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**Gambling and the Law®:
Macau and China's Gambling Problem¹**

Macau is by far the largest gaming jurisdiction in the world. This year, the casinos in this Special Administrative Region of China are projected to win more than all of the privately owned casinos in the United States – about \$40 billion. And Macau is not only smaller than the U.S., or Rhode Island; even with its reclaimed land, it would fit inside the District of Columbia six times over, with room to spare.

Imagine how much gambling there would be if it were 100% legal.

The casinos are not necessarily violating any Macanese laws. But restrictions in its main feeder market, Mainland China, mean that inevitably some laws are being broken by individuals and companies who have made this small gaming enclave such a success.

It starts with the patrons. It is against the law for anyone from the Mainland to take out more than 20,000 yuan renminbi, or about US\$3,150, in cash. That's less than \$25,000 in Hong Kong dollars: A typical bet in the high-roller rooms in Macau casinos. But casinos are a cash business. So, somehow, Mainland Chinese are getting billions of dollars in cash across the border.

One of the most common ways for Mainland players to get their cash to Macau is through straight smuggling. One Macau executive told me about a farmer who walked into his casino in dirty, torn clothes and took HK\$50,000 in cash out of his sock. After he lost it, he took another HK\$50,000 out of the other sock.

Mainland Chinese like cash, and they don't trust banks. They even buy houses with cash. Of the 28 million visitors to Macau each year, more than half come from the Mainland. Not coincidentally, more than half also stay for less than one day. Millions arrive

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carrying shopping bags, and many of those bags have wads of yuans hidden at their bottoms. And not all the shoppers who cross the borders with Zhuhai, the connecting city on the Mainland, are carrying the cash only for themselves.

Guards at most border crossings now just wave you through, if they are even there at all. Spot checks at Macau's borders with Zhuhai and at the two ferry terminals and the Macau Airport are extremely rare. Players are coming to Macau to gamble. They know they have a better chance of winning a life-changing jackpot on a slot machine than of losing a life-changing conviction for violating PRC currency laws.

Of course, wealthier visitors are also getting their money out in other ways. Stores in Zhuhai and other cities near the border provide money lending and cash transfer services. For a fee, they call their counterparts in Hong Kong and Macau, who meet the Mainland visitor in the casinos with any amount of cash the visitor wants. There may be no paper records. And a large operation does not even have to actually transfer the money across the border. It simply keeps millions of dollars in cash on the Mainland and in the S.A.R.s.

Pawn shops have always been associated with casinos. There does not appear to be any law against a player intentionally taking expensive personal merchandise out of the Mainland and selling it in Macau for cash for gambling. The Venetian last year had an auction of extremely expensive ceramics, art and jewelry, with many pieces coming from "private collections."

But there are a growing number of high-end jewelry and watch stores popping up in Macau, even as booths right on the floors of the casinos. These stores are not buying, but selling. At least, that's what they pretend to be doing. What they are actually doing is transferring funds out of Mainland China.

The most common scam is to create a credit card sale of a very expensive item, like a watch. But no actual watch is involved. The seller gets a small percentage off the top, while the bulk of the money goes to the money-lender. The credit card sale may not even be recorded. It can be held, like a casino marker, for 24 hours so that it can be cancelled if the player wins.

This is done openly and blatantly. During a recent trip to Macau I watched a player sign papers and receive bundles of cash from jewelry stores located directly on the casino floor. No actual jewelry changed hands. The players are obviously getting the cash to use in the casinos while creating a credit card transaction that appears to have nothing to do with gambling and is thus enforceable under Mainland Chinese laws.

I had assumed that if the player won, he would return to the jewelry store with the cash to pay off the jewelry store before the credit card transaction went through. But when I

asked an insider with knowledge of this business, he told me that the jewelry stores are part of a much more complicated arrangement. There are third-party companies involved with the lending and shipment of money for these jewelry stores. The operators do not want the Mainlander to pay off the loan quickly, because they are charging outrageous interest: often 10% a month or more.

Probably the most common way to get cash to gamble in a casino in Macau is through a junket operator. This is the generally accepted term used in the Western English language press. But the title is misleading. They are actually called “VIP gaming promoters,” which is slightly more accurate. They are nothing like the traditional junket operators associated with American casinos, who were often paid a flat fee per head to bring in players. The Macau VIP gaming promoters can do virtually every part of the gambling transaction: recruit players, arrange transportation, provide credit, operate the gaming room in the casino, and collect the gambling debt.

