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CORPORATE SOCIAL RESPONSIBILITY, CASINO CAPITALISM, AND THE CONSTITUTION OF MACAU

Jason Buhi

ABSTRACT

Macau's competitive foreign investment environment places it at the crossroads of global conceptions and articulations of corporate social responsibility (CSR). With tremendous financial resources at its disposal, including revenues six times those of Las Vegas, the Macau Government has a rare opportunity to position itself as a global leader in CSR practice. Nonetheless, systemic challenges such as low levels of public education and political development, the influence of mafia gangs, and high levels of human trafficking, problem gambling, and drug use persist. Although Macau's status as a Special Administrative Region of the People's Republic of China ensures that CSR here will take its own form, these issues could be better addressed with open acknowledgement of the problems and improved channeling of local resources. Utilizing Matten and Moon's methodology, this Article provides an overview of Macau's CSR repertoires at this important point in local history: on the eve of the expiration of the first concessions granted to foreign operators as well as twenty years into Macau's practice of semi-autonomous government under Chinese administration. This snapshot records how local CSR norms have developed historically, observes a cultural divide in the local conceptualization of CSR objectives between local and foreign operators, and makes a case for the normative basis for enhancement contained within the Macau Basic Law that should underlie directions for the future.

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INTRODUCTION

By revenue, Macau is the largest gambling city in the world. It has experienced exponential economic growth since the liberalization of its gaming industry in 2002,¹ when the longstanding local monopoly was divided into competitive concessions. Its earnings peaked at seven times those of Las Vegas in 2014,² and now holds at a factor of six.³ Yet beneath the electric facade lurk the city's traditional indicia of poverty such as human trafficking, problem gambling, bankruptcy, loan sharking, organized crime, and drug use. Macau's casino operators—as the primary benefactors of a national monopoly on gambling, a corporatist political structure, and liberal economic policies—are thus responsible for leadership on these issues.

The growth of these years has inspired research into the practice of corporate social responsibility (CSR) in Macau, most of it coming from a business or management perspective.⁴ Less attention has been paid to

1. This is from approximately USD \$2.7 Billion in 2002, to \$33.3 Billion in 2017. *Macau Gaming Summary*, UNLV CENTER FOR GAMING RESEARCH, <http://gaming.unlv.edu/abstract/macau.html> [https://perma.cc/9ZMN-KLM9].

2. Charles Riley, *Macau's Gambling Industry Dwarfs Vegas*, CNN (Jan. 6 2014, 8:39 PM), <http://money.cnn.com/2014/01/06/news/macau-casino-gambling/index.html> [https://perma.cc/GZ2D-K65J].

3. Macau earned \$37.1 billion in gaming revenue in 2018, compared to \$6.5 billion on the Las Vegas Strip. See Travis Hoiem, *Where Las Vegas and Macau Make Their Money (Hint: It's Not the Same Place)*, THE MOTLEY FOOL (Nov. 4, 2018, 9:30 AM), <https://www.fool.com/investing/2018/11/04/the-difference-between-las-vegas-and-macau.aspx> [https://perma.cc/BC3D-34WN].

4. See e.g., Jian Ming Luo et al., *Corporate Social Responsibility in Macau's Gambling Industry*, 17(3) J. QUALITY ASSURANCE HOSP. & TOURISM 237 (2016); see

the legal and regulatory framework. Macau laws at present do not provide much of an incentive scheme to encourage CSR adoption beyond a patchwork of responsible gaming guidelines. Casino operators rather appear motivated by desires to establish their brands, attract customers and, perhaps, avoid nonrenewal of their concessions and nationalization of their assets in the years ahead.

This Article provides an overview of Macau's CSR repertoires today, at this important point in local history, on the eve of both the expiration of the first concessions granted to foreign operators as well as now twenty years into Macau's practice of "one country, two systems" semi-autonomous government under the People's Republic of China.⁵ This snapshot both records what has been done and questions where things may be headed.

This Article follows a model for comparative CSR research introduced by Matten and Moon (2008).⁶ It begins by introducing the Macau context, including its political, economic, and cultural conditions. Next, it outlines a working definition of CSR suitable for Macau research. After that, it considers the modern scheme for CSR in Macau today in both its mandatory and voluntary dimensions. This analysis yields at least two conclusions: first, the city's lack of representative government likely accounts for its incremental and top-down approach to CSR development; second, there is a cultural divide between what constitutes CSR practices to the local and foreign-based casino operators. Finally, this Article argues from a historical and structural reading of the *Macau Basic Law* that Macau has a constitutional mandate to become a model CSR jurisdiction. Indeed, Macau's vast surpluses allow it to pursue CSR development in a manner honoring a long legacy of local charity, solidifying and celebrating a unique and enduring Macau characteristic within the PRC, and helping to preserve its monopoly for the future.

I. THE MACAU CONTEXT

Matten and Moon's 2008 article established a conceptual framework for comparative CSR research. In contrasting the regimes of the United States and European Union, they utilized four bases of comparison: the

generally Tiffany C.H. Leung, *An Initial Exploration of Corporate Social Disclosure and Responsible and Gambling Disclosure in Macau's Gambling Industry*, in *CORPORATE SOCIAL DISCLOSURE: CRITICAL PERSPECTIVES IN CHINA AND JAPAN* 153–197 (Carlos Noronha ed., 2015); see also Gui-Hai Huang, *Responsible Gaming Policies and Practices in Macao: A Critical Review*, 2 *ASIAN J. OF GAMBLING ISSUES AND PUB. HEALTH* 49–60 (2011).

5. "One country, two systems" is the name of the constitutional principle of autonomy formulated by Deng Xiaoping, former paramount leader of the PRC, for the reunification of the PRC with Taiwan, Hong Kong, and Macau during the early 1980s. For Macau, it was given expression in the Sino-Portuguese Joint Declaration and the Macau Basic Law.

6. Dirk Matten and Jeremy Moon, *'Implicit' and 'Explicit' CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility*, 33 *ACAD. MGMT. REV.* 404–424 (2008).

political system, the financial system, the education and labor system, and the cultural system.⁷ This methodology suggests global application and may be especially suitable to considering a mixed jurisdiction such as Macau, which presently operates under a hybrid of Portuguese civil law and Chinese communist legality as a result of its colonial experience. The Macau context will here be introduced through this lens, with added geographical and historical considerations.

Geography. Macau occupies approximately 30 km² of land mass along the coastline of China's Guangdong Province. Its original topography included a small isthmus and the islands of Taipa and Coloane. Those islands are now artificially adjoined by a flat strip of reclaimed land known as "Cotai" that hosts the world's densest plot of casino resorts. With over 600,000 residents, Macau is now one of the most densely populated cities in the world.

History. Macau was sparsely populated before Portuguese merchants and missionaries arrived in the 1550s. They established a trading outpost and an archdiocese that impacted all of East Asia. From its creation, both gambling and charity became the way of life.

The city's original merchants prospered by conducting trade between China and Japan. They established a local chapter of a charitable almshouse known as the *Santa Casa de Misericordia* years before establishing their own Senate. Later, from earmarks on the trading voyages, the local Senate established welfare services including hospitals, a leprosarium, and an orphanage.⁸ The local Chinese community later distinguished itself by organizing charity around its Kiang Wu Hospital and, later, *kaifong* associations in the nineteenth and twentieth centuries. Macau's population rose and fell dramatically during tumultuous events in Chinese history including the Taiping Rebellion, World War II, and the Great Leap Forward. These spikes bent but never broke Macau's infrastructure and charity. Despite these tumultuous episodes of history, a basic level of charity persisted in Macau throughout its Portuguese era.

