

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

WYNN RESORTS, LIMITED,
Petitioner,

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Elizabeth A. Brown
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v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE
HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. XI,

Respondent,

and

KAZUO OKADA; UNIVERSAL ENTERTAINMENT CORP.
AND ARUZE USA, INC.,

Real Parties in Interest.

**PETITION FOR WRIT OF PROHIBITION OR
ALTERNATIVELY MANDAMUS**

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the foregoing are persons or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Petitioner Wynn Resorts, Limited is a publicly-traded Nevada corporation, headquartered in Las Vegas, Nevada. Petitioner is the majority shareholder of non-party Wynn Macau, Limited, a Cayman Island Corporation that is publicly traded on the Hong Kong Stock Exchange which is directly implicated by the District Court's order at issue.

DATED this 3rd day of November, 2016.

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ROUTING STATEMENT

The Nevada Supreme Court should retain this writ proceeding because this is a case "originating in business court." NRAP 17(a)(10).

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I. OVERVIEW AND RELIEF SOUGHT

Wynn Resorts, Limited ("Wynn Resorts" or the "Company") petitions for a Writ of Prohibition against the District Court's October 31, 2016, order (the "Order") that purports to extend the court's authority for discovery over foreign non-parties that are not subject to the court's jurisdiction. The District Court exceeded its jurisdiction by (1) ordering a production of documents that are within the possession custody and control of Wynn Resorts' affiliates – Wynn Resorts (Macau), S.A. and Wynn Macau, Limited (collectively "Wynn Macau") – non-parties to this case that decline to voluntarily produce documents that their home country, Macau, has *declared* may not be disclosed; and (2) claiming the authority to interpret Macau law and its application to non-parties that conflicts with the explicit directives of the Macau government.

The weighty consequences of the District Court's extra-jurisdictional actions cannot be undone after the fact. Wynn Resorts has already asked non-party Wynn Macau to voluntarily produce documents to the extent that the Macau government will allow. The District Court expressly acknowledged that Wynn Resorts acted in good faith through this action and by also producing those copies of the records that are within Wynn Resorts' possession, custody, and actual control.

The District Court's claims of jurisdiction stem from the real parties in interest assertion that this Court's holding in *Las Vegas Sands v. Eighth Judicial District Court*¹ establishes that foreign privacy statutes are not a relevant objection to discovery *even for non-parties* not subject to the District Court's jurisdiction. But that decision provides simply that foreign privacy laws do not relieve a *party* from their discovery obligations for documents that were admittedly within its possession, custody, or control. There, Sands China, Ltd. was a named party to the case, subject to the Nevada Court's jurisdiction, and indisputably controlled the documents. Wynn Macau is *not a party* and the District Court's Order ignores that core limitation.

Indeed, in the instant case, the District Court went even further to reach this result, having to disagree with the Macau government's interpretations and applications of its own laws. The District Court's Order also ignores comity principals, overruling the Macau government's substantive protection for documents stemming from its gaming regulatory processes and approvals. Writ relief from this Court is both necessary and appropriate for such a sweeping ruling.

II. ISSUES PRESENTED

- 1) Do Nevada Courts have jurisdiction to require a non-party foreign corporation to violate the laws of its home country and expose itself and its representatives to foreign criminal and civil sanction?

¹ 130 Nev., Adv. Op. 61, 331 P.3d 876 (2014).

- 2) Is a Nevada Court allowed to interpret foreign law contrary to the explicit directives of the foreign government that enacted that law because the Court disagrees with the foreign government's policy choices?
- 3) Is a Nevada Court allowed to disregard a foreign government's mandate that certain documents with a gaming licensee concerning its regulatory apparatus and function not be disclosed to third-parties without that government's express consent?

III. RELEVANT FACTS AND PROCEDURAL HISTORY

A. Overview of the Litigation.

Wynn Resorts is a Nevada corporation, publicly traded on NASDAQ. The underlying litigation derives from provisions of its Articles of Incorporation ("Articles") applicable to all stockholders, including former stockholder, Real Party in Interest Aruze USA, Inc. ("Aruze"), its principal, Kazuo Okada ("Okada"), and parent, Universal Entertainment Corp. ("Universal") (collectively, the "Okada Parties"). (App. Vol. I, 0113-0138.) One provision of those Articles explicitly provides that the Company's Board of Directors has the authority to redeem the shares of any stockholder that the Board, in its sole discretion, concludes poses a likely risk to any existing or future licensing. (App. Vol. I, 0052-0056.)

Based upon information that came to the attention of the Wynn Resorts Board of Directors (the "Board"), including through an investigation by former federal judge and FBI Director, Louis J. Freeh, on February 18, 2012, the Board exercised its discretion and voted to redeem all outstanding shares held by Aruze, one of the Okada Parties. (App. Vol. I, 0127-0128.) That redemption followed from the Board's collective judgment that the Okada Parties posed a likely risk to the Company's current and future gaming licenses, considering the Okada Parties' open embrace of practices forbidden by the United States Foreign Corrupt Practices Act. (*Id.*)

Discovery has not only confirmed the risks the Board assessed and considered at the time of the redemption, but also has exposed the Okada Parties' open embrace for such improprieties. Subsequent disclosures have revealed that the Okada Parties are responsible for bribes to foreign officials in excess of \$40 million. (App. Vol. I, 0105-0112.) [REDACTED]

[REDACTED].

(App. Vol. V, 0141-0155; App. Vol. V, 0156-0166.) But, of course, as the record denotes – [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]. (App. Vol. I, 0058, 0067-0069, 0102; *see e.g.* App. Vol. V, 0279-0288; App. Vol. V, 0289-0305; App. Vol. V, 0306-0319.)

B. The Okada Parties' Defense Strategy.

Facing the inevitable of the Board's business judgment – its "sole discretion" and exclusive authority to redeem – the Okada Parties' defense is as cynical as it is predictable when someone gets caught with their hand in the proverbial cookie jar: they claim that the Wynn Resorts Board has ignored other imagined corporate improprieties such that it is unfair to hold the Okada Parties accountable when others purportedly have not been similarly treated. Just how that proposition – even if true – would serve to preclude the Board's business judgment that the activities of the Okada Parties pose licensing risk is never explained.

But in pursuit of that tactic, the Okada Parties have served nearly 1,000 different Rule 34 document production requests, covering nearly every transaction and business relationship from before Wynn Resorts' 2002 formation up to the present. The document requests implicated by the District Court's Order here concern events that occurred in what is known as the Special Administrative Region of Macau, the country that is home to the Wynn Macau operations.

Wynn Resorts (Macau) S.A. is a Macau entity, and a wholly-owned indirect subsidiary of Wynn Macau, Limited, a Cayman Island corporation publicly traded on the Hong Kong Stock Exchange ("HKSE"). (App. Vol. V, 0893-0896.) Wynn Resorts is a major shareholder of Wynn Macau, Limited, holding a little over 70% of the stock. (App. Vol. V., 0901.) The remaining near 30% is held by the

public at large through the HKSE. (*Id.*) Wynn Macau, Limited has eight directors, a majority of whom are separate from Wynn Resorts. (App. Vol. V., 0906; App. Vol. V, 0908.) The Board of Wynn Macau, Limited has four independent directors, three executive directors, and one non-executive director. (App. Vol. V., 0908.) Of these, only one existing member of the Wynn Macau, Limited Board of Directors overlaps with Wynn Resorts' Board: Stephen A. Wynn. (App. Vol. V, 0906; App. Vol. V, 0908.)

Wynn Macau is not a party to this action, and no one suggests that it is subject to jurisdiction in Nevada. By definition, the documents located in Macau concerning or relating to events occurring there or the Macau gaming concession are the property of, and in the possession, custody, and control of non-party Wynn Macau, not Wynn Resorts. Indeed, the Okada Parties have openly sought to exploit that distinction for their own benefit.

Specifically, as part of Director Freeh's investigation, [REDACTED] [REDACTED]. (App. Vol. V, 0918.) The Okada Parties claim that it is improper for Wynn Macau to accord Director Freeh access to records referencing Okada or his agents. (App. Vol. V, 0921-1009.) In fact, the Okada Parties have filed suit in Macau against Wynn Resorts (Macau), S.A. as well as Stephen A. Wynn and others (the "Macau Complaint"). (*Id.*) There, the Okada Parties assert that granting Director Freeh access to documents that identify Okada and his activities violated

their rights under the Macau Personal Data Privacy Act ("MPDPA"). (*Id.*) Indeed, the Okada Parties insist that it is up to the Macau courts to enforce and implement the MPDPA. (*Id.*)

The Okada Parties' Macau Complaint repeatedly protests that Macau law precludes the dissemination of any personal identifying information outside of Macau, absent a valid consent under Macau law:

167. *At no time* did the aforementioned citizens *give any authorization* for the use of their personal information, their personal data, by [Wynn Macau], its employees, WYNN RESORTS, LIMITED or any other person, company or entity, much less did they solicit these citizens' authorization for the transmission of said information and personal data outside the MSAR.

168. It must be emphasized that [the MPDPA], modeled as it is on the Council of the European Union's Directive 2005/85/CE, *is much more demanding in this respect than the law in effect in the United States of America.*

(*Id.* at 0959-0960.) The Okada Parties insist that dissemination of personal information covered by the MPDPA is "an *unlawful and wrongful infringement upon the right of another or any legal provision designed to protect the interests of others.* . . ." (*Id.* at 0965.) The Okada Parties' Macau Complaint goes on to emphasize the importance of the MPDPA and its binding affect upon any documents in Macau. (*Id.* at 0965-0966.) Tellingly, of course, the Okada Parties have not named Wynn Resorts in the Macau Complaint, acknowledging that the documents and information in Macau are the property and responsibility of Wynn Macau.

C. The Okada Parties Seek Non-Party Discovery through Wynn Resorts.

But in this Nevada action, the Okada Parties whistle a different tune. Here, the Okada Parties demand production from Wynn Resorts of documents that are unambiguously those of Wynn Macau:

- [REDACTED] ...
- [REDACTED]
- [REDACTED]
- [REDACTED].
- [REDACTED]

(App. Vol. VI, 1023-1028.) These are just the tip of the iceberg. [REDACTED],

[REDACTED],

[REDACTED]. (*Id.* at 1022-1029.)

Indeed, the Okada Parties attempted to [REDACTED]

[REDACTED]

[REDACTED]. (*Id.* at 1018.)²

Thus, while insisting that the Macau courts have jurisdiction over Wynn Macau's documents and enforcement of the MPDPA, the Okada Parties seek to circumvent the proper procedures for obtaining discovery from a non-party like Wynn Macau: *i.e.*, serving it with appropriate Macau legal process where Wynn Macau may then be heard. Of course, it is obvious why the Okada Parties do not want to make application to the proper jurisdiction: a Macau court would rightly question the Okada Parties' inconsistencies concerning the MPDPA.

D. Wynn Resorts Objects but Asks Non-Party Wynn Macau to Voluntarily Comply to the Extent Legally Allowed.

Addressing the Okada Parties' failure to comply with the requirements of serving non-parties with appropriate legal process, Wynn Resorts [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² In its Appendix, Wynn Resorts includes only excerpts of the Okada Parties' voluminous requests for production and its responses, as including all of the requests would needlessly duplicative.

██████████. (App. Vol. VI, 1045-1072, 1081-1083.) But Wynn Resorts did not simply raise and preserve its proper objections.

Happy to expose the Okada Parties' attempted misdirection to the extent the law allows, Wynn Resorts requested that Wynn Macau voluntarily produce responsive information. (App. Vol. VI, 1117.) Following Macau law – the very same law the Okada Parties insist must be followed with respect to any documents in Macau – Wynn Macau approached Macau's Office of Personal Data Protection (the "OPDP") and informed it of Wynn Resorts' request to produce the documents for use in this Nevada litigation. (*Id.*) The OPDP is the Macau government agency responsible for implementation, interpretation, and enforcement of the MPDPA.