Some of the VIP gaming promoters are large and sophisticated. One, Asia Entertainment & Resources Ltd. (Stock symbol AERL) is traded on NASDAQ. Its website, <http://ir.aerlf.com/>, explains how the system works and even details what arrangements it has with which casinos.

Of course, some the VIP gaming promoters are small and undoubtedly have ties with organized crime. The problems arise mainly from the archaic gambling laws of the PRC.

Much of what the VIP gaming promoters do is completely legal. There is no law in the PRC against making arrangements for travel, although there are restrictions on advertising or promoting gambling. Under the laws of Macau, VIP gaming promoters are allowed to share directly in both the theoretical and actual losses of the high-rollers they bring to Macau's casinos. It appears that China does not care if VIP gaming promoters loan money for gambling, so long as only paperwork, not currency, crosses the border.

VIP gaming promoters are at the heart of gaming revenue for Macau's richest casinos. They are so important, in fact, that VIP gaming promoters used to get a much larger share of money lost by high-rollers than the actual casinos. It is not clear, however, whether this money is all profits. VIP gaming promoters complained when the Macau government, at the urging of its casinos, put a cap on commissions, claiming that they have to give large kickbacks to losing high-rollers.

How do the VIP gaming promoters get their profits out of China? Some invest in other legitimate businesses on the Mainland, which are allowed to wire funds to Hong Kong and elsewhere. But some turn to those millions of shopping bags, or other, more nefarious, means.

The VIP gaming promoters supply Mainland visitors with the cash they need to gamble in Macau. The arrangements between the player and the promoter are secret and unknowable. A commonly heard allegation is that when a player shows up with what appears to be, say, a HK\$1 million line of credit and makes bets of HK\$25,000 per hand at baccarat (and the game is always baccarat), when the player returns to the Mainland to settle up he actually had a HK\$10 million line of credit and was making bets of HK\$250,000 per hand. There is no way to know.

Casinos and the government obviously are not happy with these side agreements. Casinos make their money by having a small percentage advantage on every bet made. And the Macau government is losing the tax revenue that the players' actual losses would generate.

But the VIP gaming promotion system persists because it serves many functions, including for the casinos. Visitors from the mainland still have trouble getting their money to Macau; gambling debts are still not legally collectable; and there is still very little fiscal infrastructure, since most Chinese do not have bank accounts, let alone credit cards and credit histories. So the junket operators bear the risk when they lend money for gaming.

Business in China is mainly conducted informally among people who know each other, or the personal contacts of personal contacts. So it is extremely difficult for a U.S. company to break into this market without junkets, with their agents and subagents.

Anonymity works for casinos as well. PRC officials are not allowed to gamble in Macau. In fact, they are not even supposed to visit the S.A.R. without prior approval. Casino operators can truthfully say that they do not know if a government official is making bets in their casinos, because they do not have the names of the high-rollers brought in by the VIP gaming promoters.

The problem of the VIP gaming promoters will not be solved until the PRC modernizes its laws. There has been some movement, but the PRC is still far behind the admittedly outdated laws of the U.S. (where gambling debts are still generally legally unenforceable). As an example, gambling in mainland China used to be punishable by death. Today, an operator can still get three years in prison.² But the PRC still punishes regular citizens for merely making bets. Gambling is lumped in with pornography in Article 32 of the Regulations of the PRC on Administrative Penalties for Public Security. It provides, "The following acts are strictly forbidden: (1) gambling or facilitating gambling . . . Whoever commits one of the above acts shall be detained for a maximum of fifteen days, fined simply or concurrently a maximum of three thousand yuan or given

² Article 303 of the Criminal Law of the People's Republic of China

re-education through labour according to regulations. Criminal responsibility shall be investigated if the actions constitute a crime.”

The PRC’s restrictions on promoting gambling apply to advertising casino gaming in Macau. The casinos themselves have found it difficult to know what is allowed, even when they don’t directly mention gambling.³

Similarly, gambling debts cannot be collected through the court systems of the mainland, although they are enforceable in Macau and Hong Kong. Because gambling debts are not legally enforceable on the Mainland, casinos are extremely reluctant to directly lend money to players.

So, how do the VIP gaming promoters collect?

The most recent development has been the creation of licensed micro-finance companies on the Mainland. There are now more than 4,000 licensees, lending at least 180 billion yuan, or more than US\$30 billion, each year. Loans are supposed to go to small businesses. But VIP gaming promoters and their agents are getting licensed and taking the position that it is none of the government's business what the loans are for. They even believe, or at least state publicly, that being a licensed micro-lender somehow makes their business of loaning money for gambling legal.

