cyber warfare tactics. As geopolitical tensions rise, especially between China and the US, Macau casinos may become targets for cyber espionage



which can either compromise strategic economic interests or expose weaknesses in critical infrastructure.

Macau's Legal Framework of National Security

Macau's Basic Law, which acts as its constitutional framework, determines in its Article 23 that "The Macau Special Administrative Region must produce laws that prohibit any act of treason against the Motherland, secession, sedition, subversion against the Central People's government and the theft of State secrets, laws that prohibit foreign political organisations or associations from carrying out political activities in the Macau Special Administrative Region and laws prohibiting political organisations or associations in the region from establishing ties with foreign political organisations or associations."

Unlike in Hong Kong which tried to approve its own national security legislation as soon as 2003, and failed due to public protests, Macau's first Chief Executive, Edmund Ho presented a law proposal to the Legislative Assembly which was met without public outcries and thereby was peacefully approved on February 25, 2009, and signed and published in the Official Gazette one day later. Law 2/2009, entitled "Law relating to the defence of State security" was drafted based on civil law concepts mainly influenced by Portuguese and Italian legal doctrines and legislation.⁹

On May 18, 2023, Macau's National Law was amended by Law 8/2023 which abandoned its pro-liberal influence and aligned its framework with the 2015 National Security Law of the People Republic of China (PRC) and implemented the "overall national security concept" (總體國家安全觀), alternatively designated "comprehensive national security concept" introduced by President Xi Jinping. The impact of the "comprehensive national security concept" theory and the PRC National Security Law is clearly illustrated by Article 2(1) of the Macau National Security Law 2023, which uses the same definition of "national security" as Article 2 of the PRC National Security Law.¹⁰ This definition encompasses both the status and ability to uphold national security across various domains.

Xi Jinping's reconfiguration of national security as a central tenet of CCP ideology

and governance represents a significant shift in China's political and strategic landscape. This transformation has far-reaching implications for both domestic and international spheres, especially the way the concept is being applied.

Conclusion

The adoption and prioritisation of national security within Macau's gaming industry, particularly following the amendments to the Macau Gaming Law, is poised to have profound implications for the region's socio-economic and political landscape. As Macau navigates this new regulatory environment, several potential impacts emerge that could reshape its future.

The emphasis on national security necessitates a shift away from an over-reliance on gaming revenues. The Macau government's push for diversification into sectors such as healthcare, finance, technology, and culture are deemed essential for sustainable economic growth. This transition aims to foster resilience against external shocks, such as global economic downturns or geopolitical tensions that affect tourism.

Stricter regulations surrounding ownership and operational compliance may deter foreign investment, particularly from US-based gaming operators. If potential investors perceive the regulatory environment as unstable or overly politicised, they may seek opportunities in more favourable jurisdictions. This could lead to a contraction in the gaming sector, potentially diminishing tax revenues that are vital for public services and infrastructure development.

The prioritisation of national security may lead to heightened government oversight and control over the gaming industry. This shift could result in a more centralised decision-making process that limits the autonomy of casino operators and curtails their ability to respond swiftly to market changes.

As Macau navigates this complex landscape, it will be crucial for policymakers to strike a balance between ensuring national security and fostering an environment conducive to economic growth and social well-being. The success of this endeavour will ultimately determine whether Macau can maintain its status as a leading global gaming destination while adapting to an evolving geopolitical context. ●

Notes

¹ See Law no. 7/2022 – Amendment to Law no. 16/2001, of 24 September 2001, hereinafter "Macau Gaming Law".

² <https://bo.io.gov.mo/bo/i/2022/29/despce.asp#121>

³ To understand the differences between gaming licenses in the US and gaming concessions in Macau, see Anthony Cabot, António Lobo Vilela, & Pedro Cortés, *Comparing Gaming Regulatory Systems in Civil and Common Law Countries: How Different Approaches Can Achieve the Same Policy Goals*, UNLV Gaming Law Journal, Volume 13:2 (2023).

⁴ These translations and those below of the 2022 objectives are unofficial and were completed by the author, who assumes full responsibility for their accuracy.

⁵ Some contend that public policy objectives are not ranked in a hierarchical manner in the MGL, at least in its initial 2001 version. See Pedro Cortés, *Macau Gaming Industry 8.0 – Public Policy Beyond 2022*, p. 57, Gaming Law Review 2021.

⁶ Both Portuguese versions of the draft suggest that those drafting or translating the texts were not native Portuguese language speakers. Unlike with the MGL's initial version, it appears that these practiced civil servants were not involved in the drafting process for Law No. 7/2022. This raises the question of whether the emphasis on national security justified the exclusion of Portuguese native speakers from the drafting process. It may also indicate the Central Government's participation in the amendment of the MGL. See opinion of Prof. Nelson Rose, in Macau Business Special Report *New Gaming Law, a Beijing Tailored Suit*, January 2024 (<https://www.macaubusiness.com/special-report-new-gaming-law-a-beijing-tailored-suit/>).

⁷ Measures against junket promoters, triads, underground banks, and satellite casinos are all components of a strategy to curb capital outflows. The arrest of Alvin Chau Cheuk Wah in November 2021, who as head of the biggest Macau junket, Suncity, was reported to have moved US\$ 250 billion annually at the peak of his operations, symbolises the shift undertaken by Macau authorities. More recently, the newly approved Law on Illegal Gambling Activities (Law 20/2024) as greatly helped reduce illegal foreign exchange activities, with as much as 11,000 money changers having been arrested in 2023 (<https://stevevickersassociates.com/news/sva-update-political-risks-in-china-viewed-through-a-macau-prism>).

⁸ See Article 47-A.2: *The termination of the concession for reasons of public interest grants the concessionaire the right to fair compensation, the amount of which must be calculated with particular regard to the remaining time until the end of the concession term and the investments made by the concessionaire.* There is no entitlement to compensation when termination occurs due to breach of obligations or lack of suitability.

⁹ See Han Zhu, *Macau and Hong Kong: Convergence or Divergence? An Analysis of the 2023 Macau National Security Law*, Hong Kong Law Journal, Vol. 54, Part 1 of 2024, pp.53-63.

¹⁰ National security is defined as "The state in which political power, sovereignty, the unity and territorial integrity of the State, the well-being of the people, the sustainable development of the economy and society, and other relevant state interests are relatively free from internal and external dangers and threats, as well as the capacity to ensure the maintenance of the state of security."