The OPDP directed that Wynn Macau could not produce any of its documents in this action without redacting personal information unless Wynn Macau obtained signed consents of the individuals identified or referenced in those documents. (*Id.*) Of course, Wynn Resorts could have simply stopped there and told the Okada Parties that it was under no obligation to have Wynn Macau voluntarily comply even to the extent the OPDP would permit. But instead, at Wynn Resorts' request, Wynn Macau undertook the process of seeking and obtaining consents consistent with Macau law and the OPDP's directive. (*Id.* at 1117-1118.)

Tellingly, one of the people who refused to sign a consent authorizing the release of his personal data for any of the documents in Macau is ***Kazuo Okada***.

(App. Vol. I, 0139-0140; App. Vol. III, 0597.) In fact, when Wynn Macau sought his consent, Okada ***objected and opposed*** the request, going so far as to tell the District Court that it did not have the authority to make Okada waive his rights under the MPDPA. (App. Vol. III, 0740-0741.)

Once Wynn Macau obtained consents as required by Macau law, it voluntarily provided responsive documents to Wynn Resorts with the consenters' personal data unredacted for production in the Nevada action. (App. Vol II, 0320-0428; App. Vol. VI, 1117-1118; App. Vol. VI, 1120-1179; App. Vol. VI, 1181-1239; App. Vol. VII, 1241-1280.) Also consistent with the directive of the OPDP, for all other personal data in the responsive documents (*i.e.*, personal data of individuals for whom no consent was received), Wynn Macau voluntarily provided responsive documents with the appropriate MPDPA redactions to Wynn Resorts for production in the Nevada Action. (*Id.*)³ Wynn Resorts also conducted searches of its own records to determine to what extent, if any, duplicates of all or part of the documents that Wynn Macau provided in redacted form pursuant to Macau law existed outside of Macau and within the actual possession, custody, or control of Wynn Resorts. Wynn Resorts produced all such duplicate documents.

³ Since Okada would not grant such a consent, his name was redacted from all of the documents, just as he required.

E. The Macau Government's Regulatory Documents Are Also at Issue.

In addition to the MPDPA restrictions, there exists a separate set of Macau government-related documents – documents to which the Macau government is itself a party or participant – that Macau law specifically protects from production without the government's express consent. These documents and the related laws generally concern the Macau government's gaming regulatory process, procedures and approvals. Not unlike Nevada's gaming regulatory laws and rules, Macau law sets forth mandated government-imposed protection for certain regulatory documents and data related to the government's gaming industry.

Specifically, Macanese Law 16/2001 establishes the legal framework for the operation of games of chance in casinos. Article 16 of Law 16/2001 (unofficially) translates as follows:

The bidding processes, the documents and data included therein, as well as all documents and data relating to the tender, are confidential and *access to or consultation of such documents by third parties is prohibited*, and for this purpose the provisions of article 63 to 67 and 93 to 98 of the *Codigo de Procedimento Administrativo* ("Code of Administrative Proceedings"), approved by Decree-Law no. 57/99/M of October 11 are not applicable.

Macau Law 16/2001, Art. 16 (emphasis added). (Ex. A hereto)⁴

⁴ While these translations are unofficial, no one disputed their accuracy before the District Court. Wynn Resorts attaches a copy to the end of this Petition as Exhibit A.

This prohibition in Macau law related to gaming concessions is reinforced by the express language in the concession agreement between Wynn Macau and the Macau government. Clause 92 of the concession agreement breaks down into three parts, which (unofficially) translate:

1. The documents produced by the Government or by the concessionaire, in keeping with the conditions of law or the present concession contract, have a confidential character, and *can only be made available to third parties with the authorization of the other Party*.
2. The Government and the concessionaire take all the necessary steps to ensure that, respectively, the workers of the Public Administration of the Macau Special Administrative Region, and the workers of the concessionaire are bound by the duty of secrecy.
3. The Government and the concessionaire undertake to enforce the duty of secrecy on other persons who have had or who might have access to confidential documents, namely through consulting services and other contracts.

(App. Vol. I, 0041.)⁵ Simply put, the Macau government has directed that its consent is expressly required for the production of this particular documentation or data.

Similar to the Nevada Legislature empowering the Nevada gaming regulatory authorities to enact gaming regulations, the Macanese gaming regulatory arm, the Direcção de Inspecção e Coordenação de Jogos ("DICJ"), enacted what it calls

⁵ This instruction is specific to the Macau gaming concessionaires and sub-concessionaires, and is distinct from the Macau Personal Data Privacy Act, which this Court addressed in *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331, P.3d 876 (2014).

instructions. Article 8 of DICJ's Instruction 1/2014 provides for the confidentiality of personal information gathered by gaming concessionaires and sub-concessionaires. (App. Vol. III, 0600-0601.)

Pursuant to these Macau government mandates, documents related to the Macau bidding process, tender, and gaming concession are confidential, and third parties are prohibited from access to or consultation of those documents without consent of the Macau government. Accordingly, the non-public communications with the Macau government related to the tender or concessions were either redacted or, on occasion, withheld.⁶ Making full disclosure, Wynn Resorts identified on a privilege log all documentation that Wynn Macau cannot provide because of these substantive Macau law directives. (App. Vol II, 0320-0428; App. Vol. VI, 1117-1118; App. Vol. VI, 1120-1179; App. Vol. VI, 1181-1239; App. Vol. VII, 1241-1280.)

In the end, Wynn Macau voluntarily provided to Wynn Resorts over 2,000 documents consistent with the laws of its home country, Macau, and the ruling of the OPDP. (App. Vol. III, 0606; App. Vol. III, 0658.) For those instances where consents did not exist, like with Mr. Okada, Wynn Macau redacted any personal

⁶ If the document was available publicly (or through some means unknown to Wynn Macau), Wynn Resorts produced the document.

identifying information prior to providing the documents to Wynn Resorts, just as the law required. (*Id.*)

F. The District Court's Order Overrules Both the OPDP (in part) and Macau Government Restrictions (in full).

Despite Okada's own refusal to sign a consent under the MPDPA and the Okada Parties' insistence that the MPDPA governs Wynn Macau's documents in Macau, they nonetheless filed a motion to compel against Wynn Resorts, essentially insisting that this Court universally rejected all applications of the MPDPA with its decision in *Las Vegas Sands*. According to the Okada Parties, that decision established that the MPDPA is not a valid objection to production in a Nevada court. (App. Vol. IV, 0766-0769.)

For its part, Wynn Resorts reminded both the District Court and the Okada Parties that Wynn Macau – the legal holder of the documents at issue – is not a party to this case, nor are any foreign entities, a critical distinction from the *Las Vegas Sands* case. (*Id.* at 0760-0762.) Presenting no evidence, the Okada Parties dismissively asserted that because Wynn Resorts and Wynn Macau have a common executive – Stephen A. Wynn – any documents belonging to one are necessarily documents within the control of Wynn Resorts. (*Id.* at 0767.) (arguing that it is "silliness and disingenuous" to suggest that Wynn Resorts does not have custody and control over all of the documents of Wynn Macau.) But tellingly, the Okada Parties presented no evidence, employing only hyperbole. (*Id.*)

The District Court's Order at issue stems from its partial granting of the Okada Parties' motion. But the District Court's Order is itself contradictory, simultaneously acknowledging the validity of the MPDPA but then disagreeing with the OPDP's own interpretation and application of it. (App. Vol. I, 0001-0007.) On the one hand, the District Court indicated that the MPDPA applies, ruling that for communications exclusively between persons located in Macau, the MPDPA redactions required by the OPDP would be upheld, at least for the time being. (*Id.* at 0003.)

But, on the other hand, and despite other OPDP directives to Wynn Macau, the District Court disagreed that the MPDPA warranted redaction of names or identifying information for communications between persons in Macau and those outside of Macau. (*Id.*) Although affording no explicit rationale, the District Court seemingly has decided that the line drawing of the MPDPA, as well as that of the OPDP in its application, is not sufficiently rational.

The District Court appears to believe that Macau – despite the terms of its own laws and the OPDP's directive – does not have a sufficient interest in protecting privacy if the communications involve anyone outside of Macau, even though the documents are located in Macau and subject to the Macau government's control. (*Id.*) Disagreeing with where the MPDPA and the OPDP have drawn the line of protection, the District Court ruled that "Macau Data Privacy Act Protection [does not apply]

when it was originally sent for business purposes to the other [outside of Macau] location." (App. Vol. IV, 0770.)

But the District Court then said that its alternate line drawing would not apply to Okada. His privacy would continue to be preserved through redactions, even though he resides outside of Macau and he is a named party to this case. (App. Vol. I, 0003.) In the end, the Court granted the Okada Parties' motion to compel documents without MPDPA redactions related to people other than Okada, explaining that "there may be some documents that remain as redacted because they either have Mr. Okada's name on them or because they are exclusively between Macanese citizens." (App. Vol. IV, 0780.)

Next, the District Court ruled that Wynn Resorts should have Wynn Macau identify the name of each person from whom it sought consents as the OPDP directed, but who refused to give their consent. In other words, it claims that Wynn Macau must provide the very information – personal identity – that the OPDP has ruled is protected under Macau law. (App. Vol. I, 0002.)

And finally, the District Court's Order overruled the substantive non-MPDPA objections to production imposed by the Macau government over its gaming regulatory process and concession. (*Id.* at 0004.) The District Court ruled that despite the lack of consent from the Macau government, including its gaming regulators, the Protective Order Regarding Confidentiality entered in this case – to

which the Macau government is not a party and has not approved – serves as an adequate substitute for the required confidentiality substantively imposed by Macau law. *Id.* The District Court has directed that Wynn Resorts must secure Wynn Macau's compliance with all of these requirements, or face potential sanctions. (*Id.*) On November 3, 2016, the District Court agreed to stay the effective date of its Order to give this Court 30 days to consider whether to direct an answer by the Okada Parties to this Petition.

Accordingly, Wynn Resorts now challenges the District Court's Order, which purports to extend the jurisdiction of a Nevada court over the files of a non-party in a foreign country and compel production of documents that a foreign government has expressly ruled cannot be produced absent appropriate consents, including the required consent of foreign gaming regulators.

IV. REASONS WHY THE WRIT PETITION SHOULD BE GRANTED

A. Extraordinary Writ Relief is Necessary to Restrain the District Court's Excessive Claims of Jurisdiction.

As this Court has observed in the context of discovery rulings, if "the District Court acts without or in excess of its jurisdiction, a writ of prohibition may issue to curb the extra jurisdictional act." *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev., Adv. Op. 13, 319 P.3d at 621; *see also Schlatter v. Eighth Jud. Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1343 (1977) (issuing writ on discovery order).

This Court has recognized that writ review of a pre-trial discovery order is appropriate if the order is one that "could result in irreparable prejudice." *Vanguard Piping v. Eighth Jud. Dist. Ct.*, 129 Nev., Adv. Op. 63, 309 P.3d 1017, 1019 (2013). This Court's discretion is appropriately exercised when: (1) "the trial court issues a blanket discovery order without regard to relevance;" (2) "a discovery order requires disclosure of privileged information;" or (3) "an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction." *Las Vegas Sands*, 331 P.3d at 878.

"[E]ven when an adequate and speedy remedy exists, this court may exercise its discretion when an important issue of law needs clarification and sound judicial economy warrants intervention" by way of interlocutory writ review. *Double Diamond v. Second Jud. Dist. Ct.*, 131 Nev., Adv. Op. 57, 354 P.3d 641, 643 (2015) (citing *Cote H. v. Eighth Jud. Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008)); see also *Strom v. Am. Honda Motor Co., Inc.*, 667 N.E. 2d 1137, 1140 (Mass. 1996) (providing that not yet addressed questions related to "the practical administration of discovery" are worthy of consideration by writ review).

Here, the grounds for this Court's intervention are particularly acute. The District Court's Order presents problematic and serious legal issues as to the trial court's jurisdiction over the documents of a foreign non-party and where controlling foreign laws govern their production. By impermissibly extending its jurisdiction to

reach foreign non-parties, the District Court has improperly embroiled itself – and by extension this Court – into a debate with a foreign government as to the proper meaning and implementation of its laws. Besides, the District Court also decreed – again in contravention of that foreign government's laws – that its protective order supplants a foreign sovereign's directive that certain gaming approvals from that government are effectively privileged against disclosure to any third-parties absent the government's express consent.

