



THE AO MAN LONG CASE SHOWS THAT THE PRESENCE OF OVER-CONCENTRATED POWER INSIDE THE ADMINISTRATION PROVIDES A LOOPHOLE FOR CORRUPTION.

between the various branches have grown wider with the passage of time. Seven years after the handover, Chief Executive Edmund Ho has already consolidated his ruling position and legitimacy in Macau. He is now expected to initiate mechanisms to better co-ordinate the five chief secretaries and to encourage co-operation between the departments.

This inter-departmental co-operation is quite conducive to administrative reform. It provides a way to search for reconfiguration options that draws on input from the various departments and units. Their interaction reshapes the government administration, provides a practical blueprint for reform and points in an empirical way to the essence of what should be addressed in the future amendment of corresponding legal documents. Through inter-departmental

co-operation, the administration can create a testing ground for effective and efficient public management. Then informed decisions can be made about formal administrative changes and can be implemented by way of legal reform. Second, the promotion of inter-departmental co-operation can establish a system of internal checks and balances that can help avoid administrative irregularities, to a certain extent. The Ao Man Long case shows that the presence of over-concentrated power inside the administration provides a loophole for corruption. Inter-departmental co-operation can mend this, to the extent that power will be shared among different units which will monitor each other within the administration.

To enhance co-operation and co-ordination among the departments,

the Chief Executive may consider two initiatives. First, he can facilitate the communication between the five chief secretaries in his cabinet meetings. The secretaries can then identify and mend the existing gaps between departments with respect to policy implementation. In Hong Kong, the Chief Executive delegates the co-ordination of various policy bureaux and departments to the Administrative Secretary and the Financial Secretary. In the case of Macau, the five chief secretaries are directly responsible to the Chief Executive. That means he is himself responsible for developing a mechanism for organisational co-ordination.

Second, the Chief Executive can encourage the administration to set up cross-departmental groups or units to deal with particular policies. During the SARS incident in 2003, the MSAR government implemented a similar practice to prevent the spread of the disease in which various measures were carried out by different departments. This practice has to be maintained and scattered throughout the administration. On other hand, the Chief Executive may delegate the responsibility to secretaries and directors to carry out cross-departmental collaborations for policy making and implementation. Nevertheless, an established convention for inter-departmental co-operation will help to re-articulate the administration of the MSAR government and contribute to the success of its administrative reform.

It is noteworthy that Macau's socio-political-economic circumstances have been growing increasingly complicated. No single department can handle the changes by itself. Inter-departmental co-operation should be stressed as a response to the changing circumstances of the social environment. A network-based structure should be institutionalised within the government administration. This has been a global trend for administrative reform and development. Institutional reconfiguration by legal reform may not necessarily improve the administration's performance. If the reform cannot tackle the problem of organisational disarticulation, the administration will still face the difficulties associated with lack of co-operation and co-ordination. Administrative reform without organisational articulation will only further delay the achievement of an efficient administration for Macau society.

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## UNDERAGE GAMBLING AND THE LAW: IS A LEGISLATIVE CHANGE NEEDED?

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The widely reported case of the 16-year old who entered a casino during the Lunar New Year and won a slot machine jackpot of HKD\$740,000.00 has justifiably generated headlines for various days, and raised a lot of attention and discussion.

While the case is, on one hand, somewhat complex, in my view it is not however one which should raise endless debate, or even give good reasons for legislative changes. Let's see why is this so.

A legal discussion of the matter makes it necessary to consider the two sides of the problem. On one hand, there are private law norms, stated in the Civil Code, which regulate the matter from the point of view of contract law. On the other, there are public law norms, stated in Law 16/2001, which regulate the matter from the point of view of administrative law, and especially regarding entrance in casinos.

Starting with the latter, Law 16/2001 (the main framework law regulating casino games of chance) states clearly in article 24(1)(1) that minors cannot access gaming venues. Gaming and betting contracts are offered inside casinos, and to conclude them it is actually necessary to get inside the

casino. Does this mean that, while minors cannot enter, if they actually do, in breach of the law, they can still play and win money? In other words, can the problem be seen as a matter of entrance control only, without implications for the contracts of gaming and betting?

This seems to be the interpretation defended by some. There is apparently a view according to which it is the casino that is responsible for controlling patron access and, therefore, under this reading, if the casino allows in persons who cannot enter, then the casino cannot avail itself of its own mistake. If it could, there would be a situation of *venire contra factum proprium*, a longstanding legal principle according to which a person cannot act in contradiction with his own previous conduct: if a casino allowed the minor in, the casino would subsequently not be allowed to refuse payment on the basis of an error in patron access control.

It may be recognized that this reasoning has a certain degree of internal coherence. However, it does incur a serious defect: it interprets the public law norms barring minors from entering casinos in an unduly restrictive way. One needs to be aware of the purposes of the regulation: if minors cannot enter casinos, obviously it is because they cannot play in casinos. It is not merely a question of gaining access or being inside a gaming venue. The prohibition of entry does function as a first line of defence in relation to the objective being pursued: the prohibition of gaming, in order to prevent minors from losing money in casinos, a serious matter that is left for adults only.

The prohibition of entry is an imperative norm: it cannot be set aside by the parties. It is a public law precept, and, consequently, it must be seen to have contract law implications, for reasons of public policy. The law tries to prevent

the occurrence of problem gambling at tender ages. It is a simple matter of purposeful interpretation of the law. My interpretation of the law is that minors and civil servants should not be paid any jackpots won by them in breach of legal provisions stating clearly that they cannot enter casinos.

With the decision that was taken to pay the jackpot, the wrong message was passed: some minors may now believe that the only thing they need to do is to somehow gain access to the gaming venues, namely by pretending to be older (e.g., by using appropriate makeup and clothes) or entering through a back door. Some minors may suppose that once they are inside the gaming venue, it is ok to play. This is of course the wrong message. The correct message is that minors cannot play, and if a minor does play, s/he will not receive any winnings.

One side effect of this debate was that many voices have claimed that a change in the law is urgently needed. I am not so sure of that. While it is a fact that the law does not put it in so many words that if a minor enters a casino and wins a jackpot s/he shall not receive it, the interpretation suggested is the only reasonable one, and many non-lawyers that I have spoken to agree that common sense dictates that a minor should not receive a jackpot. As the Civil Code tells us in article 8(3), in establishing the meaning and scope of the law, the interpreter shall presume that the legislator has upheld the best solutions and expressed his thoughts in an adequate manner. If we apply these criteria, there is only one possible solution. There is sometimes a tendency in Macau to blame the law for undesirable solutions. In this case, that cannot be done.

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