

CASINO GAMING LAW IN MACAU *

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§ 1. What is gaming?

Gaming or gambling is an old activity of human beings. Historically there were several types of games, according to social and economic conditions as well as cultural traditions of each people.

Basically, gaming is the activity of playing at games for money. There are several kinds of games, such as games of fortune (e.g., Bacará, Black Jack, Fantan, Poker, Roleta), pari-mutuels betting (e.g., Greyhound, Horse Racing), and lotteries (Chinese Lotteries – Pacapio; instant lotteries; sports lotteries), each of them having its own rules. For purposes of legal regulation, it is usually distinguished casino games of fortune, betting pari-mutuels and lotteries, and interactive games. This paper focus on casino games of fortune, i.e. games played at casinos.

§ 2. Gaming actors and the economic importance of the gaming industry

2.1. There are several actors of casino gaming, namely: corporations that exploit casinos and their shareholders and administrators (1), Junket promoters or agents (2), players or gamblers (3), and of course regulators and Government bodies (4). These are the main characters of gaming and their role on stage is a matter of gaming law. For example, in Macao the Role of the Gaming Inspection and Coordination Bureau is, namely, to collaborate in the definition and execution of the economic policies for the operations of casino gaming, to control casino gaming concessionaires (eligibility, financial capacity, compliance with legal and contractual obligations), and to issue licenses for junket promoters of casino gaming and to control their activities.

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2.2. The gaming industry is very important to the economy of Macao, according to information of the Gaming Inspection and Coordination Bureau.

To begin with, it is the main source of tax revenues. The evolution of gaming tax revenues in Macao is quite significant: while in 1999 gaming tax revenues were 4.7 billion MOP (47% of global tax revenues), in 2003 they were 10.5 billion MOP (74% of global tax revenues), and these figures have increased last year. In 2003, casinos represented 98% of gaming tax revenues, and Bacarat VIP 77% of casino tax revenue.

Then, gaming industries provide large contributions to public interest projects and offer employment opportunities. For example, the casino industry of Macao has generated more than 10,000 job opportunities and corresponds approximately to 5% of the working population.

Finally, gaming promotes tourism and related activities in the Region. This is illustrated by the fact that Macao receives annually around 10 million visitors, 56% coming from mainland China, 32% from Hong Kong and 5% from Taiwan, and gaming entertainment services are probably the main attraction for visiting tourists.

§ 3. The sensitive nature of gaming

3.1. The economic importance of gaming industries could justify a liberal approach to regulatory models, in the sense that casino gaming would be a free activity. However, despite the economic value of gaming industries, this activity has a sensitive nature. This sensitive nature of gaming is at the heart of restrictive public policy approaches and regulation models that are discussed within theories of gaming law.

The sensitive nature of gaming has to do with the fact that this industry is about making money ("making a lot of money and fast"). Gamblers want to make money trying their luck and placing their bets. Casino corporations want to make money by offering games. Promoters want to make money earning commissions from concessionaires for the clients they arrange. Governments want to make money allowing corporations to run casinos and paying taxes, premiums and making contributions. Not to mention those who want to make money assaulting casinos... (as e.g. the movie *Ocean's Eleven* shows), in the end, all gaming actors share the same common purpose: to make money. But, how does this provide a sensitive nature to gaming? Isn't making money the purpose of any commercial activity (Commercial Code, Art. 2(1))? What is so special about gaming?

3.2. The sensitive nature of gaming has to do not only with the purpose of making money but also with the risk that is related to it. In fact, the risk involved in gaming can

hardly be compared even with the risk of banking, insurance or stock exchange. It's true that the level of risk is also considerable into these financial activities, and therefore they also have a sensitive nature for purposes of regulation.