There is no way China can check every loan. Yuan-denominated loans now total 7.47 trillion yuan, or US\$1.18 trillion.

Chinese law, of course, would not allow a lender to turn a non-enforceable gambling debt into one that the courts would enforce simply because the lender has a micro-finance license. There is also the possibility of criminal charges being raised for promotion of gambling. Of course, all this would require that the player declare publicly that he and everyone else involved knew that the money was being lent for him to gamble in Macau.

How would an agent of a lender make sure the player does not talk? For that matter, how have agents been collecting those hundreds of billions of yuans over the years, when gambling debts were, and are, not legally enforceable?

³ “Marketing casinos in China,” Asian Gambling Brief, June 7, 2013, http://asiagamblingbrief.com/component/k2/490-marketing-casinos-in-china.html?utm_source=Asia+Gambling+Brief&utm_campaign=2e72eb1c2e-AGBrief%2300020-7June13&utm_medium=email&utm_term=0_51950b5d21-2e72eb1c2e-60695561

That is the greatest risk of China's outdated laws against gambling. Because gambling debts cannot be collected through the legal system, they are sometimes collected through illegal means. In a 2008 study by Macao Polytechnic of 99 high-rolling Mainlanders who made the Chinese newspapers for excessive gambling, seven died "extra-judicially," meaning they committed suicide or were murdered.⁴

One interesting side-note of this study: The argument is often raised that the VIP gaming promoters are necessary, because only local agents on the Mainland can know whether an individual is a good credit risk. This study showed that many of the "high-rollers" who got in enough trouble that they were reported in Mainland newspapers, were actually bookkeepers for large companies, who were relatively poor. This means the VIP gaming promoters, or its agents, or its agents' subagents, knew exactly that the player was good for the money, because he was in a position to embezzle it.

The biggest potential problem for American companies involved with a scandal in Macau is that they are all, by definition, licensed by at least one state of the U.S. The current problems involving Las Vegas Sands and MGM are typical of the type of trouble casino companies can face when they are associating with VIP gaming promoters or partners who bring unwanted scrutiny from state regulators.

Examples were the startling headlines of three years ago: From Reuters, the source of the original story: "SPECIAL REPORT-High-rollers, triads and a Las Vegas giant."⁵ Others picked it up: "Las Vegas Sands (LVS) Accused Of Mob Ties;" "LV Sands 'linked to Macau gang;" and the worst, "Macau Murder for Hire Tie-ing Las Vegas Sands." Reuters then ran the inevitable, "Nevada regulators analyzing Macau casino activity." Even the hometown newspaper, the *Las Vegas Sun*, jumped onboard: "Macau giving fits to Nevada regulators: Organized crime said to run rampant where state giants do business."

The murder-for-hire was real. Four men were convicted in Hong Kong of a plan to have a dealer at the Sands Macau killed, for supposedly helping a high-roller cheat a VIP room out of millions of dollars. But the other ties to LVS were weak. Reuters reported that a witness, not a gang-member but only a "regular casino patron," testified that a man who was alleged to have been running the high-roller room was also, allegedly, a member of

⁴ Another 15 were sentenced to death, usually for embezzlement. Zhonglu Zeng and David Forrest, "High Rollers from Mainland China: A Profile Based on 99 Cases," <http://digitalscholarship.unlv.edu/grrj/vol13/iss1/3/>.

⁵ <http://www.reuters.com/article/2010/03/29/us-casinos-macau-sands-idUSTRE62S34020100329>.

organized crime, and, allegedly, the mastermind of the plot. This alleged mastermind also was a major investor in a publicly traded junket operator.

It is important to note that the testimony was not strong enough to get the Hong Kong police, or anyone else, to arrest the alleged mastermind. As I wrote at the time: “It is doubtful there is enough here for the Macau government to do much in response to this news story, other than tighten its procedures and increase background checks on junket operators.”⁶ But there certainly was enough to cause major headaches for LVS, and for the other companies associated with Macau’s casinos: MGM Mirage, Wynn Resorts, Galaxy Entertainment, Melco Crown Entertainment, SJM Holdings; and even Hard Rock, Hyatt Regency, Four Seasons and Mandarin Oriental. It also put pressure on Nevada and other U.S. state regulators to take another look to see whether licenses will be pulled, or at least more stringent restrictions should be placed on Macau junket operators.