Modern gaming practices were recognized by color of law in 1847, and the Portuguese government of Macau began granting monopoly licenses in the 1930s. As most gaming was conducted by Chinese operators, it made administrative sense to grant a monopoly so that the Portuguese government need only negotiate with a single party. The final monopoly was awarded to local magnate Stanley Ho's *Sociedade de Turismo e Diversões de Macau* (STDM) in the 1960s.

Macau was transferred to Chinese administration in 1999, pursuant to the terms of a bilateral treaty on file at the United Nations known

7. *Id.* at 407.

8. The latter was called the caldeirão or "cauldron," and it was 3 percent of earnings before 1634, thereafter raised to 8 percent. CHARLES RALPH BOXER, *PORTUGUESE SOCIETY IN THE TROPICS; THE MUNICIPAL COUNCILS OF GOA, MACAO, BAHIA, AND LUANDA, 1510-1800* 119, 131 (1965).

as the *Sino-Portuguese Joint Declaration*.⁹ The new post-handover local government announced the end of the monopoly system and a competitive bidding process for three casino concessions in 2002. The original winners were SJM (a subsidiary of STDM), Wynn Resorts, and a joint venture of Galaxy Entertainment and the Las Vegas Sands Corporation. When the government permitted the Galaxy-Sands joint venture to split, a compromise was made so that each of the other two concessionaires were allowed to sell subconcessions. SJM sold its subconcession to a partnership between Stanley Ho's daughter Pansy and MGM Mirage (now MGM Resorts), and Wynn Resorts sold its subconcession to Melco PBL (now Melco Crown).¹⁰ All concessions are set to expire between 2020 and 2022. Their renewal is not guaranteed.

Political System. Macau has been officially recognized as a "Special Administrative Region" of the People's Republic of China (PRC) since the 1999 handover from Portuguese administration. Under the conditions outlined in a bilateral treaty known as the *Sino-Portuguese Joint Declaration* and later incorporated into the *Macau Basic Law*, Macau is promised a high degree of autonomy until the year 2049.¹¹ In practice, that sphere of autonomy is mostly economic. Indeed, under the PRC's "one country, two systems" approach to regional autonomy, casino gambling remained legal in Macau though it remains illegal elsewhere in the PRC. Meanwhile, the PRC continues to deploy a midtwentieth century Portuguese colonial governance model to closely control the enclave.

Indeed, the city's legislative assembly serves as little more than a consultative chamber. Only fourteen of its thirty-three seats are directly elected through universal suffrage, and even then under the uninspiring D'Hondt party-list slating methodology ensures tight control by party elders.¹² Another twelve are reserved for corporate special interests known as "functional constituencies," a system first deployed by the fascist Salazar regime that ruled Portugal from 1930 to 1974.¹³ Their

9. See Joint Declaration on the Question of Macau, Apr. 13, 1987, 1498 U.N.T.S. 25805. This document contains twelve pledges respecting Macau's zone of autonomy under PRC administration promised through the year 2049.

10. The market share, which was measured in terms of revenue, as of Feb 2016 in descending order: Sands China Ltd, with 24.6 percent; Galaxy Entertainment Group Ltd with 22.4 percent; SJM Holdings Ltd with 20.2 percent; Melco Crown Entertainment Ltd at 14.5 percent; Wynn Macau Ltd with 10.9 percent; and MGM China Holdings Ltd with 7.4 percent. *Analysts offer Feb GGR breakdown, Macau market share*, GGRASIA (Mar. 4, 2016), <http://www.ggrasia.com/analysts-offer-feb-ggr-breakdown-macau-market-share> [<https://perma.cc/BNV2-8FAH>].

11. Joint Declaration, *supra* note 9; Zhonghua Renmin heguo Aomen tebie xingzhengqu jibenfa (中華人民共和國澳門特別行政區基本法) [Basic Law of the Macao Special Administrative Region of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 31, 1993, effective Dec. 20, 1999).

12. Daniel Beitler, *Every vote counts when the system is controversial*, MACAU DAILY TIMES (Sep. 13, 2017), <https://macaudailytimes.com.mo/every-vote-counts-system-controversial.html> [<https://perma.cc/ECK8-4BBX>].

13. Although that apparatus was abandoned throughout the Portuguese Empire upon the Carnation Revolution in 1974, it was curiously retained at Macau, where

pro-establishment orientation is ensured through entrenched networks and Chinese United Front tactics.¹⁴ Finally, Macau's Chief Executive personally appoints the final seven assemblymen.

Within this "executive-led system," the local power in Macau belongs to the Chief Executive (CE).¹⁵ The CE is appointed by the Central People's Government in Beijing following a local closed-circle selection process, and he has the power to make law by decree.¹⁶ The Gaming Inspection and Coordination Bureau (known by the Portuguese acronym DICJ)—the main government organ that oversees the operation of different gaming activities—reports to the CE.¹⁷ It assists the CE on the design and execution of policies regarding casino operations, and also bears a charge "[t]o examine, supervise and monitor the activities of the concessionaires, especially on their compliance with the legal, statutory and contractual obligations."¹⁸

Through its power to appoint and dismiss the CE, amend and interpret the *Macau Basic Law*, and exercise dominating influence in shaping local civil society through United Front work, there is no doubt that the PRC's party-state apparatus is the dominant force shaping Macau politics. As the regulation of gambling in Macau is reserved to the Macau Government, and that government is beholden to Beijing, all concessionaries thus enter into a contract with the Chinese party-state.

Financial System. In contrast to the political regime, Macau enjoys a broad degree of financial autonomy. For starters, it is the only city in China to feature legalized casino gambling—a measure of grace granted by Beijing. In a further gift, Article 104 of the Macau Basic Law states that "the Central People's Government shall not levy taxes in the Macao Special Administrative Region."

The 2002 market liberalization dissolved the local monopoly and fueled a surge in foreign investment. The city's casino gaming revenues expanded exponentially from approximately USD \$2.8 Billion in 2002 to \$37.9 Billion in 2018.¹⁹ Macau's gambling sector now makes up roughly 70

a PRC shadow government had been controlling all major events since an uprising in 1966.

14. Xiao Li Kang, 'Da Tongzhan Guan' Shiyu Xia Gang Ao Tai Qiao Tongzhan Gongzuo Wenti Yanjiu, '大统战观' 视域下港澳台乔统战工作问题研究, [Studies on the United Front Work in Hong Kong, Macau, and Taiwan under the Great United Front Thinking], 1 J. FUJIAN INST. SOCIALISM 99-2017 (2017).

15. See NPC Chief Hails Macau for Safeguarding Executive-Led Government Structure, MACAU NEWS (Oct. 14, 2015), <https://macaunews.mo/npc-chief-hails-macau-safeguarding-executive-led-govt-structure> [<https://perma.cc/RT4T-2QY2>].

16. Basic Law of the Macao Special Administrative Region of the People's Republic of China, *supra* note 11, at arts. 8, 15, 47, and 50(3).

17. DICJ is an acronym for the Portuguese name *Direcção de Inspeção e Coordenação de Jogos*.

18. Introduction to DICJ, Direcção de Inspeção e Coordenação de Jogos, <http://www.dicj.gov.mo/web/en/introduction/index.html> [<https://perma.cc/3T2V-VCQB>].