These are serious matters indeed, and ones for which no speedy or adequate legal remedy in the ordinary course exists. The prejudice to Wynn Resorts and the boiling conflict with a foreign government's directive cannot be undone after the fact; thus warranting immediate review by this Court. *Aspen Fin. Servs., Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. 93, 313 P.3d 875, 878 (2013); *see Mona v. Eighth Jud. Dist. Ct.*, 132 Nev., Adv. Op. 72, 2016 WL 5723762, at *1 (2016) (entering writ of prohibition because district court ordered discovery from co-trustee in their capacity as non-party as though they were a party); *Vanguard*, 309 P.3d at 1019 (a court ordered disclosure "is irretrievable once made" and thus the appropriate subject of writ consideration).

1. The District Court lacked jurisdiction to adjudicate a non-parties' proper objections based on binding foreign law.

A central problem with the District Court's Order is its failure to recognize the limitations upon its authority to address the rights and responsibilities of foreign non-

parties. That is a question of law for which this Court's review is plenary. *See Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev., Adv. Op. 40, 328 P.3d 1152, 1156 (2014) ("As a question of law, the district court's determination of personal jurisdiction is reviewed de novo, even in the context of a writ petition.").

The Okada Parties insist that this Court's MPDPA ruling in *Las Vegas Sands* governs Wynn Macau's rights. (App. Vol. V, 0572-0573.) Not so. In *Las Vegas Sands* this Court addressed a different question: to what extent can a *party* – one subject to the court's jurisdiction and rules – rely upon foreign privacy statutes to avoid compliance with their discovery obligations under the Nevada Rules of Civil Procedure? In that case, the real party in interest, Steven Jacobs, was terminated from his position as chief executive officer in Macau. 331 P.3d at 877. As a result, Jacobs sued his former employers, Sands China, Limited – the foreign-based owner of certain Macau casinos where Jacobs worked – and Las Vegas Sands Corporation ("LVSC") in Nevada State Court. *Id.*

During discovery, Sands China withheld documents from Macau, arguing that it should not have to comply with its discovery obligations for any documents containing personal information protected by the MPDPA. Sands China later admitted that volumes of those documents were previously and secretly transported to the United States, despite its prior representations otherwise. *Id.* The district court thus ordered sanctions, prohibiting Sands China from enlisting the MPDPA as an

objection or defense to productions. *Id.* at 878. Despite the district court's sanction, Sands China continued to violate the order and redacted all documents under the MPDPA. *Id.* Facing further sanctions, Sands China and its majority owner, LVSC, challenged the district court's order by writ petition. *Id.*

This Court held that "the mere presence of a foreign international privacy statute does not itself preclude Nevada district courts from ordering *litigants* to comply with Nevada discovery rules." *Id.* at 880. (emphasis added). There, Sands China was an actual party and there is no dispute that it possessed and/or controlled the documents under the Nevada Rules of Civil Procedure.

In so holding, this Court cited the leading United States Supreme Court precedents: *Societe Internationale Pour Participations Industrielles Et Commerciales (Commerciales) v. Rogers*, 357 U.S. 197 (1958), and *Societe Nationale Industrielle Aerospatiale (Aerospatiale) v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522 (1987). *Las Vegas Sands*, 331 P.3d at 879. But again, both these cases involved actual parties that were subject to the court's jurisdiction. *See Commerciales*, 357 U.S. at 198 ("***a plaintiff*** that had failed to comply fully with a pretrial production order.") (emphasis added); *Aerospatiale*, 482 U.S. at 524 (application of foreign law to "a French adversary ***over whom the court has personal jurisdiction.***") (emphasis added).

Here, the District Court has no jurisdiction over any of the Macau-centered entities to which the documents belong. The existence of jurisdiction over the party whose documents are sought is a key aspect of this Court's *Las Vegas Sands* ruling. Through its *Las Vegas Sands* decision, this Court did not invite or authorize trial courts to address foreign law's applicability to non-parties over whom the court has no jurisdiction. A court's jurisdiction over the parties and thereby authority over the documents themselves is a jurisdictional cornerstone properly enforced through prohibition. *Mona*, 132 Nev., Adv. Op. 72, 2016 WL 5723762, at * 1.

2. *The Okada Parties failed to establish and the district court made no finding of its authority under the Nevada Rules of Civil Procedure.*

The limitations on a court's power over foreign non-parties is not just a matter of constitutional restraint, but is also constrained by the Nevada Rules of Civil Procedure. Those Rules distinguish, pointedly, between the court's power over discovery from a party to the case as opposed to discovery from non-parties. *Mona*, 132 Nev., Adv. Op. 72, 2016 WL 5723762 at *1.

Specifically, NRCP 34 provides:

(a). . . . A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's ***possession, custody, or control***.

(emphasis added).

The Rule is written in the disjunctive, meaning that if a named party, like Wynn Resorts, possesses the documents or has custody of the documents they are responsible for their production under Rule 34. Similarly, a named party is required to obtain documents over which it has "control" even if it does not presently possess them. But "control" in this context is a critical limitation, as it distinguishes between when a litigant may be held responsible for non-production.⁷

"Control is defined as *the legal right* to obtain documents *on demand*." *In re Citric Acid Litig.*, 191 F.3d 1090, 1107 (9th Cir. 1999) (emphasis added) (explaining that because affiliated unions did not have a legal right to obtain the records upon demand they were not within the "control" of each other, and claims of "theoretical control" are insufficient as "proof of actual control" is required); *see also, e.g., In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("[F]ederal courts have consistently held that documents are deemed to be within the "possession, custody or control" for purposes of Rule 34 if the party has *actual* possession, custody or control, or has the legal right to obtain the documents on demand."); *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984) (same);

⁷ Although this Court has not squarely addressed this important limitation, federal courts have. *See, e.g., Alcan Int'l Ltd. v. S.A. Day Mfg. Co., Inc.*, 176 F.R.D. 75, 78 (W.D.N.Y. 1996); *Uniden Am. Corp. v. Ericsson Inc.*, 181 F.R.D. 302, 305 (M.D.N.C. 1998); *Vanguard Piping v. Eighth Jud. Dist. Ct.*, 129 Nev., Adv. Op. 63, 309 P.3d 1017, 1020 (2013) (finding persuasive and adopting the federal court's interpretation of the federal counterpart to NRCP 16.1).

Charles A. Wright & Arthur R. Miller, 8 Federal Practice & Procedure § 2210 (2016 Update) ("**Control** is defined . . . as the **legal right** to obtain the **documents** required **on demand.**") (emphasis added).

And, the "party seeking production of documents . . . bears the burden of proving that the opposing party has such control." *United States v. Int'l Union of Petroleum & Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989); *Camden Ironing & Metal, Inc. v. Marubeni Am. Corp.*, 138 F.R.D. 438, 441 (D.N.J. 1991) (same). By definition, the party bearing that burden does not satisfy it through empty rhetoric – like labels of "silliness" and "disingenuous" by simply arguing Stephen Wynn's involvement in both companies somehow suffices. (App. Vol. IV, 0767.) *See Technical Concepts L.P. v. Cont'l Mfg. Co.*, 1994 WL 262119 at * 2 (N.D. Ill., June 10, 1994) ("By neglecting to present any evidence showing that Continental has control over the requested documents, Technical has failed to carry its burden to support the motion to compel"); *see also Princeton Digital Image Corp. v. Konami Digital Entm't, Inc.*, Civil Action No. 12-1461-LPS-CJB, --- F.R.D. ---, 2016 WL 4568315, at *2 (D. Del., Aug. 31, 2016) (court is not permitted to assume that Konami USA has control over Konami Japan to obtain documents as "what might possibly be or what one might assume to be" is insufficient and plaintiff's motion to compel thus fails).

Here, the Okada Parties presented no evidence that Wynn Resorts has the "legal right to obtain the documents upon demand." *Citric Acid*, 191 F.2d at 1107. Indeed, the record readily proves otherwise. Wynn Resorts voluntarily requested the documents from Wynn Macau. (App. Vol. VI, 1117.) Wynn Macau sought approval from OPDP, the Macanese governmental body with jurisdiction to make the decision. (*Id.*) The OPDP ruled that Wynn Macau could only give Wynn Resorts those documents if written consent is obtained. (*Id.*) And, the OPDP directed that Wynn Macau could not disseminate the personal data of any individuals for whom it did not obtain a form of consent permitted under Macau law. (*Id.*)

Federal courts addressing the so-called "control" issue note that it is a vital fact-based determination. *Alcan*, 176 F.R.D. at 78 (determination of the nature of the central relationship is "pivotal"); *Addamax Corp. v. Open Software Found., Inc.*, 148 F.R.D. 462, 467 (D. Mass. 1993) (same); *St. Jude Med. S.C., Inc. v. Janssen-Counotte*, 305 F.R.D. 630, 638 (D. Or. 2015) (control is fact-specific); 8B Alan Wright et al., *Federal Practice and Procedure* § 2210 (3d ed. 2016) ("[T]he question [of control] is a fact-specific one that must be evaluated in the context of each case.").

Accordingly, "[t]he court must examine the facts of the case before it in order to determine if the relationship is such that [discovery] is to be compelled." *Alcan*, 176 F.R.D. at 78 (alteration in original) (quoting *Addamax Corp. v. Open Software*

Found., 148 F.R.D. at 467). Without establishing a litigant's control over the documents, an order subjecting a foreign, non-party affiliate to U.S. discovery proceedings is patently arbitrary. *See Strom v. Am. Honda Motor Co., Inc.*, 667 N.E.2d 1137, 1140 (1996) ("[R]esolution of the question of control . . . is a necessary predicate to proper discovery.").

Consider *Goh v. Baldor Electric Company*, where "[t]he evidence presented f[ell] short of proving that Ernst & Young LLP [were in] control over the disputed document," which belonged to foreign affiliates. 3:98-MC-064-T, 1999 WL 20943, at *3 (N.D. Tex., Jan. 13, 1999). "Other than shared membership in the common association of Ernst & Young International, Ernst & Young LLP, Ernst & Young Singapore, and Ernst & Young Thailand are separate entities." *Id.* The court also noted the differences in place of organization: "Ernst & Young LLP is a United States limited liability partnership organized under laws of the State of Delaware. Ernst & Young Singapore and Ernst & Young Thailand are separate general partnerships organized under the laws of Singapore and Thailand, respectively." *Id.*

The court held that "where Ernst & Young's foreign entities have refused to voluntarily provide the documents in question, it necessarily follows that Ernst & Young, LLP in Dallas does not have control over the documents." *Id.* at * 3⁸; *accord*

⁸ The *Goh* Court observed that "Ernst & Young LLP was able to obtain some documents initially from the overseas [affiliate] entities through an honored request.

Int'l. Union of Petroleum & Indus. Workers., 870 F.2d at 1452 (holding international union did not control local union because they were considered separate labor organizations under the relevant federal statutes and the contractual agreement between the labor organizations have it no right to obtain the documents at issue); *Cochram Consulting, Inc. v. Uwatec USA, Inc.*, 102 F.3d 1224, 1229-30 (Fed. Cir. 1996) (reversing district court for sanctioning party's failure to produce documents over which it had no control since "they did not possess it and had no right to obtain it" under the terms of foreign law).

Nor can the Okada Parties extend a Nevada court's jurisdiction into a foreign country by simply pointing to Wynn Resorts' stockownership in a foreign entity. Nevada courts do not acquire jurisdiction over foreign corporations any time a Nevada resident is a stockholder, even a significant stockholder. *See Goodyear Dunlap Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011) (Jurisdiction over subsidiaries is not established simply because they are owned by a U.S. parent corporation); *MGM Grand, Inc. v. District Court*, 107 Nev. 65, 807 P.2d 201 (1991) (Jurisdiction over non-resident corporations cannot be premised upon the fact that it is the parent of a Nevada subsidiary).

However, Ernst & Young Singapore and Ernst & Young Thailand could have honored similar requests from another individual or entity if such requests were made." *Goh*, 1999 WL 20943, at *3.

