

KIRKLAND ALERT

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Macau's New Anti-Money Laundering Rules Send Warnings to U.S.-Based Casinos with Operations in Macau

Introduction

Effective May 13, 2016, the Gaming Inspection and Coordination Bureau of Macau promulgated Instruction No. 1/2016, entitled "Preventive Measures Against Crimes of Money Laundering and Terrorist Financing" (the "New Instruction"). The New Instruction aims to bring Macau's AML regulatory regime closer to international standards through imposing regulations over junket operators and more comprehensive internal control requirements over casinos and junket operators.

The New Instruction highlights the increasing AML risks facing many U.S.-based casinos, namely casino companies headquartered in the U.S. with operations in Asia. As the Asian regulators start to focus on enforcing the AML laws, these U.S.-based casinos may face parallel AML enforcement from both the U.S. and local authorities.

Overview of the New Macau AML Rules Targeting the Local Casino Industry

The New Instruction stipulates: (1) casinos and junket operators should report and keep records of large-amount and suspicious transactions, and provide such records to relevant authorities upon request; (2) casinos are required to supervise their junket operators in complying with reporting obligations; and (3) casinos and junket operators are obliged to identify and verify their customers and perform customer due diligence (CDD) and enhanced due diligence (EDD).

In particular, the New Instruction contains the following highlights:

- 1) *Reporting and recordkeeping obligations.* The New Instruction requires two types of reports: Large-Amount Transaction Reports (the "LTRs") and Suspicious Transaction Reports (the "STRs"). As for LTRs, the New Instruction keeps the reporting threshold at MOP500,000 (approx. US\$62,616) despite the increase in the number of high rollers throughout the years. As for STRs, the New Instruction maintains a broad test, under which any transaction that appears to be associated with money laundering or terrorist financing based on its nature, complexity, amount of money involved or unusualness shall be reported. All LTRs, STRs and supporting documents shall be retained by casinos and junket operators for a period of five years.
- 2) *Regulations over junket operators.* The New Instruction explicitly stipulates that it applies to junket operators, imposing all the same onerous obligations on them. Further, it requires casino compliance officers to audit the STRs com-

Because Macau's new AML rules aim to bring its regulatory regime closer to international standards through more comprehensive internal control requirements over casinos and junket operators, many U.S.-based casinos may start to face multi-jurisdictional AML enforcement from both the U.S. and local authorities.

pleted by their junket operators and keep track of STRs filed by them on a daily basis.

- 3) *“Know your client” requirements.* In the first place, the New Instruction requires casinos and junket operators to identify and verify their customers, including patrons engaging in long-term business relationships with them and suspicious or large-amount transactions, bettors and receivers of gaming credit, their representatives, principals and ultimate beneficiaries. The New Instruction also requires casinos and junket operators to perform CDD on persons involved in long-term business relationships with them, suspicious or large-amount transactions, and associated financial transactions. Moreover, the New Instruction calls for an EDD, for instance, on local and foreign politically exposed persons as well as their family members and close associates.

Cross-Border Impacts on U.S.-based Casinos with Macau Operations

U.S. regulators have long recognized the significance of money laundering. In 2012, the World Bank and International Monetary Fund estimated that the volume of money laundering to be 3-5% of the global GDP, equivalent to US\$2.17 to US\$3.66 trillion annually. In response, the U.S. has enacted several key statutes and regulations¹ that require financial institutions (including casinos by definition) to develop and implement corporate-wide AML compliance programs, including CDD and EDD, suspicious activity identification and reporting, and currency transaction reporting policies and procedures.

The New Instruction has significantly facilitated U.S. regulators’ ability to enforce the AML laws over U.S.-based casinos’ operations in Macau. First, as explained in the previous section, the New Instruction now requires all casinos and junket operators in Macau to monitor and report suspicious transactions as well as to implement stricter internal control measures such as the customer identification program, CDD, and EDD processes.

More importantly, the U.S. regulators can use the following means to gain visibility into these U.S.-based casinos’ Macau operations:

- 1) *Sharing information among AML agencies.* One of the key U.S. federal AML regulators, FinCEN, and the Macau Financial Intelligence Office, are both members of the Egmont Group, an international organization where AML agencies from different jurisdictions cooperate and exchange information. Moreover, China entered into an agreement with Australia in early November to share information on money laundering activities to support its long-running anticorruption campaign. In addition to Australia, China has also identified the U.S., Canada and Singapore as popular destinations for corrupt officials due to a lack of bilateral extradition treaties. As a result, information-sharing arrangements between China and these countries are inevitable in strengthening China’s effort to combat corruption, as well as cross-border money laundering activity.
- 2) *Obtaining information through special measures.* The PATRIOT Act empowers FinCEN to impose special measures on U.S. financial institutions transacting

Macau's New AML Rules contain three key obligations on casinos and their junket operators: (1) record keeping obligations for large-amount and suspicious transactions; (2) supervision requirements on casinos to ensure that their junket operators comply with the corresponding reporting obligations; and (3) customer due diligence and enhanced due diligence obligations.

with foreign financial institutions deemed by FinCEN to be “primary money laundering concerns.” Therefore, it is possible that FinCEN may view a Macau-based casino as a “primary money laundering concern” and require the U.S. financial institutions to obtain and retain information concerning the beneficial ownership of any accounts from the casinos, as well as identify the customers of these accounts.

- 3) *Utilizing the agency principle.* The U.S. enforcement agencies sometimes hold a parent company responsible over its subsidiary’s conduct simply because the parent exercises control over the subsidiaries. As a result, it is possible that the U.S. enforcement agencies may request information from these U.S.-based casinos’ Macau subsidiary operations in order to pursue enforcement actions over the U.S. parents.

For U.S.-based casinos, the New Instruction also means higher stakes of enforcement by state gaming authorities. Nevada, for instance, prohibits casinos from knowingly violating laws in a foreign gaming operation. Following enforcement by the FinCEN, it is possible that the Nevada Gaming Control Board may take independent actions against casinos based in that state.

Implications

Macau is not only the world’s largest gambling hub, but also has one of the most significant risk exposures to money laundering as compared to the other major gambling hubs in the world. As a result, the New Instruction not only strengthens Macau’s local AML enforcement regime, but also facilitates parallel enforcement by the U.S. AML regulators.

Below are some of the mitigation measures recommended for U.S.-based casinos with Macau operations to mitigate their risk exposure under the New Instruction:

- 1) Devote adequate compliance resources to ensure that their AML policies have been updated, implemented and assessed by independent compliance professionals who are experienced and conversant in multiple jurisdictions’ (at a minimum, the key jurisdictions with the highest risk factors) legal and regulatory regimes;
- 2) Adopt a risk-based approach for CDD, especially his or her source of wealth, to identify suspicious transactions that may violate the applicable AML laws;
- 3) Conduct appropriate CDD and EDD measures concerning their junket operators to ensure on-going AML compliance; and
- 4) Take a more proactive approach in retaining complete KYC records and periodic review and monitoring for suspicious transactions and activities.

Macau's New AML Rules have significantly enhanced U.S. regulators' ability to obtain information in Macau and conduct cross-border investigations to enforce the applicable AML laws.

1 The key U.S. AML laws and regulations are the Bank Secrecy Act of 1970 (BSA) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (commonly referred to as the PATRIOT Act).

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