19. Macau's gross gaming revenue was 60 percent that of Las Vegas in 2002, and is now holding at six times its size. UNLV CENTER FOR GAMING RESEARCH, *supra* note 1.

percent of the local economy and 87 percent of its fiscal revenue.²⁰ Local gambling revenue peaked at USD \$45 billion in 2014, a figure seven times that of Las Vegas. The corresponding GDP per capita reached approximately \$69,500 USD in 2014, one of the highest figures in Asia.²¹ Indeed, the gaming industry is so prosperous that the local government enjoys a huge budget surplus. For the past twelve years in a row it has handed out a cash payment to all local residents. In 2018, this award was 10,000 MOP (\$1,245 USD) for permanent residents and 6,000 MOP (\$745 USD) for nonpermanent residents.²²

Nonetheless, Macau's finances are extremely vulnerable to externalities. In addition to the reasons stated above, approximately 90 percent of Macau's visitors are mainland Chinese. The mainland government fueled Macau's growth by initiating its individual visitors scheme in 2003, easing entry requirements for mainland citizens. On the contrary, financial indicators tumbled in 2008 when the PRC government limited the number of entries of mainland Chinese tourists due to capital outflows. They fell again between 2014–2017 as the Xi Jinping administration began cracking down on the junket operators that recruit VIP gamblers. Many of those former VIPs (often public figures) avoided Macau, and the length of stay for mainland visitors was reduced.²³ As a result, gambling revenues fell 34 percent between 2014 and 2015.²⁴ Macau's gaming sector saw a major recovery in 2018, and there are now 41 casinos operating there as of the time of this writing.

Education and Labor Systems. Macau offers free public education through high school, and a senior secondary education is all that is required for entry-level casino employment. Given the relatively high wages paid by the industry, few locals seek higher education. Despite the population density, the sheer number of tables and regulations that limit opportunities for foreigners sustain the hiring demand. As a result of this classroom-to-casino-floor pipeline, Macau's gambling industry helps to maintain a low level of education among employees, particularly among

20. This includes closely-related restaurant and shopping services. See Jian Ming Luo and Ka Yin Chau, *Measuring Corporate Social Responsibility in Gambling Industry: Multi-Items Stakeholder Based Scales*, 9 Sustainability 1 (2017).

21. See World Bank, *GDP Per Capital (Constant 2010 US\$)—Macao SAR, China*, <https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?end=2014&locations=MO&start=1960>.

22. Wendy Wong, *Macau Announces More Cash Handouts for Residents*, RTHK (Nov. 15 2018, 5:27 PM), <https://news.rthk.hk/rthk/en/component/k2/1428492-20181115.htm> [https://perma.cc/V59H-M5S2].

23. Casino operators and analysts also blame a partial smoking ban implemented at the end of 2014. See, e.g., Glenn McCartney, "How Much to a Puff? Macao's Casino Smoking Ban Debate and the Implications for Mainland Chinese Visitation", 20(7) GAMING L. REV. AND ECON. 571, 571-579 (2016).

24. Earned 223.2 billion patacas in 2016, which was a down year, following a 34 percent drop in 2015. *Macau Reveals Lower Gaming Revenue Losses in 2016*, IGAMING BUSINESS (Jan. 3, 2017), <http://www.igamingbusiness.com/news/macau-reveals-lower-gaming-revenue-losses-2016> [https://perma.cc/QH72-KM2U].

frontline workers. Walkouts and small-scale protests are relatively frequent as employees seek higher wages,²⁵ but otherwise political apathy appears to run high. Beyond the low level of education, Beijing's ability to simply open another casino district elsewhere in China hangs over the city like a Sword of Damocles, helping to suppress largescale political activism.²⁶

Culture. Macau's culture defies simple exposition, but as a general observation the majority of local residents lack the cohesive, shared, local identity apparent in neighboring Hong Kong.²⁷ Macau's cultural ties to mainland China have always been closer for a variety of reasons, not the least of which was the ineffectiveness of the Portuguese regime at providing social services and infiltrating Chinese United Front networks in the pre-handover years.²⁸ Indeed, Macau's casino capitalism has created dependency among a large section of the middle class, whose low political awareness and reliance on Beijing's grant of monopoly has led them to shy away from political advocacy to a greater extent than their Hong Kong counterparts.²⁹

Macau society is hardly immune from the vices that frequently accompany casino capitalism. While the majority of locals enjoy recreational gaming responsibly, it has been estimated that six percent of Macau residents qualify as problem gamblers, significantly higher than the overall global rate of two percent.³⁰ Speaking of addiction, the local government only began collecting statistics on illicit drug use in 2009, but a 2018 study concluded the actual usage rate is at least twice the government estimate.³¹ Furthermore, Macau hosts a flourishing sex trade tied

25. See e.g., Raquel Carvalho, *Staff of Macau gambling empire SJM vow to walk out in battle for higher pay*, SOUTH CHINA MORNING POST (Sep. 7, 2014, 5:15 AM), <https://www.scmp.com/news/china/article/1586810/staff-macau-gambling-empire-sjm-vow-walk-out-battle-higher-pay> [<https://perma.cc/6QAG-JM5E>]; Kevin Horridge, *2,200 March in Macau Labor Protest Demanding Better Benefits, Working Conditions from Melco Resorts*, CASINO.ORG (Aug. 4, 2018), <https://www.casino.org/news/macau-labor-protesters-demand-better-benefits-from-melco-resorts>.

26. One persistent rumor that has been floated is possible development on Hainan Island. See, e.g., *Hainan Bets on Giving Macau a Run for the Money*, THE STANDARD (Apr. 16, 2018), <http://www.thestandard.com.hk/section-news.php?id=194734&sid=11> [<https://perma.cc/RT8F-MH7H>].

27. Compare this with the sense of local Hong Kong identity described by Steve Tsang in Chapter 13 of his MODERN HISTORY OF HONG KONG 180–196 (2007).

28. SONNY SHIU-HING LO, POLITICAL CHANGE IN MACAU 75–81 (2008).

29. See Sonny Shiu-Hing Lo, *Reinterpreting Macau's Society, Politics and Economy: The Significance and Geopolitical Aspects of Casino Capitalism*, in CHINA'S MACAU TRANSFORMED: CHALLENGE AND DEVELOPMENT IN THE 21ST CENTURY 75 (Eilo W.Y. Yu ed., 2014).

30. Tiffany C.H. Leung, *Corporate Social Responsibility & Gambling Industry: An Exploratory Study* 23, 272, 285 (Sept. 26, 2013) (unpublished Ph.D. thesis, University of St. Andrews).

31. Tianji Cai and Yiwei Xia, *Estimating Size of Drug Users in Macau: an Open Population Capture-Recapture Model with Data Augmentation Using Public Registration Data*, 13 ASIAN J. CRIMINOLOGY 193 (2018).

to human trafficking, including many brothels believed to be controlled by Chinese organized crime syndicates known as Triads.³² As a result, Macau is ranked as a Tier 2 territory (i.e., territories which do not fully comply with the minimum standards in the Victims of Trafficking and Violence Protection Act of 2000 “but are making significant efforts to bring themselves into compliance”) on a U.S. State Department watch list for human trafficking.³³ In 2018 the Americans alleged, “the [Macau] authorities investigated fewer cases and were unable to secure a single condemnation for sexual trafficking for the third consecutive year and have never secured a condemnation for human labor trafficking.”³⁴

CSR alone cannot eradicate these plights, but resources can be better directed to help mitigate their symptoms. These would not seem to be issues of political contention in other environments; indeed, a naive analysis might conclude that these issues provide particularly fertile ground for agreement between ideological regimes as diametrically opposed as the Communist United Front, local democratic parties, and the remaining local Catholic institutions. Unfortunately, such an analysis would underestimate the PRC’s incentives for keeping the Macau populace politically apathetic and the well-known collaborations between the Chinese Communist Party and local Triad organizations in both Macau and Hong Kong.³⁵

II. MACAU’S CSR FRAMEWORK

This Part begins with a working definition of CSR suitable for Macau, then examines Macau’s existing CSR framework in its mandatory and voluntary dimensions. The voluntary compliance is then assessed for its consistency and statement about what constitutes CSR across operators of various nationalities.