This is not a case where the foreign entity is a "wholly-owned" subsidiary and thus their separateness of no importance for discovery purposes. *See Cormack v. United States*, 117 Fed. Cl. 392, 403 (2014) (stating corporate structure can be dispositive of control when the entity is a wholly-owned subsidiary, but otherwise, the moving party must establish "additional factors indicative of control before production can be compelled."); *Ethypharm S.A. France v. Abbott Labs.*, 271 F.R.D. 82, 96 (D. Del. 2010) (granting a motion to notice a deposition where the information was sought from a "wholly-owned" subsidiary).

The Delaware Supreme Court addressed an analogues point in *Weinstein Enterprises, Inc. v. Orloff*, 870 A. 2d 499, 508-09 (Del. 2005). That case stemmed from a request by a shareholder of a Delaware corporation to inspect the company's books and records, including those of a New York publicly-traded subsidiary.⁹ The Court of Chancery ruled that as the majority shareholder, the Delaware corporation – the named party and subject to the court's jurisdiction – had such "control" and thus was obligated to also produce the subsidiary's records. *Id.* at 508 However, recognizing the potentially far-reaching nature of such a holding, the court stayed its own ruling pending review. *Id.* at 505.

⁹ Under Delaware law, the stockholder in the parent corporation was entitled to obtain access to the subsidiary's books and records to the extent that the corporation had "actual possession and control of such records" or "could obtain such records through the exercise of control" over the subsidiary. *Id.* at 508.

On review, the Delaware Supreme Court unanimously reversed, holding that a majority shareholder does not have "control" over a publicly-traded subsidiary's documents by virtue of its stock majority ownership. *Id.* at 509. A publicly-traded subsidiary has its own Board of Directors and those Directors owe their allegiance to the subsidiary corporation as well as its minority stockholders. *Id.* The majority stockholder does not have the unfettered power to simply tell those directors what to do. *Id.* The court specifically noted the impropriety of suggesting that majority stockholder power would extend replacing any Board members who did not voluntarily provide the documents as requested by the majority stockholder. *Id.* Accordingly, the court reversed the order which purported to extend Delaware jurisdiction to compel access to documents from a non-party publicly-traded corporation that was not before court.¹⁰ *Id.*

The record here readily confirms Wynn Resorts' lack of entitlement to obtain un-redacted copies of the documents at issue, let alone the legal right to do so on demand. Wynn Macau, Limited is a separate and distinct publicly-traded corporation. While Wynn Resorts is the majority stockholder, Wynn Macau, Limited has its own board of directors with eight members, only one of which even overlaps with members of the Wynn Resorts Board. (App. Vol. V., 0906;

¹⁰ The court noted that the New York-based subsidiary was not subject to jurisdiction in Delaware.

App. Vol. V, 0908.) Indeed, pursuant to the requirements of the HKSE, Wynn Macau, Limited has four separate independent directors for the specific purpose of ensuring independence and that action is taken in the interest of Wynn Macau, Limited. *Id.*

After all, some 30% of the Macau enterprise is owned by members of the public. Contrary to the Okada Parties' self-serving wants, those stockholder's rights matter and cannot be disregarded. Here, Wynn Resorts simply does not have the ability or obligation to tell the Wynn Macau board of directors to disregard the separate obligations it owes to stockholders and the government of its home jurisdiction. *Weinstein Enter.*, 870 A.2d at 509. Wynn Macau is not a party to this case and is not subject to jurisdiction in Nevada.

3. *Non-party discovery is governed by the procedures of NRCP 45.*

For good reason, the Nevada Rules of Civil Procedure also distinguishes the court's authority over discovery sought from a party that is before the court as opposed to discovery sought from a non-party. *Mona*, 132 Nev., Adv. Op. 72, 2016 WL 5723762 at *1 (District court erred in ordering a co-trustee, in their capacity as a non-party, to produce documents without satisfying the prerequisites of NRCP 45); NRCP 45 (specifying protections for non-parties); *Highland Tank & Mfg. Co. v. Psint'l, Inc.*, 27 F.R.D. 374, 379 (W.D. Pa. 2005) ("Rule 45 is the only discovery method wherein information may be obtained from a non-party to the suit.").

Of course, when discovery is sought from a non-party in another jurisdiction, the Nevada courts' subpoena power must be domesticated in that jurisdiction and that jurisdiction's legal processes followed. *See Gucci America, Inc. v. Weixing Li*, 768 F.3d 122, 141 (2d Cir. 2014) ("A district court . . . must have personal jurisdiction over a non-party in order to compel it to comply with a valid discovery request under Federal Rule of Civil Procedure 45"); *Leibovitch v. Islamic Republic of Iran*, 2016 WL 2977273, at *17 (N.D. Ill., May 19, 2016) (Existence of affiliated branch offices of foreign banks did not subject it to non-party discovery without establishing personal jurisdiction. And despite existence of horrific injuries at issue, "the court cannot jettison the requirements of due process or important principles of international comity to permit the expansive third-party discovery sought . . .").

That fundamental limitation upon a court's power to compel discovery is particularly noteworthy here. In disregarding the limitations of its jurisdiction, the District Court has embroiled itself in interpreting a foreign government's laws and overriding that government's express directives to the non-party in the only place it does business. Respectfully, those are matters properly left to the legal system in the jurisdiction where discovery from the non-party is sought. After all, that government's courts are in the best position to interpret and implement their own laws and policies.

B. The District Court has Needlessly Entangled Itself in a Foreign Law Conflict.

The District Court's improper assumption of jurisdiction so as to address Wynn Macau's rights and obligations under Macau law – as opposed to directing the Okada Parties to follow the appropriate discovery process from a non-party through the Macau courts – has also needlessly placed the Nevada judiciary in a standoff with a foreign government. The District Court has "interpreted" the MPDPA in direct contravention of its express terms as well as the directives of the OPDP.

Again, the District Court's Order is contradictory. On the one hand, it presently recognizes and honors the MPDPA's restriction upon disclosure (partly) of personal information as it pertains to any communications that occurred exclusively between citizens of Macau. (App. Vol. I, 0003.) It also recognizes Okada's personal right to assert privacy over *any* documents that contain his name, whether he is the author, the recipient, or he is just referenced in a document. (*Id.*) It does that even though Okada is not a citizen of Macau, although the citizenship of any individual is not relevant under the express terms of the MPDPA or the OPDP's enforcement of it.

But for any other communication that involves persons outside of Macau – other than Okada – the District Court has ruled that the MPDPA should yield. But again, the District Court's line drawing as to what will and will not be protected under the MPDPA is not based upon the law's actual terms, but simply a re-drawing

of the lines that the District Court prefers over those of the Macau government. Respectfully, to the extent that the MPDPA should be interpreted in accordance with the District Court's approach, that is a question that should be presented to the Macau judiciary. Considering that the Okada Parties are already in the Macau courts concerning the MPDPA, that is precisely where the District Court should have directed the Okada Parties to proceed with their discovery from non-party Wynn Macau.

After all, on its face, the MPDPA is in direct conflict with the District Court's alternate line drawing. Article 3 of the Macau Personal Data Protection Act provides the Act's scope:

1. This Act shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a manual filing system or which are intended to form part of a manual filing system.

....

3. This Act shall apply to video surveillance and other forms of capture, processing and dissemination of sound and images allowing persons to be identified, provided the controller is domiciled or based in the Macao Special Administrative Region (the MSAR) or makes use of a computer or data communication network access provider established on the MSAR territory.

(promulgated by Office for Personal Data Protection, Aug. 2005, rev'd Feb. 2016)

(emphasis added).) Chapter 2, Article 6 of that Act explains, in relevant part:

"Personal data may be processed only if the data subject has unambiguously given his consent" *Id.*

MPDPA Chapter 5, Article 19(1) relates specifically to the transfer of personal data outside Macau and provides that "[t]he transfer of personal data to a destination outside the [Macau] may only take place subject to compliance with this Act and provided the legal system in the destination to which they are transferred ensures an adequate level of protection." The OPDP makes the determination whether a given legal system ensures an adequate level of protection. MPDPA, art. 3(3).

Furthermore, failure to comply with MPDPA's obligations may be criminally prosecuted:

1. Any person who intentionally:

. . . .

(5) fails to comply with the obligations provided for in this Act or in other data protection legislation after the time limit fixed by the public authority for complying with them has expired;

(6) continues to allow access to open data transmission networks to controllers who fail to comply with the provisions of this Act after notification by the public authority not to do so, shall be liable to up to one year's imprisonment or a fine of up to 120 days.

In this case, the information ordered produced is private under the MPDPA.

A person's name "form[s] part of a manual filing system" pursuant to Article 3(1).

Indeed, a person's name is a common method by which personal information is filed.

A person's name is furthermore all that is required to identify a person, a highly relevant point in light of Article 3(3)'s directive to prohibit the transmission of any data "allowing persons to be identified." The intent expressed in the Act's general

principle is further instructive. It demands that the processing of personal data be carried out "in strict respect for privacy." MPDPA, art. 2. Thus, if there exists any doubt, privacy prevails.

Because the information requested is protected by the MPDPA, to legitimize its processing, unambiguous consent must be given under Chapter 2, Article 6. The individuals at issue here did not provide consent, although asked, and even though the district court Order requires production, the MPDPA mandates compliance – redactions – before the information leaves Macau. MPDPA, art. 19(1).

Here, the District Court's Order unambiguously distorts the MPDPA's requirements and the directives of the OPDP. It treats some persons as protected, but not others, and does so on the basis of nothing more than the District Court's disagreement with the Macau government about who's privacy rights should be recognized and who's should not. Respectfully, the District Court should not have placed the Nevada judiciary in this thicket of applying a foreign government's laws in a manner contrary to its own directives. Again, had the District Court directed the Okada Parties to seek their non-party discovery in the appropriate jurisdiction – Macau – neither it nor this Court would be in a standoff with the Macau government.

C. The District Court's Order disregards the Macau Government's Gaming Interests and Substantive Protections.

Beyond its own recrafting of the MPDPA's restrictions, the District Court also disregarded Macau's separate regulatory interest in its control over Macau gaming,

ordering the production of documents that are specifically declared protected under substantive Macau gaming law. To do so, the District Court overlooked the importance of comity.¹¹ See *Las Vegas Sands*, 331 P.3d at 879 (citing *Aerospatiale*, 482 U.S. at 544 n.29).

In *Aerospatiale*, aircraft passengers initiated an action against French aircraft manufacturers in a United States district court after the plane they were on crashed. 482 U.S. at 525. During discovery, the French corporations filed a motion for a protective order, arguing that the discovery sought was in France, and that under French penal law, they could not respond to discovery requests that did not comply with the Hague Convention. *Id.* at 525-26.

The French statute prohibited disclosure of certain information for purposes of foreign litigation, commonly known as a "blocking statute." *Id.* at 526 n.6. However, the court went on to note that such "blocking statutes that frustrate this goal need not be given the same deference by courts of the United States as *substantive rules of law* at variance with the law of the United States." *Id.* at 544 n.29 (emphasis added) (internal citations omitted).

¹¹ "Comity refers to the spirit of cooperation in which a domestic tribunal approaches the resolution of cases touching the laws and interests of other sovereign states. *Aerospatiale*, 482 U.S. at 543 n.27.

Aerospatiale goes on to express the need for comity when a foreign law intersects with the laws of the United States and where the foreign law is substantive:

American courts, in supervising pretrial proceedings, should exercise special vigilance to protect foreign litigants from the danger that unnecessary, or unduly burdensome, discovery may place them in a disadvantageous position. Judicial supervision of discovery should always seek to minimize its costs and inconvenience and to prevent improper uses of discovery requests. When it is necessary to seek evidence abroad, however, the district court must supervise pretrial proceedings particularly closely to prevent discovery abuses. For example, the additional cost of transportation of documents or witnesses to or from foreign locations may increase the danger that discovery may be sought for the improper purpose of motivating settlement, rather than finding relevant and probative evidence. Objections to "abusive" discovery that foreign litigants advance should therefore receive the most careful consideration. In addition, we have long recognized the demands of comity in suits involving foreign states, either as parties or as sovereigns with a coordinate interest in the litigation. *See Hilton v. Guyot*, 159 U.S. 113, 16 S. Ct. 139, 40 L.Ed. 95 (1895). American courts should therefore take care to demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state.