Murder-for-hire and casinos obviously made this a major story, and sexy enough to be published far and wide. The timing was particularly bad, coming on top of the ruling in New Jersey that MGM's Macau partner, Pansy Ho, was unacceptable due to the alleged organized crime ties of her father, Stanley Ho.

Problems in one jurisdiction always lead to problems in others. State governments in the U.S. cannot ignore news like this. American casino companies in Macau have licenses in Nevada, Michigan, Mississippi and other states, that are now at risk, if any tie at all with organized crime is discovered.

Nevada has laws on the books that already require regulators to look at the operations of its licensees wherever they may be. The state’s “foreign gaming” law has gone through a number of changes over the years.

Nevada’s original policy was to forbid its operators to open casinos anywhere else. This was obviously designed to keep Nevada the only game in town. And it worked, until the voters of New Jersey approved amending their State Constitution in 1976 to allow casinos in Atlantic City.

The Nevada Legislature reacted by passing a law in 1977 allowing Nevada licensees to open casinos outside the state, but only if the gaming regulators gave their prior approval. This included evaluating the foreign government’s controls. I still have a copy of the “Report on Gaming Control in New Jersey,” dated April 19, 1979. The Report concludes, “the Nevada State Gaming Control Board finds that a comprehensive, effective government regulatory system exists in New Jersey.”

⁶ I. Nelson Rose, “Gambling and the Law®: Macau Junkets Trouble Nevada,” <http://www.gamblingandthelaw.com/columns/248-macau-junkets-trouble-nevada.html>.

Although New Jersey might have been okay with Nevada evaluating its laws and regulations, politically, it became difficult for the United States when Nevada declared itself the arbiter of other nations' governmental controls. The U.S. Ambassador to the Bahamas told me the leaders of that independent country did not like being judged by a mere state. There were also legal questions of whether Nevada was creating trade barriers in violation of U.S. treaties.

The proliferation of legal gaming eventually made it too costly for Nevada to investigate every foreign regulatory system in advance. And Nevada operators complained that the delay allowed their competitors to get a new jurisdiction's casino licenses first. So, the law was changed, in 1987, 1993 and 1997, to ease the standards and eliminate the requirement of prior Nevada approval.

Now Nevada licensees only have to notify state regulators within 30 days of signing a deal for a foreign casino and apply for a "finding of suitability." And those regulators have been given the impossible job of continuously monitoring activities around the world. Even with contacts, reports filed by licensees, and occasional visits, there is no way a Nevada regulator can always be sure that there were not secret agreements made on the Chinese mainland.

New Jersey does not have a specific foreign gaming law. But the Casino Control Act, like similar statutes in all casino licensing states, requires that its licensees show they are of "good character, honesty and integrity" on a continuing basis.⁷ This expressly includes a licensee's "business, professional and personal associates," "to the extent that they may reflect upon actual character and present fitness to either hold a casino license or participate in gaming operations."⁸

Casinos in New Jersey have to meet a tough standard: rather than proof by a mere preponderance of evidence, found in other states and regular civil suits, New Jersey requires applicants and licensees to prove their worthiness by clear and convincing evidence. As New Jersey demonstrated in finding that Pansy Ho was unsuitable, and that MGM had to sever its ties with her or leave the state, the standard is equally tough in practice as in theory. Nevada regulators had the same information, but reached a different conclusion.

Part of the difference could be the more relaxed attitude Nevada has toward gaming. So long as an operator or its partner has not been charged, let alone convicted, of a crime, Nevada regulators will normally not suspend or revoke a license.

⁷ N.J.S.A. 5:12-84(c).

⁸ *In re Resorts Casino Application*, 10 N.J.A.R. 251 (CCC 1979).

New Jersey, on the other hand, took the license for the Tropicana Casino in 2007 without a specific finding of criminal wrongdoing, or even of charges having been filed. The New Jersey Casino Control Commission found numerous problems, including management's "abysmal" regulatory compliance and a "lack of business ability . . . and a lack of good character, honesty, and integrity."

Although New Jersey found violations sufficient to deny the renewal of the casino license, Nevada regulators never seriously threatened the many Nevada casinos owned and operated by the same company, Columbia Sussex.

Other states are more likely to follow New Jersey than Nevada if a license is actually revoked. Some, in fact, make it automatic. Indiana law, for example, required Columbia Sussex to give up its license for the riverboat Casino Aztar, because Indiana law does not allow the state to license anyone who has had its licensed revoked in another state.