32. Katie Hunt, *The Dark Side of Asia’s Gambling Mecca*, CNN (June 18, 2013, 3:23 AM), <https://www.cnn.com/2013/06/17/world/asia/macau-dark-side/index.html> [https://perma.cc/2X7R-APJ2].

33. *Office to Monitor and Stop Trafficking in Persons*, U.S. DEP’T ST., <https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/office-to-monitor-and-combat-trafficking-in-persons>.

34. Inês Almeida & Salomé Fernandes, *Human Trafficking Keeps Macau SAR Under Surveillance*, MAC. BUS. (Aug. 24, 2018), <https://www.macaubusiness.com/human-trafficking-keeps-macau-sar-under-surveillance> [https://perma.cc/VR8E-HL-HX].

35. Raquel Carvalho, *Shady Dealings: Triads ‘Play Major Role’ in High-rolling Macau VIP Casino Rooms*, S. CHINA MORNING POST (Mar. 6, 2016, 1:00 AM), <https://www.scmp.com/news/hong-kong/politics/article/1921335/shady-dealings-triads-play-major-role-high-rolling-macau-vip> [https://perma.cc/86JU-UX6J]; Patrick Winn, *Why Hong Kong’s Secret Societies are Attacking Protesters*, PRI (Oct. 11, 2019, 3:15 PM), <https://www.pri.org/stories/2019-10-11/why-hong-kong-s-secret-societies-are-attacking-protesters> [https://perma.cc/6RCW-272V].

A. *CSR Definitions and Assumptions*

It is well-known that CSR evades simple definition. Multiple perspectives exist depending on the stakeholder's role.³⁶ It is only within the past decade that global actors have been moving toward a rough consensus.³⁷ For example, the UN Global Compact and Global Reporting Initiative provide standardized CSR guidelines divided into economic, environmental and social categories.³⁸

Common to many definitions is an assumption that CSR is a form of self-regulation. In this view, CSR functions as a voluntary regime whereby a business monitors and ensures its compliance within the spirit of the law, including local ethical standards as well as developing national or international norms.³⁹

Matten and Moon suggest a dichotomy between "implicit" and "explicit" CSR practices after studying how CSR differs in various legal jurisdictions.⁴⁰ Whereas "explicit CSR" consists of voluntary strategies assumed to be within the corporation's social obligations, "implicit CSR" may include "values, norms, and rules that result in mandatory and customary requirements for corporations to address stakeholder issues."⁴¹ This distinction is useful in analyzing Macau, where both explicit and implicit motivations exist.

B. *Mandatory Elements*

Macau's legal system has never considered gaming law a separate category *per se*. Instead, regulation falls under the nexus of a range of legal topics including administrative, tax, company, contract, and criminal law. A patchwork of local legislation serves to regulate the industry.⁴²

36. See generally Archie B. Carroll, *The Pyramid of Corporate Social Responsibility: Toward Moral Management of Organizational Stakeholders*, in 34 BUS. HORIZONS 39 (1991). Far from being definitive on the subject, Carroll's famous 1991 article identified four pillars supporting the CSR concept: economic, legal, ethical, and philanthropic.

37. See JOHN G. RUGGIE, *JUST BUSINESS: MULTINATIONAL CORPORATIONS AND HUMAN RIGHTS* (2013).

38. See for example, UN Global Compact, *Principle 8: Environment*, <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-8> ("Define company vision, policies and strategies to include sustainable development—economic prosperity, environmental quality and social equity . . ."); Global Reporting Initiative, *G4 Sustainability Reporting Guidelines: Reporting Principles and Standard Disclosures*, <https://www.globalreporting.org/resource/library/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf> ("In the Guidelines, unless otherwise stated the term 'impact' refers to significant economic, environmental and social impacts . . .").

39. This view has been increasingly challenged. See ANDREAS RASCHE ET AL., *CORPORATE SOCIAL RESPONSIBILITY: STRATEGY, COMMUNICATION, GOVERNANCE* 6 (2017).

40. Matten, *supra* note 6.

41. *Id.* at 408 (parentheses omitted from original).

42. The main legislation is the Macau Gaming Law (Law 16/2001). Other relevant legislation include the: Instant Lottery Law (Law 12/87/M), which governs the concession and operation of instant lotteries; Illegal Gaming Law (Law 8/96/M), which governs the unlicensed supply of games; International Gaming Tender

Macau's casinos are regulated on a day-to-day basis by the local Gaming Inspection and Coordination Bureau (again, known by its Portuguese acronym the DICJ). The DICJ issues instructions that are binding on all casino concessionaires, as well as gaming promoters, horse and greyhound concessionaires, and lotteries.⁴³

There is little in the way of a formal CSR regime or incentive scheme. Macau law imposes only adherence to "responsible gaming" guidelines as a matter of law. Instead, the Macau Government achieves many beneficial CSR-related general social objectives through financial redistribution under its taxing and spending powers.⁴⁴ Indeed, approximately 90 percent of public revenue is derived from gaming taxes, which allows the government to operate at a huge surplus,⁴⁵ and provides disincentives to install too ambitious a CSR regime. Major public services include a universally accessible single-payer health care system and perhaps even the annual surplus handout checks. Indeed, Macau's comparative advantage as a small jurisdiction with border controls allows it the freedom to pursue modes of welfare unavailable to other global jurisdictions. Assuming an articulation of CSR that allows the consideration of measures adopted under the government's taxing power—because the casino operators accept this tax rate when they accept the concession contract with the government—then the basis for levies on Macau's casino concessionaires becomes clearer.⁴⁶ The effective tax rate on cas-

Regulation (Regulation 26/2001) which sets out the international public tender procedure to award concessions; Gaming Promoters' Regulation (Regulation 6/2002) which governs the licensing and activities of gaming promoters; Gaming Credit Law (Law 5/2004), which regulates the granting of gaming credit by casino operators and gaming promoters; Junket Commissions Regulation (Regulation 27/2009), which imposes certain limitations on the commissions paid to gaming promoters; Gaming Participation Law (Law 10/2012), which regulates gaming participation and the right to enter casinos; and Electronic Gaming Machines Regulation (Regulation 16/2012), which regulates electronic gaming machines and sets out the licensing procedures for EGM manufacturers and suppliers. See *Rui Pinto Proença & Carlos Eduardo Coelho, Gaming in Macau: Overview*, THOMSON REUTERS PRAC. L. (July 1, 2019), [https://uk.practicallaw.thomsonreuters.com/3-634-9931?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/3-634-9931?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1).

43. For example, relevant DICJ regulations include: Smoking control in casino areas (Instruction No. 1/2014); Technical standards for EGMs and electronic table games (Instruction No. 2/2014); Anti-money laundering and counter-terrorism financing (Instruction No. 1/2016); and Macau Jackpot Technical Standards (Instruction No. 2/2016). *Id.*

44. It could be argued that unlike Hong Kong, whose economy attracts a massive amount of FDI into China, Macau's entire economy is based upon a 'redistributive tax' that withdraws funds from other communities (mostly mainland China, but also across Asia) for disbursement via government action into general revenue, with just a very small proportion of that allocated to local problem solving.

45. Devin O'Connor, *Casino Taxes Account for Nearly 90 Percent of Macau Government Budget*, CASINO.ORG (Apr. 22, 2019), <https://www.casino.org/news/casino-taxes-account-for-nearly-90-percent-of-macau-government-budget>. This compares to about 33 percent in Nevada.