482 U.S. at 546.

The District Court's Order relative to those documents stemming from the Macau gaming concession – over which Macau substantive law has decreed to be protected from disclosure from their very inception – a different matter from the MPDPA. These are substantive rights of a foreign government in declaring its regulatory process to be protected from third-party intrusion. Nevada has declared similar rights for its gaming regulatory bodies. *E.g.*, NRS 463.120. (Declaring

things like the information in a gaming application and related investigation to be confidential and cannot be revealed without the consent of the Nevada Gaming Control Board or the Nevada Gaming Commission).

Respectfully, if Nevada's judiciary will so easily brush aside another sovereign's claims of confidentiality in its gaming regulatory process and licensing, Nevada invites a similar lack of comity towards its claimed paramount interest in confidentiality and secrecy of its own regulatory processes. *See In re Smith*, 397 B.R. 124, 128-31 (Bankr. D. Nev. 2008) (Noting strict protection the Legislature and Nevada gaming regulators maintained over their files and noting that showing that the evidence is highly relevant must be established and balancing test employed to invade Nevada's strong regulatory interests). But here again, the District Court conducted no such balancing analysis and simply decreed that its protective order supplants the regulatory interest of a foreign sovereign government.

V. CONCLUSION

No one disputes that discovery from a *party* is easier, more efficient and quicker, particularly when foreign laws are implicated. But, the trial court's desire to expedite discovery and take charge of it, while admirable, is not a substitute for proper jurisdiction and respect for the rights of non-parties. The Okada Parties know that the Macau courts is the proper venue for addressing the MPDPA relative to the documents within the possession, custody and control of Wynn Macau, a non-party

to this case. After all, they are suing in the Macau courts to enforce the MPDPA against it. The Okada Parties presented no evidence, and the District Court made no finding, that Wynn Resorts has possession, custody, or control of Wynn Macau's documents located in Macau that are the subject of its Order. To the contrary, the record establishes otherwise.

This Court should enter a writ of prohibition enjoining the District Court's Order and directing the Okada Parties to seek their non-party discovery through appropriate process, namely through the Macau legal process where the Okada Parties are currently engaged in litigation and insisting that Macau law must be honored.

DATED this 3rd day of November, 2016.

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VERIFICATION

I, Todd L. Bice, declare as follows:

1. I am one of the attorneys for Wynn Resorts, Ltd., the Petitioner.
2. I verify that I have read and compared the foregoing PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS and that the same is true to my own knowledge, except for those matters stated on information and belief, and as those matters, I believe them to be true.
3. I, as legal counsel, am verifying the petition because the question presented is a legal issue as to the district court's jurisdiction and application of foreign law.
4. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

This declaration is execution on 3rd day of November, 2016 in Las Vegas, Nevada.

/s/ Todd L. Bice
TODD L. BICE, ESQ.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2007 in size 14 font in double-spaced Times New Roman.

I further certify that I have read this brief and that it complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and 11,253 words.

Finally, I hereby certify that to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 3rd day of November, 2016.

PISANELLI BICE PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd day of November, 2016, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **PETITIONER WYNN RESORTS LIMITED'S PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY MANDAMUS** properly addressed to the following:

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/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

EXHIBIT A

MACAO SPECIAL ADMINISTRATIVE REGION

Law n.º 16/2001

Juridical system for operating games of fortune in casinos

The Legislative Assembly decrees, in accordance with the terms of paragraphs 1) and 3) of article 71 of the Basic Law of the Macao Special Administrative Region, that the following be enforced as law:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope and object of the law

1. The present law defines the juridical system for operating games of fortune in casinos in the Macao Special Administrative Region.
2. The purpose of the juridical system for operating of games of fortune in casinos is mainly to ensure:
 - 1) The adequate management and operation of games of fortune in casinos;
 - 2) The persons involved in the inspection, management and operation of games of fortune in casinos are suitable to carry out these functions and to assume these responsibilities;
 - 3) That the management and operation of games of fortune in casinos is conducted in a fair and honest manner, and free from any criminal influence;
 - 4) That the interest of the Macao Special Administrative Region in what concerns taxes resulting from the casino operations is fully protected; and
 - 5) The promotion of tourism, social stability and the economic development of the Macao Special Administrative Region.
3. A special Law criminalizes illicit gaming.

Article 2

Definitions

1. For purposes of the present law:

1) "Mutual Betting" means a system of betting on a high-speed animal race or on a sports event in which the winners divide the total amount of their bet, after having deducted the commissions, rates and taxes prorated to the amounts of their individual bets;

2) "Casinos" means the premises and areas authorized and classified as such by the Government of the Macao Special Administrative Region;

3) "Games of fortune" means those in which the outcome is contingent as it depends exclusively on the chance of the player;

4) "Interactive games" means the games of fortune in which:

a) A prize in money or in kind is offered or can be won in accordance with the terms of the respective rules;

b) A player enters or participates in a game by telecommunications, namely telephone, fax, internet access, data networks, transmission of video signals or digital data, and for which the player makes or agrees to make payments in money or in kind; and

c) The game is equally offered or approved as a game of fortune or as an electric or mechanic machine game, in the Macao casinos;

5) "Operations offered to the public" means those in which the expectations to win reside exclusively on chance, such as lotteries, raffles and tombolas;

6) "Games promoters" means the promotion agents of games of fortune in casinos, that carry out their activity by offering facilities to players, namely in what refers to transports, lodging, food and entertainment, receiving from a concessionaire a commission or other remuneration as payment.

2. The use of the term "casino" shall be reserved solely to the concessionaires that operate games of fortune.

Article 3

Games of fortune

1. The operation of games of fortune, as well as electric and mechanic machine games, by an entity other than the Macao Special Administrative Region is always subject to a prior concession.

2. The games of fortune, as well as the electric and mechanic machine games can only be operated in casinos, without prejudice of provisions of n. ° 3 of article 5.

3. The following games of fortune can be operated in casinos:

- 1) Bacará;
- 2) Bacará "chemin de fer";
- 3) "Black Jack" or "Twenty one";
- 4) "Boule";
- 5) "Craps";
- 6) "Cussec";
- 7) "Twelve numbers";
- 8) "Fantan";
- 9) Chinese Dice Game;
- 10) Fish-Prawn-Crab Dice Game;
- 11) 13 Card Game;
- 12) "Mahjong";
- 13) "Mahjong-Bacará";
- 14) "Mahjong-Pai Kao";
- 15) "Pachinko";
- 16) "P'ai Kao";
- 17) "Two Stone P'ai Kao";
- 18) "Three Card Poker";
- 19) "Five Card Poker";
- 20) Roulette;
- 21) "Sap-I-Chi" or 12 Card Game;
- 22) "Super Pan 9";
- 23) "Taiwan- P'ai Kao"; and
- 24) "3-Card Bacará Game".

4. Any other type of game of fortune shall be authorized by means of an external dispatch issued by the Secretary for Economy and Finance, at the request of one or more concessionaires and based on an opinion given by the Games Supervision and Coordination Bureau.

5. The operating rules for the games of fortune are approved by external dispatch of the Secretary for Economy and Finance, upon proposal of the Games Supervision and Coordination Bureau.

6. "Mutual betting" and "operations offered to the public" cannot be operated in casinos.

7. Exceptionally, the Secretary for Economy and Finance may, by means of an external dispatch, authorize the concessionaires to use "operations offered to the public", in which case the concession contract shall be revised, and amendments to the contract shall be signed by all parties.

8. Electric and mechanic game machines, including "slot machines" may also operate in casinos, in accordance with the law.

Article 4

Interactive games

1. The concessionaires operating games of fortune in casinos are not authorized to operate any interactive game.
2. The concessions for the operation of interactive games of fortune are autonomous from the concessions for operating games of fortune in casinos.

Article 5

Areas for the operation of games of fortune

1. The operation of games of fortune in casinos is restricted to the locations and premises authorized by the Government.
2. The characteristics, location and operating rules of the premises referred to in the previous number are defined in Administrative Rule or in the concession contracts.
3. The Head of the Executive may authorize, for an undetermined period of time, the operating of:
 - 1) Any game of fortune aboard a ship or airplane registered in Macao, when outside the Macao Special Administrative Region and operating in circuits of tourist interest;
 - 2) Machine games, directly paying in chips or coins, within the duty free area of the international departures of the Macao International Airport.
4. The operation mentioned in paragraph 1) of the previous number may only be granted to commercial businessmen who own or charter ships or airplanes registered in the Region or to concessionaires of games of fortune in casinos, with the authorization of the former.
5. The operation of games of fortune authorized in accordance with the terms of n.ºs 3 and 4 shall comply with the rules and specific conditions to be determined by the Head of the Executive, by means of an Administrative Rule, which follow, with the strictly necessary alterations, with the provisions of the present law and other applicable legislation in what concerns the operation of games of fortune in casinos.
6. The provisions of articles 7 to 13, 16 to 20, 22, paragraphs 7) and 8), articles 31 and 49 to 52 do not apply to the operation of games of fortune that are authorized under the terms of n.ºs 3 and 4.

Article 6

Area of continuous gaming

1. The Macao Special Administrative Region is considered an area of continuous gaming, with the casinos functioning every day of the year.
2. A concessionaire can only suspend the functioning of a casino for a period of one or more days, in some special cases, and with the prior authorization of the Government.

3. The authorization referred to in the previous number is waived in urgent situations, namely resulting from a serious accident, a catastrophe or natural calamity, which may bring serious risks to the safety of people, in which case the concessionaire shall inform the Government, as soon as possible, of the suspension of the functioning of the casino.

4. Without prejudice of the provisions of the previous numbers, the concessionaires may establish a daily period in which the casinos and their integrated activities are open to the public.

5. The concessionaire's management shall inform the Games Supervision and Coordination Bureau, three days in advance, of any alteration to the daily opening period of any of its casinos.

CHAPTER II

THE CONCESSION SYSTEM

SECTION I

THE TENDER

Article 7

Concession system

1. The operation of games of fortune is reserved to the Macao Special Administrative Region and can only be carried out by limited liability companies incorporated in the Region, to whom a concession has been granted by means of an administrative contract, in accordance with the terms of the present law.

2. The maximum number of concessions for the operation of games of fortune in casinos is three.

Article 8

Public tender

1. The granting of concessions for the operation of games of fortune in casinos is preceded by a public tender.

2. The public tender may be limited with a prior pre-selection.

Article 9

Opening of tender

The opening of the tender is carried out by dispatch of the Head of the Executive and shall namely specify:

- 1) The existence of a possible pre-selection;
- 2) The procedural steps of the tender, including the date for the reception of proposals;
- 3) The amount of the guarantee to be deposited by the possible bidders in order to be accepted for the tender;
- 4) The concession system, including the appropriate legal regulations, the obligatory clauses of the concession contracts to be signed, with the clear indication of the maximum terms foreseen for the concessions; and
- 5) The requirements necessary for admission to the tender.

Article 10

Admission to the tender

1. Only limited liability companies incorporated in the Region and whose corporate purpose is exclusively the operation of games of fortune in casinos shall be admitted to the tender.
2. The Government may, up to the awarding phase, determine the alteration of any of the precepts included in the articles of association of the limited liability companies referred to in the previous number, as well as of any para-social agreements signed between all or some shareholders.
3. The non-compliance to alter, within the period of time established by the Government, any precept included in the articles of association of the limited liability companies or any para-social agreements determined under the terms of the previous number, is considered equivalent to a withdrawal.
4. Each bidder is required to deposit a guarantee in order to be admitted to the tender. The amount of this guarantee is to be determined by the Head of the Executive, and can be replaced by an adequate bank guarantee.
5. The withdrawal from the tender, after the deadline established for the reception of proposals, implies the breach of the deposit guarantee.
6. Exceptionally, reliable commercial businessmen that do not meet the requirements foreseen in nº1 may be admitted to the tender, as long as they commit to incorporate in the Region a limited liability company with those requirements, within the terms and deadlines to be established in a dispatch of the Head of the Executive .The other provisions of the present article shall be applicable.