Nonetheless, gaming is something else because the calculation of probability of chance is not available for normal human beings and moreover gaming rules usually prohibit "counting cards" (recalling *Rain Man*, with Dustin Hoffman and Thomas Cruise). Therefore, the incertitude of gaming makes it hazardous and dangerous, not only for casinos but also and mainly for gamblers. The hazardous nature of gaming justifies public policy approaches that favour restrictive regulatory models.

3.3. Moreover, gaming activities involve large sums of money and a risk exists that the money on the table is not accounted. Therefore, State regulations can be jeopardized not to mention that gambling can be associated with illegal activities, namely by serving as an instrument of money laundering. (On this debate, concerning the Japanese situation, see the conference papers of William Eadington, *The Decision to Legalize Casinos: Important Considerations for Japanese Policy*, and Toru Mihara, *Casinos: Japanese Initiatives – Where it stands now? Background, Structures & Issues*, Osaka, 2005; for Korea law and policy, see William Thompson, Ichiro Tanioka, H.E. Yang, Kotaro Fujimoto, *Casino Gambling in Korea: Contemporary Policy Questions*, Choong Ki Lee, KI Joon Back, *History, Development, and Regulation of Korean Casino Gaming*, Osaka, 2005).

In short, the sensitive nature of gambling places several limits and restrictions to freedom of enterprise and its exercise is deemed as an exceptional privilege rather than as a right of prospective gaming operators.

3.4. Old approaches used to base the restriction or even eradication of gaming upon moral notions of sin and evil, as gaming was a privileged territory of greed daemons. These considerations are however of scarce value in today's complex societies.

They have been replaced by approaches based upon public health concerns, as gaming can be an addiction and become an illness. In fact, gamblers can get addicted to the adrenaline of gaming (see *The Gambler*, Dostoiewski) and become psychologically disturbed with their bad (or good) luck. However, these concerns do not justify the full prohibition of gaming, and they only provide arguments in favour of restrictive regulatory models.

3.5. Nowadays, casino gaming is perceived as an entertainment industry. The movie *Casino*, with Robert de Niro and Sharon Stone, illustrates well this evolution of the

industry. The idea that “in the end we get it all” has been replaced by a Disneyland concept in which casino gaming is only a part – however important - of the entertainment industry. In fact, gaming is considered an ordinary leisure industry and it is even argued that it should “be treated as an ordinary business” (Dixon, *From Prohibition to Regulation: Bookmaking, Anti-Gambling and the Law*, Oxford, 1991).

This appears to be the conclusion of a number of studies made by the Royal English Commission, and ended with the Gaming and Lotteries Act in 1984. But this is only the last step of a campaign of legalization and administrative regulation, whose priorities are especially the prevention of criminal exploitation and individual excess. These studies show the real situation of this kind of activity and of its market. In the English market there are large gaming and bookmaking companies that transformed their business by applying standard marketing techniques to betting. Accordingly, gaming became a “legitimate part of the leisure industry, rather than a source of social problems” (Dixon, *From Prohibition to Regulation*).

The regulatory model in force in Macao seems to have in consideration this evolution of the gaming industry, in which the gaming enterprise becomes a “tourism enterprise” (as stressed by Sasaki Kazuaki, *Application of Balanced Scorecard in Gaming Enterprise as Tourism Enterprise*, Conference Paper, 2005). Nonetheless, casino gaming is still perceived as a “privileged business”, in the sense that, as a Nevada Court ruled in 1931, the “State may regulate or suppress it without interfering with any of those inherent rights of citizenship which is the object of government to protect and secure” (*Grimes v. Board of Commissioners*, 1931 – see Cabot, *Casino Gaming: Casino Gaming: Policy, Economics and Regulation*, 1996, 320 ff.).

§ 4. Legal system and sources of casino gaming law in Macao

4.1. The legal system of Macao has been reset up in 1999 upon the reunification with PR China. Macao is since then a Special Administrative Region of the PR China, and the main features of the legal system of Macao are provided in the Basic Law, which establishes a high degree of autonomy for the Region.