46. Including tax base within the scope of CSR certainly raises the definitional

nos is about 38 percent, a figure that comprises a 35 percent tax on gross gaming revenue, a mandatory 1.6 percent contribution to the Macau Foundation,⁴⁷ and a mandatory 1.4 percent (for SJM) and 2.4 percent (for everyone else) contribution to the local Infrastructure/Tourism/Social Security Fund.⁴⁸

The other mandatory aspect of Macau's CSR regime is responsible gaming education. The aim of "responsible gaming" is to minimize gambling addiction through consumer protection mechanisms including awareness, education, and treatment. The Macau Government recognized an increase in local problem gambling jumping from 4.3 percent in 2003 to 6 percent in 2007.⁴⁹

Reflecting the "executive-led system" of local governance, the impetus for development of a coordinated response flows from the top-down. Mentions within the Chief Executive's annual policy address have been the specific trigger. It was not until CE Edmond Ho specifically referenced pathological gambling in his 2005 address that resources were distributed to establish the Resilience Centre as a division of the Social Welfare Bureau.⁵⁰ The next major trigger was a second reference in the Chief Executive's 2009 annual policy address, after which the concept of responsible gaming was elaborated through publications issued by the University of Macau.⁵¹ In August 2012 the DICJ issued instructions for the implementation of actual "Responsible Gambling Principles" that required casinos to implement certain measures including making available information about the risks of gambling and odds, creating counseling kiosks and a hotline, and mandating that lighting inside windowless casinos more closely simulate natural cycles.⁵²

The passage of these principles was accompanied by the Macau Government raising the minimum age for casino entrance from 18 to 21.⁵³ In 2016, the Macau government formed a formal "Responsible Gaming Work Preparation Unit" with concerned local institutes to construct responsible gaming policies and administrative procedures.⁵⁴

issue, but perhaps no more so than local operators trying to include "employee training" and other tangential items within their CSR articulations, as well.

47. The Macau Foundation is an organization aims to promote, develop and study cultural, social, economic, educational, scientific, academic and philanthropic activities, including activities aimed at the promotion of Macau.

48. UNLV, *supra* note 1.

49. Leung, *supra* note 30, at 285.

50. Gui-Hai Huang, *Responsible Gaming Policies and Practices in Macao: A Critical Review*, 2 ASIAN J. GAMBLING ISSUES AND PUB. HEALTH 49, 52 (2011).

51. See, e.g., the contemporary reports published through The Institute for the Study of Commercial Gaming (ISCG) at University of Macau, a not-for-profit gaming research and development organization, available at <https://www.um.edu.mo/iscg/dlCenter.html>.

52. Law no. 10/2012 [Gaming Participation Law] (Macau).

53. *Id.*

54. *Responsible Gambling*, DICJ, <http://www.dicj.gov.mo/web/en/responsible/responsible01/content.html#1> [<https://perma.cc/ST55-8VPK>].

Although the gambling industry now provides these RG initiatives for customers (and reports on them in their annual filings), there is little evidence to suggest that they are effective, particularly given the easy accessibility of gambling venues. Local casinos have tried to branch out with more family-friendly shows, while the local tourism board offers free passes to museums and historical sites.⁵⁵ So far, the results have been inconclusive.

That is the extent of Macau's formal CSR regulation. The lack of a deeper framework can probably be attributed to the local industry's commanding influence within the city's highly corporatized political structure.

C. *Voluntary Elements*

Beyond these commitments, the casino interests are competing to articulate their voluntary activism. Leung's study of CSR in Macau posits that the rationales for engaging in the local CSR race can be divided into "proactive" and "reactive" self-interest.⁵⁶

Proactive self-interest entails the voluntary recognition of CSR by the gambling companies as long as this enhances their longterm economic interests. For example, the gambling companies sponsor NGOs and provide corporate donations for vulnerable groups in order to gain influence within the local community or enhance the reputation of the company. Western companies operating in Macau have a deeper incentive as they want to develop deep business roots in the local community so as to maintain a longterm presence. Such companies are able to draw upon their wealth of experience in more developed CSR jurisdictions in order to provide aid.

Reactive self-interest, on the other hand, is mainly driven by external pressure, such as direct political pressure or industrial competition. In the former situation, the implication is that the companies will team with the government in making a contribution to society. For example, the Chief Executive's mention of "responsible gaming" in his 2009 policy address set into motion a chain of events leading quickly to the development of a soft-law course of action. Furthermore, the adoption of CSR practices by some companies will cause others to adopt and enhance theirs. Local interests quickly learned how to articulate their philanthropy in the same rhetoric as their foreign competitors.

Undoubtedly, a prime impetus for engaging in and ramping up this CSR competition is the fact that there is an enormous political risk looming. All existing gaming concessions and subconcessions will expire in either 2020 (for SJM and MGM) or in 2022 (for Wynn, Melco, Galaxy

55. Nyshka Chandran, *Macau Gets a 'D' for Diversification*, CNBC (Aug. 26, 2015, 6:13 PM), <https://www.cnbc.com/2015/08/25/macau-gets-a-d-for-diversification.html> [<https://perma.cc/RDC4-6EXE>].

56. Leung, *supra* note 4, at 161 ("Thus, this industry appears to adopt proactive strategies in gaining legitimacy, rather than taking reactive strategies to repair legitimacy in order to respond to an unforeseen crisis.").

and LVS).⁵⁷ There are no renewal conditions imposed under the concession contracts although the government reserves the right to impose such conditions (the most widely discussed are gaming tax hikes and additional investments in nongaming activities).⁵⁸ It is especially noteworthy that in the event of a license nonrenewal, all of a concessionaire's assets in Macau would become the property of the local government and subject to redistribution. Thus, the prevalence of CSR—particularly in its philanthropic aspect—could be viewed as a means of maintaining the single most important relationship in Macau: that with the government. Indeed, these investments might earn sufficient legitimacy to ensure the original investor's survival in the marketplace.

Macau's gambling concessionaires also appear to employ CSR to maintain a good relationship with the PRC Government in Beijing. Interestingly, although most mainland Chinese laws do not apply with direct force in Macau,⁵⁹ Article 5 of China's Company Law includes an affirmative duty to comply with CSR norms.⁶⁰ There is of course the apparent reality that Beijing can influence or decide any matter of influence in Macau through its ultimate command of the local political structure, including concession renewal. Indeed, all efforts may very well come to naught in the context of the current trade war (or, then again, their continuation may become part of a grand bargain). In the meantime, local intermediaries might cite the responsible gaming initiative to attempt to persuade Beijing to grant more Free Travel Scheme (FTS) visas to citizens from other provinces and thus sustain Macau's customer base. As it stands, 90 percent of Macau's guests come from the mainland, so this initiative responds to a perception that Macau is feeding a gambling problem in certain quarters of the nation.

Ultimately, the articulation of most CSR strategies is an exercise for the companies themselves. These Subparts consider the CSR efforts of all six Macau casino operators as self-articulated, considering promotional content posted on both their websites and their annual corporate reports filed with the Hong Kong Stock Exchange (HKSE).⁶¹ The six

57. The government can also redeem their concessions earlier if: (1) By giving at least one year prior notice after 26 June 2017 (or April 2009 for SJM/MGM); or (2) the concessionaires violate the law.

58. According to the contracts, up to six months prior to its expiry date, a concession contract may be extended by the Macau Government for two additional years at a time, up to a limit of twenty years. Beyond twenty years, the concession may be exceptionally extended by the Macau Government, up to a further limit of five years.

59. Macau was guaranteed continuation of its previous laws in force, with all national laws of local application listed in Annex 3 of the Macau Basic Law. See Basic Law of the Macao Special Administrative Region of the People's Republic of China, *supra* note 11.