Article 11

Awarding of concessions

1. The provisional awarding of the concessions for the operation of games of fortune in casinos is made by dispatch of the Head of the Executive, issued based on a supporting report.
2. The granting of the concession contracts is preceded by an awarding process, by means of a dispatch issued by the Head of the Executive.
3. The granting of the concession contracts may be preceded by negotiations with the bidders aiming at the establishment of additional conditions. The amount of the annual premium established in the proposal cannot be reduced at a later date, except with the agreement of the Government.
4. The Head of the Executive has the powers to, whenever deemed of interest to the Region, decide not to award the concession or concessions put to tender.
5. The concession contract consists of a public deed registered in the book of notes of the Finance Services Bureau, in which the Government grants in representation of the Region.
6. The concession contracts are published in Series II of the Official Gazette of the Macao Special Administrative Region.

Article 12

Appeals and deadlines

1. All acts that precede the awarding process, namely those related with the pre-selection of the tender, cannot be litigiously contested, or litigiously appealed and the suspension of their effectiveness cannot be requested or be the subject to any other action or measure.
2. The awarding process may be litigiously appealed to the Trial Court, with proceedings being considered urgent, namely under the terms and for the purposes of article 6 the **Código de Processo Administrativo Contencioso**, (Code of the Litigious Administrative Proceedings) approved by **Decree-Law n.º 110/99/M**, of December 13, and the deadlines for the acts to be carried out by the interested parties are reduced by half, namely the deadline to apply for an appeal.
3. All claims and administrative appeals do not have a suspensive effect.
4. Except if specifically provided for in the supplementary regulations to the present law, and without prejudice of the establishment of special deadlines by the Government, namely in the dispatch that orders the opening of the tender, the deadlines for applying claims or administrative appeals established in the **Código do Procedimento Administrativo**, (Code of the Administrative Proceedings) approved by **Decree-Law n.º 57/99/M**, of October 11, as well as the deadline for the interested parties to request or carry out any acts or services, to answer on any subject they are required to answer or to exercise other powers, shall be reduced by half.

Article 13

Terms of the concessions

1. The term of a concession for the operation of games of fortune in casinos is established in the concession contract and cannot be of more than 20 years.
2. If a concession is awarded for a period of less than the maximum authorized by the present law, the Government may, at any time and up to six months prior to the end of the concession, authorize one or more extensions of the concession, as long as the total period does not exceed the maximum term foreseen in the previous number.
3. When the maximum term foreseen in n°1 is reached, the period of the concession may, exceptionally, be extended, by means of a supported dispatch issued by the Head of the Executive, for one or more periods, as long as the total period does not exceed five years.
4. The extension of the term for a concession may lead to a revision of the concession contract, as well as the signing of amendments to the contract by all the parties.

Article 14

Suitability

1. A concession for the operation of games of fortune in casinos may only be awarded to a bidder that is considered suitable to obtain the concession.
2. The bidders shall be subject to a process in which their suitability is verified by the Government.
3. The costs of the investigation to verify the bidders' suitability shall be paid by these, and shall be deducted from the amount of the guarantee required to be admitted to the tender.
4. On verifying the suitability of the bidders, the Government shall take into consideration, amongst others, the following criteria:
 - 1) The experience of the bidder;
 - 2) The reputation of the bidder;
 - 3) The nature and reputation of the companies belonging to the same group as the bidder, namely those in which they are the majority partners;
 - 4) The character and reputation of the entities closely associated with the bidder, namely those in which they are the main partners.
5. The concessionaires shall retain their suitability during the term of the concession and shall be subject to an on going monitoring and supervision by the Government.

6. The suitability requirement is extensive to the bidders' shareholders who hold 5% or more of their capital stock, to its directors and the main employees who carry out relevant duties in the casinos.

7. The managing companies that, by contract signed with a concessionaire take over management duties in relation to the latter, shall equally be subject to the suitability verification process, as well the holders of 5% or more of the capital stock, their directors and main employees.

Article 15

Financial resources

1. The bidders to a concession for the operation of games of fortune in casinos shall make proof of sufficient financial resources to operate the concession.

2. The bidders are subject to a verification process of their financial resources, carried out by the Government.

3. The costs of the investigation to verify the financial resources of the bidders are paid by these, and deducted from the amount of the guarantee required to be admitted to the tender.

4. On verifying the financial resources, the Government shall take into consideration, amongst others, the following criteria:

1) The economic and financial situation of the bidder;

2) The economic and financial situation of the companies that are majority partners of the bidder;

3) The economic and financial situation of the entities closely associated to the bidder, namely those that are committed to ensuring the financing of the investments and obligations that the bidders propose to carry out and take on;

4) The economic and financial situation of the holders of 5% or more of the capital stock of the bidder;

5) The nature and type of casino or casinos that the bidder intends to operate and the sub-structures proposed to be associated.

5. The concessionaires shall maintain sufficient financial resources during the period of the concession and are subject to an on going monitoring and supervision by the Government.

6. Whenever there is a legitimate fear that the financial resources will decrease, an adequate guarantee, namely bank guarantee acceptable by the Government, may be demanded with no further explanation.

Article 16

Confidentiality

The bidding processes, the documents and data included, as well as all documents and data related to the tender, are confidential and cannot be accessed or consulted by third parties, and for this purpose the provisions of articles 63 to 67 and 93 to 98 of the **Código do Procedimento Administrativo**, (Code of the Administrative Proceedings) approved by Decree-Law n.º 57/99/M, of October 11 are not applicable.

SECTION II

THE CONCESSIONAIRES

Article 17

Capital stock and shares of the concessionaires

1. The concessionaires cannot operate with a capital stock of less than 200 million Patacas.
2. The concessionaires shall make proof that the capital stock referred to in the previous number is totally paid up in money deposited in a credit institution authorized to operate in the Region.
3. The deposit referred to in the previous number cannot be transacted before the beginning of the concessionaire's activity.
4. The Head of the Executive may determine the increase in the capital stock of the incorporated bidders, whenever justified by supervening circumstances
5. The full capital stock of the concessionaires is represented by registered shares.
6. Without prejudice of the provisions of nº1 of article 10, the corporate purpose of the concessionaires may also, with the prior authorization of the Government, include other correlated activities.
7. The transfer or encumbering, for any reason, of the property or other right in rem on the concessionaire's shares or the carrying out of any act that may involve the granting of the right to vote or other social rights to a person other than the holder, requires the authorization of the Government, otherwise it shall considered null and void.
8. The concessionaires shall inform the Games Supervision and Coordination Bureau, of any of the acts referred to in the previous number, within 30 days from the registry in the registry book of the company's shares or equivalent formality.
9. The transfer or assignment to third parties, for any reason, of the operation of the games of fortune in casinos or other activities that are the legal or contractual obligation of the concessionaire, without the prior authorization of the Government, will be considered null and void.

10. The concessionaires, as well as the shareholders that hold 5% or more of the respective capital stock, cannot own, directly or indirectly, an equal or higher percentage in the capital stock of another concessionaire that operates games of fortune in casinos in the Region.

11. The contract signed between a concessionaire and a commercial businessman, namely a managing company, by which it assumes or may assume management powers over the concessionaire, without the prior authorization of the Government, is considered null and void.

Article 18

Prohibition to concentrate functions in governing bodies

1. It is prohibited to concentrate functions in the governing bodies of more than one concessionaire or more than one managing company, as well as to concentrate functions in the governing bodies of concessionaires and in the governing bodies of managing companies.

2. The acts or deliberations in which members of governing bodies who violate the provisions of the previous number intervene shall be considered null and void.

3. The Government shall proceed with the dismissal of the members of the governing bodies of the concessionaires or managing companies, who violate the provisions of nº1, and these persons may be temporarily or permanently inhibited from carrying out any functions in the governing bodies of those companies.

4. The appointment of persons in violation of the provisions of nº1 is considered an administrative infraction.

Article 19

Delegate-director

1. The management of the concessionaires shall be delegated to a delegate-director.

2. The delegate-director referred to in the previous number shall be a permanent resident of the Macao Special Administrative Region and shall hold at least 10% of the capital stock of the concessionaire.

3. The delegation of the concessionaires' management, including the appointment of the delegate-director, the scope of powers and the delegation period, or any alteration to it, namely involving the temporary or permanent replacement of the delegate-director, is subject to the prior authorization of the Government, without which it shall be considered null and void.

4. The delegate-director, apart from being subject to the suitability requirement in accordance with the terms of article 14, cannot be barred for this purpose and cannot be an employee of the Region's Public Administration or a member of the Executive Council.

5. If a contract is signed between a concessionaire and a managing company, the requirements and inhibitions established in the previous numbers shall only apply to the latter.

Article 20

Payment of premium

1. The concessionaires are liable for an annual premium, to be established under the terms of the respective concessionaire contracts, and which shall vary according to the number of casinos that each concessionaire is authorized to operate, the number of authorized gaming tables, the games operated, the location of the casinos and other relevant criteria that the Government may determine.
2. The Government may determine that the premium be paid monthly.
3. The Government may require an independent bank guarantee ("first demand") or any other deemed acceptable, to guarantee the payment of the premiums that the concessionaire is liable for by contract.

Article 21

Prohibition of restrictive competition practices

1. The concessionaires shall carry out their activity within a fair and loyal competition, respecting the principles inherent to a market economy.
2. The Government shall treat all concessionaires in a non-discriminatory manner and shall ensure that they comply with the rules of competition, and that a fair and loyal competition exists amongst the concessionaires.
3. Arranged agreements and practices are prohibited, in whatever form, between concessionaires or companies belonging to the respective groups that may in any way restrict, obstruct or distort the competition amongst the concessionaires.
4. The abusive exploitation, by one or more concessionaires, of a relevant position on the market or on a substantial part of it, that may in any way obstruct, restrict or distort competition amongst the concessionaries is prohibited.
5. The agreements, decisions, practices or facts prohibited by n°s 3 and 4 are considered null and void except in the cases expressly declared as justified in a dispatch issued by the Head of the Executive.
6. The violation of the provisions of the present article is considered an administrative infraction, without prejudice of any underlying civil or criminal responsibility.

Article 22

Other duties of the concessionaires

Apart from other duties foreseen in the present law and other applicable legislation, as well as in the concession contracts, the concessionaires shall:

- 1) Ensure that all the areas of the casinos and annexes are operating normally and for the purposes for which they were authorized;
- 2) Pay a bond to guarantee the execution of the legal and contractual obligations to which they are committed. This bond may be waived if the guarantee referred to in n°3 of article 20 has been given;
- 3) Submit to the Government for approval, any alteration to their articles of association, or they shall be considered null and void;
- 4) Inform the Government, as soon as possible, of any circumstance that may affect normal operations, such as those related with liquidity or solvency, the existence of any judicial proceedings against the concessionaires or their directors, any fraud, violent or criminal conduct occurring in the casinos and any adverse attitude occurring against them or their governing bodies, by a member of a public entity or a worker of the Region's Public Administration, including the agents of the Security Forces and Services;
- 5) Submit the games operation to the daily inspection of their gross revenues;
- 6) Install surveillance and control electronic equipment in the game rooms for the safety of people and goods;
- 7) Make annual payments of not more than 2% of the gross revenues from the operation of the games, to a public foundation for the promotion and development of cultural, social, economic, educational, scientific, academic or charity activities; and
- 8) Make annual payments of not more than 3% of gross revenues from the operation of the games, for urban development and promotion of tourism and social order.

Article 23

Game promoters

1. The activity of the game promoters is subject to a licensing and the respective activity shall be subject to Government inspection.
2. To carry out their activities in the casinos, the game promoters shall also register with each concessionaire where they intend to operate.
3. For the Government, it is always the concessionaire who is responsible for the activity carried out in the casino by the game promoters, the directors and collaborators and for their compliance with the legal rules and regulations, and shall, thus supervise their activity.
4. The game promoters and holders of 5% or more of their capital stock, as well as their directors and main employees, must be considered suitable for their duties.