History is a factor here. When Nevada legalized casinos in 1931, it imposed no regulatory controls. The state allowed convicted felons to obtain gaming licenses. The theory was that since gambling was illegal in all other states, the only individuals with experience would be people involved in illegal gambling. Nevada, fearing federal intervention, only began regulating its casinos after the Kefauver televised Congressional hearings in the early 1950s focused on organized crime's ties with gambling, including Nevada casinos.

New Jersey took a completely different approach. When it legalized casinos in the 1970s, it expressly stated that it did not want anyone with a background tainted in any way. Its theory was that training schools and foreign gaming jurisdictions would fulfill the industry's demand for skilled individuals. This proved to be correct.

Today, the children of these original Nevada licensees are sometimes now running the casinos in that state. Nevada regulators are thus not in a position to revoke gaming licenses simply because an individual's father allegedly had ties with organized crime. On the other hand, the state is still concerned with possible federal criminal investigations or developments in other states that would show Nevada does not adequately regulate its licensees.

Times may be changing. Macanese law was amended a few years ago to allow casinos to loan money directly to players. Hong Kong courts issued a ruling that allow Macau casinos to collect there.

But, until the PRC allows the enforcement of gambling debts through its legal system, and loosens its restrictions on the transportation of cash across its borders, the "junket" system will continue. And who the VIP gaming promoters are remains a problem. It is significant that not a single Macau VIP gaming promoter has been approved by the

government of Singapore. The two casinos in Singapore do even more business than the largest casino in Macau. But Singapore requires disclosure of financial information and finger-printing of VIP gaming promoters, and it won't approve one of these junket operators until it is sure that the real owners of the VIP gaming promoter are actually who they say they are.

U.S. state and federal investigations are the most obvious danger for American casino companies doing business in Macau. But the other potential problem comes from the PRC itself. As a totalitarian government, the PRC is not overly concerned with legal niceties, like holding hearings before changing its rules. But its leaders do care about bad publicity, such as stories of government officials embezzling money and losing it in the casinos of Macau.

Nobody knows for sure why the PRC has occasionally put restrictions on travel from the Mainland to Macau. But when the PRC changed the rules for residents of the provinces nearest Macau from daily visits to only being able to enter Macau once every three months, the impact was immediate. I was teaching Gaming Law at the University of Macau. One of my students was in charge of the frequent visitors program for an American casino. When visa restrictions were imposed from Beijing, she lost her job, because there were no more frequent visitors.

There is a fear that other American companies will become reluctant to partner with casinos in Macau, and that investors will get scared off if there are more rounds of bad news. But the major threat and unknown question is whether the Beijing government will once again impose visa restrictions on mainlanders' visits to Macau. If the PRC closes the border it would be shooting itself in the foot. But the bullet would kill the casino industry in Macau.

END

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Prof. Rose is best known for his internationally syndicated column and 1986 landmark book, "GAMBLING AND THE LAW®." He is the co-author of INTERNET GAMING LAW (1st and 2nd editions), BLACKJACK AND THE LAW, the first casebook on the subject, GAMING LAW: CASES AND MATERIALS (LexisNexis), and the recently published GAMING LAW IN A NUTSHELL (West). Prof. Rose is co-editor-in-chief of the *Gaming Law Review & Economics*.

Harvard Law School educated, Prof. Rose is a consultant to governments and industry. He has testified as an expert witness in administrative, civil and criminal cases throughout the United States, in Australia and New Zealand, including the first NAFTA tribunal on gaming issues. Prof. Rose has acted as a consultant to major law firms, international corporations, licensed casinos, tribes and local, state and national governments, including the provinces of Ontario and Québec, the District of Columbia, the states of Arizona, California, Delaware, Florida, Illinois, Michigan, New Jersey, Texas, and the federal governments of Canada, Mexico and the United States.

With the rising interest in gambling throughout the world, Prof. Rose has addressed such diverse groups as the National Conference of State Legislatures, Congress of State Lotteries of Europe and the National Academy of Sciences. He has taught classes on gaming law to the F.B.I.; at universities in Spain, France, Slovenia and China; and as a Visiting Scholar for the University of Nevada-Reno's Institute for the Study of Gambling and Commercial Gaming. Prof. Rose has presented scholarly papers on gambling in Nevada, New Jersey, Puerto Rico, Canada, England, Australia, Antigua, Portugal, Italy, Argentina and the Czech Republic.

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