60. See generally Jamie Allen & Li Rui, *Awakening Governance: The Evolution of Corporate Governance in China*, ACGA CHINA REPORT (2018). Of course, domestic adherence is questionable.

61. The Hong Kong Stock Exchange requires CSR-related reporting annually. See Appendix 27 *Environmental, Social and Governance Reporting Guide*, HKEX,

operations here are ranked in terms of exposition and descriptiveness of overall disclosures as of May 2019.

1. Galaxy Entertainment Group (GEG)

Hong Kong-based GEG holds a primary concession, and it publishes the longest and most complex website dedicated to CSR activities as of October 2019.⁶² Indeed, the CSR tab of their website opens six submenus: (1) Supporting the Community; (2) Environmental Protection and Sustainability; (3) Responsible Gaming; (4) Supporting Local SMES;⁶³ (5) CSR Events; and (6) Reports. The addition of “Supporting Local SMES” and “Reports” (under which one report is available, dated 2018), are recent additions in 2019, showing an ongoing development. The most significant page is the first, which details Galaxy’s CSR commitments. They subdivide these initiatives into eight sections: (1) Environmental, (2) Social and Governance; (3) Stakeholder Engagement and Materiality Assessment; (4) Social Responsibilities; (5) Compliance with Laws and Regulations; (6) Team Member Engagement; (7) Guest Engagement; and (8) Suppliers Management.

The first words of the Supporting the Community page strategically portray GEG as a friend and partner of the Macau Government, stating:

As a frontrunner in the gaming and entertainment industry, Galaxy Entertainment Group (“GEG” or “the Group”) is proud of its record of achieving sustainable business growth and sustained value for its customers, employees, and the society in which it operates. Recognizing the importance of giving back to the community, GEG continues to be a proud supporter of the Macau Special Administrative Region (“SAR”) Government’s social programs and initiatives.

Better than any of its competitors, GEG articulates a CSR plan of action that fuses Western expectations with specific tailoring to Macau’s special circumstances, encapsulated by their motto “World Class, Asian Heart.” Of particular pride is the establishment of the philanthropic Galaxy Entertainment Group Foundation in 2015.

2. MGM China Holdings, Ltd. (MGM)

MGM China Holdings Limited holds a subconcession in partnership with SJM’s Pansy Ho. It is majority owned by MGM Resorts International headquartered in Paradise, Nevada, USA. Its website does not have a “CSR” label *per se*, but rather includes this information under the tag “Sustainability.”⁶⁴ That tag has nine subheadings: (1)

http://en-rules.hkex.com.hk/en/display/display_main.html?rbid=4476&element_id=3841 [<https://perma.cc/B73F-2HWJ>].

62. *Supporting the Community*, GALAXY ENTERTAINMENT GROUP (Feb. 11, 2020), <http://www.galaxyentertainment.com/en/corp/supporting-the-community>. [<https://perma.cc/Z8M8-AJGJ>].

63. SMES stands for small-medium enterprises.

64. *Sustainability at MGM*, MGM CHINA HOLDINGS LTD., <http://en.mgmchinaholdings.com/sustainability-sustainability-at-MGM> [<https://perma.cc/9YTS-JREN>].

Sustainability at MGM; (2) Employees; (3) Community; (4) Responsible Gaming; (5) Support for Local Business & SMEs; (6) Anti-Human Trafficking; (7) Environmental Sustainability; (8) Sustainability News; and (9) Disclosures.

Of particular interest is the Anti-Human Trafficking category, the only of its kind on the casino operator websites. MGM China tactfully portrays it as a problem of “global proportions” before noting it was the first operator in Macau to develop a “Human Rights & Anti-Human Trafficking Policy.”⁶⁵

Beyond that, there is very little tailoring to the Macau audience. The listed CSR contributions are far less specific than those of GEG and often indistinguishable from the parent corporation’s U.S. activities. For example, under “Disclosures,” the company lists its annual reports (styled “Company Sustainability Reports”) dating to 2014. The international parent corporation publishes an annual CSR report which only mentions Macau twice in fifty-six pages.⁶⁶ Indeed, most of its information regards initiatives specific to MGM’s U.S. holdings and political situation, such as LGBTQ weddings, which are not recognized in Macau.⁶⁷

3. Sociedade de Jogos de Macau, S.A. (SJM)

SJM, a local subsidiary of Macau’s own SDTM, posts a singular CSR page of moderate detail,⁶⁸ and its 2016 HKSE filing includes a nine-page “Environmental, Social & Governance Report.”⁶⁹ SJM tailors its contributions to the Chinese community, noting sponsorship of martial arts competitions and dragon boat races on its “CSR: Supporting the Community” page.⁷⁰ SJM is also unique among the websites in emphasizing philanthropy directed towards mainland China, particularly in donations and aid sent to natural disaster zones in mainland China:

Our commitment often stretches beyond Macau’s borders, as well. For instance, SJM contributes transportation and hotel accommodation in Macau to charitable groups and other associations involved in sports, arts and culture from Hong Kong, Macau and the China Mainland. We have also donated extensively in times of need to

65. *Anti-Human Trafficking*, MGM CHINA HOLDINGS LTD., <https://en.mgmchinaholdings.com/sustainability-Anti-human-trafficking> [<https://perma.cc/WK88-GJ4U>].

66. MGM RESORTS INTERNATIONAL 2017 CORPORATE SOCIAL RESPONSIBILITY REPORT, (2017) <https://www.mgmresorts.com/content/dam/MGM/corporate/csr/annual-report/mgm-resorts-corporate-social-responsibility-annual-report-2017.pdf> [<https://perma.cc/8C8R-ZV4M>].

67. *Id.* at 12.

68. *Corporate Social Responsibility*, SJM HOLDINGS LTD, <http://www.sjmholdings.com.hk/en/corporate-social-responsibility/supporting-the-community> [<https://perma.cc/7DFZ-JSEF>].

69. SJM HOLDINGS LTD., ANNUAL REPORT 2016, https://www.sjmholdings.com/resources/images/uploads/e00880_ar_04151921.pdf [<https://perma.cc/7RND-H9MB>].

70. *Corporate Social Responsibility*, *supra* note 68.

various organizations on the Mainland, including relief aid for victims of snowstorm and earthquake.⁷¹

More interestingly, SJM is keen to curry support with the Beijing government. The website states, “Since 2014, the SJM Staff Welfare Consultative Committee has organized staff participation in the patriotic education programme in Jinggangshan, Jiangxi of China.”⁷² A previous reference to promoting education in the Mandarin dialect (as opposed to the local Cantonese dialect) has been removed.

4. Sands China, Ltd. (Sands)

Sands China, Ltd. holds a full concession following its split from an original joint venture with GEG. It is the majority-owned subsidiary of the Las Vegas Sands Corporation, an American casino and resort operating company based in Nevada. Its website features four CSR-related pages under the heading of “Community Affairs.”⁷³ These are styled: (1) Environmental Sustainability; (2) Volunteering; (3) Responsible Gaming; and (4) Sustainability Reports.