5. Each concessionaire shall submit annually to the Games Supervision and Coordination Bureau, for Government approval, a list indicating the game promoters with whom they intend to operate during the following year.
6. The Government shall annually establish the maximum number of game promoters authorized to operate with each concessionaire.
7. To carry out their activity, the game promoters may have collaborators chosen by them, up to a maximum number to be established annually by the Games Supervision and Coordination Bureau, and shall for this purpose, submit to the Bureau through the concessionaires, a list of their collaborators for the following year.

Article 24

Access to the game rooms and areas

1. Access to the game rooms and areas is prohibited:

- 1) To persons who are under the age of 18 years;
- 2) To persons who are incapable, incapacitated and guilty of intentional bankruptcy, unless they have in the meantime been rehabilitated;
- 3) To employees of the Region's Public Administration, including agents of the Security Forces and Services, except when authorized or while performing their duties;
- 4) To the employees of the games of fortune concessionaires, when off duty, in the game rooms and areas operated by the respective employer;
- 5) To persons who are visibly drunk or under the influence of drugs; and
- 6) To persons carrying arms, explosive devices or material, as well as image and sound recording devices.

2. The following have free access to the gaming rooms and areas; however, they are not authorized to gamble, directly or through a third party:

- 1) The Head of the Executive, the Secretaries of the Government and the members of the Executive Council;
- 2) The Commissioner against Corruption;
- 3) The Audit Commissioner;
- 4) The General-Commander of the Unitary Police services;
- 5) The Director-General of the Customs Services;
- 6) The members of the governing bodies of the concessionaires who operate the games of fortune in casinos and their guests;

7) The members of the governing bodies of the managing companies and their guests;
and

8) The Presidents of the Municipal Assembly and Town Hall, in the council where the casino is located.

3. The following persons are also authorized to enter the gaming rooms and areas when performing their duties; however they are not authorized to gamble, directly or through a third party:

1) The Judicial and Department of Justice Judges;

2) The employees of the Commissioner against Corruption;

3) The employees of the Audit Commissioner;

4) The agents of the Region Security Forces and Services;

and

5) The employees of the Games Supervision and Co-ordination Bureau.

Article 25

Expulsion from gaming rooms and areas

1. Anyone who is found in a gaming room or area violating the specific rules and conditions approved for the purpose, or when their presence is inconvenient shall be expelled by the inspectors of the Games Supervision and Coordination Bureau or by the member of the management of the casino responsible for the gaming rooms and areas, and refusal shall be considered a crime of insubordination, if the order was given or confirmed by an inspector.

2. Whenever a member of the direction of the casino responsible for the gaming rooms and areas is obliged to expel anyone as established in the previous number, he shall inform the Games Supervision and Coordination Bureau of his decision within 24 hours, indicating the reasons that justified the act and the witnesses that can be heard on the facts, requesting the confirmation of the adopted measure.

3. An expulsion from the gaming room or area under the conditions referred to in the previous numbers implies the preventive barring of the expelled person.

Article 26

Reserve of right of admission

In the casinos, namely the gaming rooms and areas, the right of admission is reserved.

CHAPTER III

THE FISCAL OBLIGATIONS AND THE RENDERING OF ACCOUNTS

Article 27

Special gaming tax

1. The concessionaires are liable for a special gaming tax on the gross revenues resulting from the operation.
2. The rate of the special gaming tax is of 35%.
3. The special gaming tax is paid in duodecimals at the Treasury of the Macao Finance Department before the tenth day of the following month.
4. A minimum guarantee amount of the special gaming tax can be contractually established between the Region and the concessionaires.
5. The Government may require an adequate bank guarantee to guarantee the payment of the amount equal to the probable monthly amounts of the special gaming tax.
6. Any debts in relation to the special gaming tax shall be collected through the courts.

Article 28

Fiscal system

1. Further to the payment of the special gaming tax, the concessionaires are liable for the taxes, contributions, rates or emoluments established by law.
2. Whenever deemed of public interest, the Head of the Executive may exempt, temporarily or exceptionally, totally or partially, the concessionaires from paying the tax on income.

Article 29

Tax on commissions paid to game promoters

1. The concessionaires are liable to definitively withhold the tax due on the amounts of the commissions or other remunerations paid to the game promoter, that is calculated on the gross revenues originated by the player.
2. The tax rate on commissions or other remunerations paid to gaming promoters is of 5% and is discharging in nature.
3. When justified by public interest, the Head of the Executive may partially exempt, for a period of not more than 5 years, the payment of the tax referred to in the previous numbers; however, that exemption cannot be of more than 40% of the tax rate.

4. When justified by public interest, the Head of the Executive may authorize that the remunerations consisting of payments in kind related to the attribution of facilities to players, namely in what refers to transports, lodging, food and entertainment that is made available to the gaming promoters, be totally or partially excluded from the scope of incidence of this tax.

5. The tax on commissions or other remunerations paid to the game promoters is submitted by the concessionaires in duodecimals to the Treasury of the Macao Finance Department up to the twelfth day of the following month.

6. The debts relating to the tax on commissions or other remunerations paid to game promoters shall be collected through the courts.

Article 30

Accounting and internal control

1. The concessionaires and the managing companies shall keep their own accounting, a good administrative organization and adequate internal control procedures and shall comply with all instructions issued by the Government in what refers to these matters namely through the Games Supervision and Coordination Bureau and the Finance Services Bureau.

2. The bookkeeping of the concessionaires and the managing companies shall be prepared in one of the official languages of the Region.

3. For accounting purposes, the fiscal year of the concessionaires and managing companies coincides with the civil year.

4. The accounting of the concessionaires and managing companies shall be prepared and presented in accordance with the principles of the Accounting Official Plan in effect in the Region, and the Head of the Executive may, upon proposal of the Director of Games Supervision and Coordination or of the Director of the Finance Services, and by means of a dispatch, require that certain books, documents or other accounting elements be kept, as well as determine the criteria to be adopted by the concessionaires or managing companies in the bookkeeping of their operations and the special rules that should be observed in their preparation or presentation.

Article 31

Obligatory publications

1. The concessionaires and the managing companies shall publish, prior to April 30 of each year, during the period of the concession and in relation to the previous fiscal year ended at December 31, in the Official Gazette of the Macao Special Administrative Region and in two of the most distributed newspapers of the Region, one in the Chinese language and another in the Portuguese language, the following documents:

1) The balance sheet, financial statement and notes;

- 2) The summary of the operations' report;
 - 3) The audit board's report;
 - 4) The summary of the independent auditors' report;
 - 5) A list of the qualified shareholders who hold 5% or more of the capital stock of the concessionaire or managing company at any time of the year indicating the respective percentages; and
 - 6) The names of the members of the governing bodies.
2. The notes referred to in paragraph 1) of the previous number include a financing caption, where the resources obtained in the fiscal year and their sources are posted, as well as the application or use of these in intangible assets or floating assets.
3. The concessionaires and managing companies shall submit to the Games Supervision and Coordination Bureau, a copy of all the elements to be published under the terms of the present chapter, at least 10 days in advance.

Article 32

Providing of information

1. The concessionaires and the managing companies shall submit to the Games Supervision and Coordination Bureau up to the last day of the following month, the trial balance sheet referring to the previous quarter, except the one referring to the last quarter, which is sent up to the last day of the following February.
2. The concessionaires and managing companies shall submit to the Games Supervision and Coordination Bureau, up to 30 days prior to the date in which the annual general meeting is held to approve the accounts, all the accounting and statistical maps referring to the previous fiscal year.
3. Apart from other similar obligations established in the present law, the concessionaires and managing companies shall submit to the Gaming Supervision and Coordination Bureau, within the deadline established in the previous number, the following elements:
 - 1) The full names, in all possible versions, of the persons who during the respective fiscal year comprised the Board of Directors and the audit board, of the appointed attorneys as well as of the person responsible for the accounting department; and
 - 2) A copy of the accounting report of the Board of Directors, together with the audit board's report and the independent auditors' report.
4. The Games Supervision and Coordination Bureau and the Finance Services Bureau may request that the concessionaires or managing companies supply any further information that may be required to fully carry out their functions.

Article 33

Inspection and supervision activities

1. The Games Supervision and Coordination Bureau and the Finance Services Bureau have special powers to inspect and supervise the compliance of the obligations foreseen in the present chapter.
2. For this purpose, the Games Supervision and Coordination Bureau or the Finance Services Bureau may, upon authorization of the head of the service, directly or through persons or entities duly mandated for this purpose, at any time, with or without prior notice, analyze or examine the accounting or bookkeeping of the concessionaires or managing companies, including any transactions, books, accounts and other registries or documents, verify the existence of any type of values, as well as photocopy, totally or partially what is deemed necessary to verify the compliance, on the part of the concessionaires and managing companies of the applicable legal and contractual provisions.
3. During the inspection and supervision process referred to in the present article, the Games Supervision and Coordination Bureau and the Finance Services Bureau, may seize any documents or values that are part of an infraction or that are considered necessary to the investigation of the respective process.

Article 34

Independent audit of the annual accounts

1. The concessionaires and managing companies shall request an annual audit of their accounting to be carried out, by an independent external entity of renowned qualifications and previously accepted by the Games Supervision and Coordination Bureau and the Finance Services Bureau.
2. The audit referred to in the previous number shall verify if:
 - 1) The balance sheet, the statement of results and the notes have been prepared in accordance with the applicable legal provisions;
 - 2) The balance sheet, the statement of results and the notes fairly reflect, in all aspects, the true financial situation of the concessionaire or the managing company;
 - 3) The accounting books of the concessionaire or the managing company have been adequately kept and correctly show their operations; and
 - 4) The concessionaire or the managing company gave all the information and explanations requested, specifying the cases in which any information or explanation was withheld, or if any false information was provided.
3. The reports of the audit companies shall be sent together with the accounting and statistical maps referred to in n°2 of article 32.

4. Apart from the elements referred to in n°2, the Games Supervision and Coordination Bureau or the Finance Services Bureau may request from the auditors of the concessionaires or the managing companies, other information deemed necessary, as well as demand their presence in meetings held with representatives of the respective concessionaires or managing companies to request further information.

5. Without prejudice of other information duties foreseen in the present law or other legislation, the auditors shall immediately inform the Games Supervision and Coordination Bureau and the Finance Services Bureau, in writing, of any facts detected during the carrying out of their duties that may be susceptible of causing serious damage to the concessionaire, the managing company or the interest of the Region, namely:

- 1) The suspicion that the concessionaire or managing company, the members of the governing boards or their employees may be involved in any criminal activity or in money laundering activities;
- 2) Any irregularities that immediately put at risk the solvency of the concessionaire or managing company;
- 3) The occurrence of prohibited activities; and
- 4) Other facts that, in their opinion, may seriously affect the concessionaire, the managing company or the interests of the Region.

Article 35

Extraordinary audits

Whenever deemed necessary or convenient, the Games Supervision and Coordination Bureau or the Finance Services Bureau may, upon authorization of the head of the services, at any time, with or without prior notice, request an extraordinary audit, to be carried out by an independent auditor of renown qualifications or by another entity.

Article 36

Duty to cooperate

1. The concessionaires and managing companies shall cooperate with the Government, namely with the Games Supervision and Coordination Bureau and with the Finance Services Bureau to provide the elements and information that is requested of them, to allow the inspection of their accounts, and the carrying out of extraordinary audits and in general in relation to the duties established by rules included in the present chapter and other supplementary regulations.

2. The violation of the duty to cooperate is considered an administrative infraction.

CHAPTER IV
PROPERTY/GOODS ALLOCATED TO THE
CONCESSIONAIRES

Article 37

Goods/Property of the Region

1. The concession authorizes the temporary transfer to the concessionaires, of the enjoyment, fruition and use of the Region's property/goods that are necessary for the business to operate.
2. The provisions of the previous number also apply, with the necessary adaptations, to the renting or concession of land, grounds or natural resources for which the Region is responsible in terms of management in accordance with the terms of **article 7 of the Basic Law of the Macao Special Administrative Region** and that are necessary for the business to operate.
3. The concessionaires shall ensure the perfect maintenance or replacement of the property/goods referred to in the previous numbers that have been allocated to the concessionaire, in accordance with the instruction of the Games Supervision and Coordination Bureau.