Nonetheless, most of the Portuguese legal legacy has been accepted, and this goes in special for the “Great Codes” left by the Portuguese, such as the Civil Code, the Commercial Code, the Criminal Code, and the Administrative Code. These Codes are of greatest importance for understanding gaming law in Macao. In special, the Commercial Code provides the basic legal lexicon of gaming companies and commercial contracts as well as other relevant notions, such as, e.g., dominant shareholders, agreements outside the company, insurance contracts, banking independent guarantees (on the Commercial Code

of Macau, see Pereira, *Business Law: A Code Study*, 2004). Other Codes are also of importance due the complex and multidimensional nature of gaming law.

4.2. In Macao, the specific legal framework of casino gaming is established by several special laws. Law 16/2001 is the “basic law” of casino gaming providing the legal framework for the operation of casino games of fortune. This general framework has been implemented by administrative Regulation 26/2001 (amended by Administrative Regulation 4/2002), concerning the regulation of the public bidding of the gaming concession contracts. Moreover, Administrative Regulation 6/2002 defines the eligibility of the Junket promoter of casino games of fortunes. Finally, Law 5/2004 establishes the legal framework of casino gaming credit operations, and Law 8/96/M, of July 22, provides several criminal offences and administrative infractions to gaming activities.

§ 5. General features of the legal framework and access requirements to the activity of exploiting casino gaming

5.1. The regulation of casino games of fortunes provided by Law 16/2001 is aimed to achieve several objectives, such as, namely: that those involved in the supervision management and running of casino games are suitable persons to exercise their functions and assume those responsibilities, and that the operation of casinos is fair, honest and free of criminal influence (1); that those involved in the supervision, management and operations of casino games of fortune have appropriate qualifications to carry out their duties and functions (2); to protect the right of Macao SAR to collect gaming tax from the casino games of fortune (3); to enhance the development of tourism, social stability and economy of Macao (4).

A relevant aspect of this new legal framework is that it has introduced competition in the gaming marketplace. Only a few years ago gaming services were provided by one single concessionaire in a situation of monopoly. The new legal framework has created room for three gaming concessionaires, and two sub-concessionaires are also operating. This places new concerns concerning fair competition among casino gaming operators.

5.2. Law 16/2001 provides that the exploitation of certain games of fortune is an activity that can only be exercised in casinos by Macao SAR or by its concessionaires, up to 3, upon obtaining a gaming license from the Executive. (Interactive games cannot be exploited by the concessionaires of casinos and their exploitation is not related to the exploitation of casinos – on the implications of cross-borders gaming on the Internet, see Nelson Rose, *Gambling and the Law: Prohibiting Cross-Border Wagers*, Conference Paper,

2005, and his book *Internet Gaming Law*). 24 games of fortunes are approved as games of chance, but additional games and respective rules may be approved by the Executive. (Despite their soft legal value, these rules represent “hard law” of gaming as they account for much of the fairness of the game, as evidenced by the Conference Paper of Jason Zhicheng Gao, *Fairness of Macao Casino Games*, 2005). The Executive does also define the places of exploitation of casinos (location and premises). The term of concession is provided in the concession contract and cannot be longer than 20 years, although it can be renewed.

5.3. Three casino gaming concessions have been granted by the Executive of Macao SAR. Concessions contracts in force are with: Sociedade de Jogos de Macao (SJM), S.A. (1/4/2002 - 31/3/2020), with a sub-concession to MGM Grand Macau, S.A.; Galaxy Casino S.A. (27/6/2002 – 26/6/2022), with a sub-concession to Venetian Macao, S.A. (19/12/2002 – 26/6/2022); and Wynn Resorts (Macao), S.A. (27/6/2002 – 26/6/2022).