The website is low on detail. For example, the volunteering page is offered to emphasize individual employee activities, but contains only three pictures with captions reading “Spring cleaning with Macao’s elderly,” “Chinese New Year tea buffet with Macao’s elderly,” and “The Sands China Care Ambassadors shared the holiday spirit with local families for a friendly competition of decorating gingerbread houses at Sands Cotai Central.” The sustainability reports only go back two years and make several references to such borderline CSR activities.⁷⁴

5. Wynn Resorts (Wynn)

Wynn Resorts is a primary concessionary, with its principal place of business registered in Las Vegas. It appears to be redesigning its website as of the time of this writing, and presently does not have a major book-mark tab dedicated to CSR activity.⁷⁵ A previous iteration of the website described community involvement, educational initiatives, community outreach, donations and scholarships, its “green team,” employee initiatives, and supplier diversity.⁷⁶ Notably, it is the only casino operator whose

71. *Id.*

72. *Id.*

73. SANDS CHINA LTD., <https://www.sandschina.com> [<https://perma.cc/G7K9-LT5C>].

74. Sands’ 2016 HKSE filing contains only one brief reference to CSR in its 208 pages. However, the parent company authors its own separate CSR and environmental reports featuring several brief mentions of Macau. For example, the “CSR” reference on page 60 addresses “the environmentally responsible choice for green meeting worldwide” advertising their “China Hotelier award for CSR.” *Sands China Limited 2016 Annual Report*, SANDS CHINA LTD. (2016) http://media.corporate-ir.net/media_files/IROL/23/233498/2017/1_2016%20Annual%20Report_ENG.pdf.

75. WYNN MACAU LTD., <http://www.wynnmacaulimited.com/en> [<https://perma.cc/36VC-XW5C>].

76. Screenshot of former site on file with author. Formerly available at WYNN

website is without reference to responsible gaming. Wynn's HKSE filing also does not include a CSR section, though it publishes its own "social responsibility report." The thirty-six page, 2016 document includes Macau specific pages on sustainability, "recognizing rising young artists," "promoting social welfare," and "advancing careers in hospitality."

6. MELCO Crown Entertainment (MELCO)

Melco Crown Entertainment holds the Wynn sub-concession. It is a joint venture between the Macau-based Melco International Development Ltd. and the Australian gaming company, Crown Ltd. Its core CSR website is by far the shortest, containing only one page with an overview statement followed by a drop-down menu designed to highlight philanthropic news.⁷⁷ CSR highlights are sprinkled throughout their 2016 HKSE report including in individual directors' profiles. Most information is available in their colorful annual CSR report. Its largely pictorial 2016 report is forty-seven pages long but contains little writing, though it does include a section on responsible gaming. Melco raises the definitional question perhaps more than any other operator as it highlights "mooncake donation" as a CSR activity.⁷⁸

III. ANALYSIS OF CONTENT

Considering this and other information, a 2016 study considered all of the various CSR activities conducted by casino operators in Macau.⁷⁹ It concluded that they, as a group, do fairly well in the areas of "Leadership, Vision and Values," "Workforce Activities," and "Community Activities," but are relatively weak in "Supply Chain Activities," "Marketplace Activities," and "Shareholder Engagement."⁸⁰ A fresh evaluation is offered here.

One of the most elaborated areas common to all articulations is environmental protection or sustainable development. Indeed, Macau's energy consumption doubled between 2000 and 2010, while the casino operators brag of energy savings. The Las Vegas Sands Corp. is a leader in this regard. According to its own figures, its Venetian property's electricity bill for 2012 was 13 percent less than in 2008, while its Parisian property is the "most energy-efficient property to date."⁸¹ They hope that it will be

MACAU LTD., *Corporate Social Responsibility—Macau*, <http://en.wynnmacaulimited.com/phoenix.zhtml?c=231614&p=corpres>.

77. *In the Community: Corporate Social Responsibility*, MELCO, <https://www.melco-resorts.com/en/social-responsibility.html> [<https://perma.cc/2UDF-WHVR>].

78. MELCO, MELCO CROWN ENTERTAINMENT EMPLOYEES DONATED RECORD-HIGH NUMBER OF MOONCAKES TO LOCAL COMMUNITY, AND ADDED A WARM AND CARING TOUCH TO THE ELDERLIES, http://www.melco-resorts.com/en/doc/MCE_Mooncakes_150922_EN.pdf [<https://perma.cc/7BFM-B9AA>].

79. *See generally* Jian, *supra* note 4.

80. *Id.* at 237.

81. *Environmental Sustainability*, SANDS CHINA LTD., <https://www.sandschina.com/community-affairs/environmental-sustainability.html> [<https://perma.cc/U29Z-SFQ8>].

Macau's first casino to achieve LEED silver certification, asserting that "[m]any of the resort's comprehensive sustainability initiatives represent new features not yet seen in Macau or . . . the region," claiming that LED lights, window glazing, low-flow water fixtures, and underground parking all contribute to an energy savings of approximately US\$3.9 million a year.⁸²

Of course, claims of *environmental protection or sustainable development must be met with the highest skepticism. The very land these resorts are built upon is artificial, forever altering the local ecosystem.*⁸³ Immense energy spending is the prerequisite to such significant reductions, and casino designs notoriously include an intentional lack of windows and natural daylight. *Massive amounts of resources are spent bringing tourists to Macau via car, train, ship, and airplane. Environmental, historical and cultural preservation are negligible concerns to the development interests.*

Half of the operators (Galaxy, MGM and Wynn) specifically mention supply chain activities on their websites. Even then, there is nothing in the literature to suggest that Macau's casino operators promote CSR practices among local or international business suppliers. Rather, they simply express their contributions as helping to support local businesses. For example, GEG claims that it is "Supporting Macau SAR Government to foster new industries and accelerate the process of Macau's economic diversification," by sourcing its goods and services from them, encouraging them to open retail shops in their resorts, and providing logistical support.⁸⁴ This is a good thing, even if incomplete. It must be emphasized that the opening of the large casino resort shopping malls has put many small restaurants and shops out of business, creating an ever-more dependent rent-seeking economy.⁸⁵ Gambling operators should include increasing investments in the local small business community with the purpose of increasing prosperity across a more balanced society. However, that is unlikely given the corporatist structure of local politics.

It is expected that cultural differences may manifest in different CSR-type activities promoted by local and foreign concessionaries. Galaxy and Wynn are joined by SJM in advertising their commitment to education, though the first two do it in simple phrasing without elaboration. The exception is SJM, which places full emphasis on it, including

82. SANDS CHINA LTD., THE PARISIAN MACAO—A LUXURIOUS GREEN OASIS ON THE COTAI STRIP, [https://s21.q4cdn.com/635845646/files/doc_news/archive/2016.09.06-Parisian-Sustainability_Press-Release_EN-\(3\).pdf](https://s21.q4cdn.com/635845646/files/doc_news/archive/2016.09.06-Parisian-Sustainability_Press-Release_EN-(3).pdf).

83. The Portuguese were attracted to Macau in the 1500s in part because it included a patchwork of four small islands that divided local waters into the shape of a cross. That land was reclaimed for the Cotai development. The Macau peninsula's once famous Praia Grande, once the busiest port in China and home to its *de facto* embassy row during the early Qing dynasty, has also been lost to development.

84. *Supporting the Community*, *supra* note 62.

85. Sheyla S. Zandonai, *Casino Development and Urban Transformation in Macau*, INTERNATIONAL INSTITUTE FOR ASIAN STUDIES, 72 THE NEWSLETTER 10–11 (Autumn 2015), https://iias.asia/sites/default/files/IIAS_NL72_1011.pdf.

ties to mainland arts groups and formerly promotion of the Mandarin language used in Mainland China as opposed to the locally-favored Cantonese dialect.⁸⁶

It is interesting (and perhaps telling) that the two Macau-based corporations (SJM and Melco) have the shortest but most culturally-tailored CSR articulations. There are three possible reasons for this. First, they may better understand or represent the local conception of CSR, which simply does not concern itself with many of the morality-based topics present in “western” conceptions. Second, and on the contrary, they may have less experience and knowledge in how to articulate CSR norms than their foreign counterparts. Finally, perhaps for political reasons (namely, their local ties), they feel the least pressure to defend their concessions in the years ahead. What is clear is that none of the casino operators’ CSR statements directly address Macau’s more unbecoming problems such as drug use, organized crime, or loan-sharking. MGM China is to be commended for its recent addition of human trafficking to its CSR manifesto.