Article 38

Delivery record

The transfer referred to in the previous article shall comprise a maintenance record, in triplicate, including a list of the goods involved signed by representatives of the Games Supervision and Coordination Bureau, of the Finance Services Bureau and the respective concessionaire.

Article 39

Payment for the use of Region's property/goods

1. The concessionaires shall remunerate the Region for the use of its property/goods, or for the use of the property/goods that according to the respective concession contract are to be managed, used and developed by the Region.
2. The amounts in money of the remuneration referred to in the previous number shall be updated annually, in accordance with the average price index in the Region.
3. The remuneration relating to the property/goods allocated to the concessionaires referred to in article 37, which are used for other purposes than those contracted, shall

be revised upon agreement between the Games Supervision and Coordination Bureau and the concessionaire.

Article 40

Property/goods reversible to the Region

1. Once a concession is terminated, the respective casinos with all their equipment and devices revert to the Region, without prejudice of other goods and rights that shall revert due to any contractual clause.
2. The reversion of the property/goods and rights referred to in the previous number does not imply the right to compensation, unless otherwise established in the contract.
3. Whenever the property/goods acquired by the concessionaires, that have reverted to the Region at the end of the concession, namely the gaming equipment and devices are considered by the Games Supervision and Coordination Bureau to be unsuitable for use, these shall be put out of service or destroyed, followed by the write off process as foreseen in the legislation applicable to the write off of the Region's property/goods.

Article 41

Inventory of the property / goods allocated to the concessions

1. All the property/goods allocated to the concessions referred to in article 37, as well as all property/goods revertible to the Region, shall be listed in an inventory, prepared in triplicate, and one of the documents shall remain with the Games Supervision and Coordination Bureau, another with the Finance Services Bureau and another with the concessionaire.
2. The inventory shall be updated annually, and the maps corresponding to the verified alterations shall be updated prior to May 31 of each year.

Article 42

Improvements

The improvements, that for any reason, are made to property/goods allocated to the concessions referred to in article 37, as well as to property/goods revertible to the region, do not confer to the concessionaire the right to an indemnity.

CHAPTER V

NON COMPLIANCE AND TERMINATION

Article 43

Administrative Infractions

1. The infraction system for violation or non-compliance, attributable to the concessionaires or managing companies, under the provisions of the present law, in supplementary regulations or in concession contracts, is established in Administrative Rule.
2. The infractions referred to in the previous number are of an administrative nature, and are ruled by the provisions of **Decree-Law n.º 52/99/M**, of October 4, and the respective sanctions shall be applied by the Government.
3. The payment of the fines relating to the administrative infractions referred to in the previous numbers does not prejudice the criminal proceedings that may eventually take place.
4. The concessionaire or managing company shall be responsible for the payment of the fines, as are in solidarity, the respective shareholders with 10% or more of the capital stock, even if the companies have in the meantime been dissolved or their activities terminated for any reason.

Article 44

Seizure

1. A concession for the operation of games of fortune in casinos can be seized:
 - 1) When the respective operation is, without justification, about to be interrupted or has been interrupted; or
 - 2) When there are visible serious disturbances or deficiencies in the organization and functioning of the concessionaires or in the general conditions of the installations or the material allocated for the respective operation.
2. During the seizure, the operation of the concession shall be ensured by representatives of the Government, and the expenses with the maintenance and normal operations shall be of the responsibility of the concessionaire.
3. The seizure is maintained while deemed necessary, and at the end of the seizure, the Government may notify the concessionaire to resume the operations of the concession, which will be rescinded, in accordance with the terms of article 47, if the concessionaire does not accept.

Article 45

Dissolution

A concession for the operation of games of fortune in casinos can be dissolved for the following reasons:

- 1) The established period of time has elapsed;
- 2) Agreement between the Government and the concessionaire;

- 3) Redemption;
- 4) Rescission due to non-compliance; and
- 5) Rescission for reasons of public interest.

Article 46

Redemption

1. Redemption occurs when the Government takes over the concession before the contractual term is ended.
2. The redemption of the concession gives the concessionaires the right to receive an indemnity.
3. The Head of the Executive determines, by means of Administrative Rule, the date on which the right to redemption can be exercised and the criteria to be followed for the calculation of the indemnity foreseen in the previous number.

Article 47

Rescission due to non-compliance

1. A concession for the operation of games of fortune in casinos can be rescinded unilaterally by the Government when the fundamental obligations to which the concessionaire is legally or contractually committed are not being complied with.
2. The reasons for the unilateral rescission of the concession are especially the following:
 - 1) The abandonment of the operations or their unjustified suspension;
 - 2) The total or partial transfer, temporary or definitive, of operations carried out without respecting the provisions of the present law and respective supplementary regulations or the concession contract; and
 - 3) The evasion of taxes, premiums or other compensation due to the Government as established in the respective concession contract.
3. The rescission of the concession implies the gratuitous reversion to the Region of the respective casinos, with all their equipment and devices, and all other goods and rights that would have reverted to the Region at the end of the concession by virtue of the contractual clause.

Article 48

Rescission for reasons of public interest

1. A concession for the operation of games of fortune in casinos may be unilaterally rescinded by the Government, at any moment, for reasons of public interest, independently of the noncompliance on the part of the concessionaire of any obligation to which it is committed.
2. The rescission declared under the scope of the previous number gives the concessionaire the right to receive a fair indemnity, and the amount shall be calculated, specifically taking into consideration the time remaining until the end of the concession and the investments made by the concessionaire.

CHAPTER VI

FINAL AND TRANSITORY PROVISIONS

Article 49

Dissolution of the companies not awarded

1. The shareholders of the companies incorporated for purposes of the provisions of n°1 of article 10, which were not awarded a concession under the terms of article 11, shall dissolve those companies.
2. The dissolution of the partnerships referred to in the previous number shall be deliberated within 60 days from the date of notification of the decision not to award the concession, or of the transit in rem judicatam on the decision on the appeal of the non-awarding decision, if that is the case.
3. After the deadline referred to in the previous number has elapsed without any decision being taken on the dissolution of the partnership, the Department of Justice shall immediately order its judicial dissolution.
4. The dissolution of the partnership shall be registered within 15 days from the date of the deliberation of the transit in rem judicatam of the decision determining it.
5. Once the partnership is dissolved, the ex-shareholders that detain 10% or more of the capital stock shall be jointly responsible for the supervening liabilities.

Article 50

Maintenance of the clauses of the present concession contract

The provisions in the present law do not hinder the maintenance of the clauses of the present contract for the concession of the exclusivity of the operation of games of fortune, which shall be integrally maintained and governed by the legislation in force at the date the present law comes into effect, even in the case of a possible extension under the terms of article 51.

Article 51

Extension of the deadline for the present concession

The Head of the Executive may, by dispatch, extend the term of the present contract for the concession of the exclusivity of the operation of games of fortune for a maximum period of twelve months.

Article 52

Supplementary regulations

1. The Head of the Executive and the Government shall approve the supplementary diplomas to the present law.
2. Apart from other provisions necessary to the execution of the present law, the supplementary diplomas shall include rules referring to the regulations of the public tender, to the concession contract, to the use and frequency of the gaming rooms, to the functioning of the premises allocated for the operation, to the inspection of the gross revenues from the game, to the persons allocated to the operation, to the operation of games in casinos and to administrative infractions.

Article 53

Non-Applicability of precepts of the Administrative Procedures Code

The provisions of articles 168, 169, 170, 172, 173 and 174 of the **Administrative Procedures Code**, approved by **Decree-Law n.º 57/99/M**, of October 11, apart from the provisions of article 16 are not applicable to the concessions for the operation of games of fortune in casinos.

Article 54

Revoking Rule

1. All legislation that is contrary to the provisions of the present law is hereby revoked, without prejudice of article 50.
2. Namely, the following are revoked:
 - 1) Articles 15 to 35, 37 to 52 and 54 to 58 of Legislative Diploma n.º 1496, of July 4, 1961;
 - 2) Law n.º 6/82/M, of May 29;
 - 3) Law n.º 10/86/M, of September 22;
 - 4) Decree-Law n.º 2/84/M, of January 28; and
 - 5) N.º 13 of article 279 of the **Statute of the Workers of the Macao Public Administration**, approved by **Decree-Law n.º 87/89/M**, of December 21.

Article 55

Alteration of the nature of statutes

The Dispatches, Administrative rules and Executive Orders that approve the operation rules for the operation of games of fortune, namely those indicated below, shall hereinafter take on the nature of external regulation dispatches of the Secretary for Economy and Finance:

- 1) Administrative Rule n.º 7461, of February 1, 1964;
- 2) Administrative Rule n.º 8116, of February 5, 1966;
- 3) Administrative Rule n.º 168/75, of October 4;
- 4) Administrative Rule n.º 169/75, of October 4;
- 5) Administrative Rule n.º 223/75, of December 20;
- 6) Administrative Rule n.º 9/76/M, of January 17;
- 7) Administrative Rule n.º 210/76/M, of December 13;
- 8) Administrative Rule n.º 171/79/M, of October 27;
- 9) Administrative Rule n.º 211/80/M, of November 15;
- 10) Administrative Rule n.º 54/81/M, of March 28;
- 11) Administrative Rule n.º 57/83/M, of March 5;
- 12) Administrative Rule n.º 96/85/M, of May 18;
- 13) Administrative Rule n.º 97/85/M, of May 18;
- 14) Administrative Rule n.º 104/85/M, of May 25;
- 15) Dispatch n.º 260/85, of December 16;
- 16) Dispatch n.º 16/SAEFT/86, of July 14;
- 17) Administrative Rule n.º 48/86/M, of February 22;
- 18) Administrative Rule n.º 153/88/M, of September 12;
- 19) Administrative Rule n.º 51/89/M, of March 20;
- 20) Administrative Rule n.º 100/89/M, of June 12;
- 21) Administrative Rule n.º 108/89/M, of June 26;
- 22) Administrative Rule n.º 118/89/M, of July 17;
- 23) Administrative Rule n.º 178/89/M, of October 23;
- 24) Administrative Rule n.º 15/90/M, of January 22;
- 25) Administrative Rule n.º 65/90/M, of February 26;
- 26) Administrative Rule n.º 83/90/M, of March 19;
- 27) Administrative Rule n.º 57/91/M, of March 25;
- 28) Administrative Rule n.º 58/91/M, of March 25;
- 29) Administrative Rule n.º 125/91/M, of July 15;
- 30) Administrative Rule n.º 135/91/M, of August 5;
- 31) Administrative Rule n.º 14/96/M, of January 29;
- 32) Administrative Rule n.º 15/96/M, of January 29;
- 33) Administrative Rule n.º 21/96/M, of February 12;
- 34) Administrative Rule n.º 22/96/M, of February 12;
- 35) Administrative Rule n.º 219/96/M, of August 26;
- 36) Administrative Rule n.º 261/96/M, of October 21;
- 37) Administrative Rule n.º 274/96/M, of November 4;
- 38) Administrative Rule n.º 234/98/M, of November 16;
- 39) **Executive Order n.º 69/2000**, of December 29;
- 40) **Executive Order n.º 70/2000**, of December 29; and
- 41) **Dispatch of the Head of the Executive n.º 141/2000** of July 24.

Article 56

Remissions for revoked rules

Any remission made by legal diploma prior to the enforcement of the present law for a legal precept included in the hereby-revoked legislation, is considered made for the corresponding provision of the present law.

Article 57

Effective date

1. The present law shall come into effect on the date following its publication, without prejudice of the provisions of the following numbers.
2. Article 27, n.º 2, articles, 29, 30, 32 and 34 shall come into effect on January 1, 2002.
3. Article 17, n.º 1 to 3 articles, 18, 19, 21, 22, paragraphs 2), 7) and 8) articles, 23, 28 and 37 to 42 shall come into effect following the publication of the first concession contract for the operation of games of fortune in casinos, following the opening of the first public tender foreseen in articles 9 and following.

Approved on August 30, 2001.

The President of the Legislative Assembly, Susana Chou.

Signed on September 19, 2001.

Be it published.

The Head of the Executive, Ho Hau Wah.