5.4. In order to achieve their concession contracts, these gaming companies had to follow a special procedure. There was a public tender for the award of a concession to exploit casinos, although it should be noted the special nature of this public tender, for access to which could be restricted by pre-qualification. This corresponds to the understanding that gaming is a “privileged business”, as the Nevada Court ruled in a leading case (*State v. Rosenthal*, 1977) and consequently applicants do not have a right to a license nor even a protected expectation that justifies procedural safeguards of due process, because no prospective licensee acquires a “protected property interest” until obtaining the license (*Jacobson v. Hannifin*, 1980; see Cabot, *Casino Gaming*).

Moreover, in order to qualify to the concessions, gaming concessionaires had to comply with several requirements. These grant a high level of control of the Executive over the concessionaires.

Qualifying requirements for eligible applicants are, namely:

1. These companies have to be public companies incorporated in Macao (see Commercial Code, Art. 174(1), providing several types of commercial companies, namely: unlimited partnerships, limited partnerships, private companies and public companies; for requirements of the incorporation act see Art 179; see Pereira, *Business Law*, 44 ff.);

2. There are suitability requirements (experience and financial capacity, e.g.) of the applicant and of substantial equity holders (5% shareholders) and key employees and directors;

3. The exclusive object of these companies is to exploit casino games of fortune;

4. Minimum capital must be MOP 200 millions, which must be fully accomplished in money by deposit in a credit institution legally operating in the Region;

5. Corporate capital must be fully represented by nominative shares (not shares to bearer);

6. The executive manager (delegate administrator) must be a Macao resident who owns at least 10% of the capital and he is subject to approval by the Executive;

7. Concessionaires must offer adequate financial guarantees of payment of premiums and taxes, and accept to provide special contributions.

5.5. Moreover, the operation of casino gaming by concessionaires is subject to several rules that provide great control powers to the Executive. These are, in special:

1. Transfers of company shares and voting or other rights are subject to authorization from the Executive (the same goes for the increase of corporate capital by public subscription, the emission of privileged shares and bonds and the admission to listing on the stock exchange of the concessionaire or a dominant shareholder thereof);

2. Transfer by any means or sub-concession, total or partial, of the exploitation of casino games of fortune requires previous authorization from the Executive (in the SJM concession contracts, penalties range from 1 billion MOP in case of unauthorized transfer of full exploitation to 300 million MOP in case of unauthorized sub-concession of partial exploitation);

3. Agreements outside the company among shareholders have to be searched for by the concessionaire and must be communicated to the Executive (Art. 185 of the Commercial Code provides several limits to these agreements; see Pereira, *Business Law*, 61(1));

4. Concessionaires have to comply with corporate rules on legal reserves (at least ¼ of 200 million MOP);

5. Concessionaires have to install in casinos and other gaming areas electronic surveillance devices approved by the Gaming Inspection and Coordination Bureau;

6. Concessionaires must pay premiums and taxes, and to offer adequate guarantees of payment;

7. Concessionaires are bound to provide contributions to the development of Macao as established in the concession contract;

8. Concessionaires must keep casinos running continuously and to advertise and promote casinos;

9. Concessionaires have to comply with public regulations and intellectual property rights, such as patents, marks, and copyright (for basic notions of IP law in Macao, see Pereira, *Business Law*, 27 ff.);

10. When the gaming concession expires, all assets and cash deposits revert to the Macao SAR.

§ 6. Gaming Premiums, Taxes, Contributions and Investments

6.1. Concessionaires have to pay a premium of concession which is composed of a fixed portion paid yearly plus a variable portion paid monthly. For example, the concession contract of SJM provides a yearly premium of 30 million MOP, and as variable portion at least yearly 30 million MOP for special gaming tables, 15 million MOP for free gaming tables and 1 thousand MOP for each slot machine.

6.2. Moreover, concessionaires have to pay a *special gaming tax* of 35% of gross revenue (Law 16/2001, art. 27), and assigned contributions of 1.6% of gross revenue to the Macao Foundation, and 1.4% to 2.4% of gross revenue to Infrastructures, Tourism and Social Security Fund.