IV. RECLAIMING MACAU’S LEGACY: AN OPPORTUNITY FOR GLOBAL LEADERSHIP

As Macau leads the world in terms of gambling jurisdictions by revenue, its sovereign seeks to compete for supremacy on the world stage. It should seem to make sense that Macau, therefore, would want to project itself as a leader within its sphere. For what Macau lacks in political autonomy, it possesses in the economic freedom and financial assets to realize societal goals. Macau can and should leverage these endowments to build a better future for its residents and solidify its commitment to CSR-type charitable practices in the twenty-first century.

Charitable enterprises always formed an important part of Macau’s civil society. Macau’s historical commitment to charity throughout the Portuguese era was touched upon before, and a historical approach is emphasized by Articles 8 and 18 of the *Macau Basic Law*.⁸⁷ It now remains to be seen if Macau will continue to play its historic role as a fountainhead of charity. With the advent of modern CSR norms coinciding with the handover to Chinese administration, Macau should actively seek to bring its traditional commitments in line with contemporary needs. There is perhaps no stronger opportunity for defining “Macau Characteristics” for itself under the scope of autonomy granted by the PRC government. Further, CSR should be a largely non-political area where even Macau’s various strands of ideological thought can agree to cooperate, if not for the collusion between government and mafia interests. Previously, despite vast political and cultural differences, Macau’s local Portuguese and Chinese communities shared a common commitment to local social welfare.

86. *Corporate Social Responsibility*, *supra* note 68.

87. These provisions state that the laws and social structures existing in Macau before the handover should remain largely in force.

Indeed, the *Macau Basic Law* (MBL) itself can be read to provide a normative foundation upon which to build the practice of CSR. While it would be a stretch to assert that the MBL is driving local CSR development in any meaningful way at the moment, it does provide a favorable foundation. Local jurists could decide to interpret it to realize that potential. Recognizing that normative basis requires a structural approach to reading the MBL, reading alike provisions in concert in order to massage out foundational principles. For example, the MBL has a deeper nexus of charity and welfare provisions than its template document, the Hong Kong Basic Law. Article 38 (protecting certain “minority” groups), Article 39 (guaranteeing the right to social welfare) and Article 128 (guaranteeing the right of religious organizations to run hospitals and charities) form one such nexus. The crux is Article 38. Whereas both Basic Laws begin this provision by guaranteeing freedom of marriage and family, MBL Article 38 further guarantees that “[t]he legitimate rights and interests of women . . . minors, the aged and the disabled shall be taken care of and protected.” Since the MBL was drafted later in time than the HKBL, this added clause—which matches similar wording in the Portuguese Constitution—represents a negotiated difference and seems to indicate a more conscious commitment to normative equality, at least among the referenced groups. As women and children are the main subjects of human trafficking, attention here is an imperative.

Furthermore, *MBL Article 119 provides an affirmative duty that the Macau Government* “shall carry out the protection of the environment in accordance with law.” The city’s environmental statute provides guidelines and principles to protect the local environment, but the government has not always enforced these standards consistently with regard to the gaming industry.⁸⁸ Furthermore, MBL Article VI includes several affirmative obligations for the government and NGOs to support cultural and educational development,⁸⁹ so it would not be a stretch to extend these duties to casinos operating under licensed government concessions as well. Although times are good, Macau needs to prepare itself for future down-cycles and the prospect of regional competition.

Indeed, Macau’s history and specific grant of autonomy suggest that it could and should become a world leader in CSR. As it is a manner within local scope, the question of adopting and realizing this aim will ultimately fall on local political leaders. Given Macau’s present material prosperity, low levels of education, and corporatized political system, it is unlikely that such calls will emerge from civil society in the near future. Perhaps this is how the powers-that-be at both levels desire it.

88. Law no. 2/91/M (1991) [Environment Act] (Macau).

89. Macau Basic Law Chapter VI is styled “cultural and social affairs” and contains 13 articles ranging on subjects such as education, social welfare, and sports. Basic Law of the Macao Special Administrative Region of the People’s Republic of China, *supra* note 11, at arts. 121–134.

Nevertheless, CSR could be one issue capable of uniting action across many of Macau's political divides. As the responses to the Chief Executive's 2005 and 2009 policy addresses show, perhaps all that is needed is one dynamic leader to champion the cause. The DICJ can advise the CE on this issue. It may wish to consider a local statutory definition of CSR activity, the offering of benefits such as tax reduction in exchange for true CSR development, or sanctions for non-compliance or false advertising. A comprehensive code of CSR conduct for the casino industry, as well as the encouragement or extension of CSR duties to Macau's non-gambling sectors, may also be considered.

What is imperative is that Macau squarely address its true problems. While sponsoring mooncake donations and dragon boat festivals may make for better branding, the uncomfortable issues in Macau are drug use, human trafficking, and organized crime. So far, only one joint venture, MGM China, has had the fortitude to admit and address one of these issues head-on. Macau presently has the resources, fiscal and otherwise, to abate all of these problems. By doing so, the Macau Government will make best use of this favorable moment in local history and perhaps even preserve the continuance of Macau's model of autonomy beyond the expiration of the *Sino-Portuguese Joint Declaration* in 2049.⁹⁰

CONCLUSION

At present, Macau lacks a comprehensive CSR code. Most CSR practices appear motivated by brand competition and the desire to win a continuation of concessions. Much could be done in terms of defining the concept and designing a scheme for casino operators that features positive incentives for compliance and negative incentives for neglect. The gambling interests are already the backbone of the local economy, but their capture of the levers of government increases their societal duty. Drug use and sex trafficking require redress in ways the government has not been able to manage and methods not provided by present CSR articulations.

Macau thus faces a number of challenges that require long-term solutions and the participation of a broad array of stakeholders to truly implement them. Improving educational outcomes, increasing political awareness and participation, enhancing community health and wellness, and solving environmental concerns are all complex problems that require an accountable government pledged to lasting commitments.

Even lacking those crucial elements, Macau still possesses the necessary endowments to become a global leader in CSR. Its grant of economic autonomy and tremendous financial surplus provide the space and resources to benefit society and develop a unique model. The *Macau Basic Law* grants the local government freedom from central taxation. It also provides a mandate to spend so long as it "follow[s] the principle

90. Although the current range of autonomy leaves a lot to be desired, it arguably may be preferable to total assimilation.

of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product.”⁹¹ While the method of annual cash handouts now preferred by the government helps to ensure political stability and provides short-term economic pops, they do little to address the city’s darker systemic problems. Macau already has one of the highest per capita GDPs in Asia. The open acknowledgement of the city’s true problems and modest redistribution of resources to address them could go a long way to redefining the city’s legacy.

It is unclear at this time if the U.S.-held casino concessions will be nationalized in the short years ahead. One cannot say what impact the trade war has on that issue at this moment, as it could break either way, and may have always been inevitable, regardless. If the foreign concessions do expire, it will be interesting to watch what will become of local CSR practices.

History demonstrates a long tradition of philanthropy in Macau, long before such norms were articulated as CSR. Actively adapting that legacy for a new era could provide continuity and build upon the finest Macau characteristic common to both the Portuguese and Chinese eras. By doing so, the Macau Government will make best use of this favorable moment in local history and perhaps even find a way to preserve the continuance of Macau’s present level of autonomy beyond the expiration of the *Sino-Portuguese Joint Declaration* in 2049.

91. See Basic Law of the Macao Special Administrative Region of the People’s Republic of China, *supra* note 11, at arts. 104–105.