6.3. Concerning investments in Macao SAR, the concession contracts in force provide around 4.7 billion MOP for *SJM*, 8.8 billion MOP for *Galaxy/Venetian*, and 4 billion MOP for *Wynn*. It means that only in investments Macao SAR will receive approximately MOP 17.5 billion from concessionaires.

In carrying out these investments, concessionaires are bound by several duties, namely to use materials and systems that comply with international quality standards.

§ 7. Principle of full disclosure

7.1. In order to fulfil their obligations to the Region, concessionaires are subject to a rule of full disclosure. This is evidenced by several obligations of information and cooperation, special gaming accounting rules and investigative procedures, as well as to submission to daily supervision of gaming revenues.

7.2. Each year the concessionaire must provide the Executive the structure of shareholders that own 5% or more of the capital, including the membership structure of companies that hold such shares in the capital of the concessionaire. Moreover, the concessionaire must inform the Executive about any person that is designated to the corporate bodies of the concessionaire (general assembly, board of administration, supervision council and any other corporate body).

Concerning agreements outside the company (or would-be agreements), they have to be searched for by the concessionaire who must communicate them to the Executive.

7.3. Then, casino enterprises are run by an executive manager approved by the Executive and the concessionaire cannot grant powers of attorney to any other persons concerning the exercise of the enterprise in the name of the concessionaire.

7.4. As for obligations of information, concessionaires must inform the Executive about any circumstances that may affect their operation (concerning namely their solvency), any remunerations paid to administrators, financiers and main employees, forms of profit distribution, as well as any management and service contracts; concessionaires also have to provide the Executive with a list of gaming promoters they want to work with in the following year.

This allows Public Authorities to control who is taking money from the casino and why. In order to carry out the obligation of information, concessionaires have to submit each year to the Gaming Bureau a document with all their banking accounts.

7.5. Concerning accounting, concessionaires have to keep proper accounting books according to the Accounting Official Plan of the Region.

In special, concessionaires are bound to provide to certain Public Authorities, namely the Gaming Inspection and Coordination Bureau, free access to any parts of their premises as well as free access to and examination of bookkeeping and accounting, including all relevant documents.

7.6. Moreover, concessionaires are subject to external auditing by internationally recognized auditing firms, and must allow extraordinary auditing.

Moreover, concessionaires have to publish in the Official Bulletin of Macao several elements, such as balance sheets, report of gains and losses, activity report summary, opinion of the supervision board and summary of opinion of external auditors, list of qualified shareholders having 5% or more of the capital in any period of the year, and names of holders of positions in corporate bodies.

§ 8. Financial provisions and guarantees

8.1. In order to be eligible for running casino gaming, companies need to comply with strict financial requirements.

To begin with, they must have a minimum corporate *capital* of 200 million MOP fully accomplished in money deposited in a credit institution legally operating in Macao. Moreover, concessionaires must comply with corporate rules on mandatory reserves. It

means that until they reach an amount equal to a ¼ of the capital (minimum 200 million MOP), no less than 10% of exercise profits have to be retained as legal reserves (Commercial Code, art. 432, 2; see Pereira, *Business Law*, 51-2, 65).

Then, concessionaires have to communicate to the Executive any loan they grant higher than 30 million MOP or equivalent contract, and they must achieve required financing for proper operation.

8.2. Another financial aspect concerns *insurance*. In fact, concessionaires have to take several insurance contracts that cover the risks of operation of their activities in the Region. These insurance contracts include, namely, labour accidents and illness, transports (cars, boats, planes), advertising, specific insurance for gaming, insurance of premises, equipment and other goods used in the exploitation of casinos.

8.3. Finally, there are *financial guarantees* to be provided by gaming concessionaires. First, concessionaires have to provide guarantee of accomplishment of their legal or contractual obligations to the Executive. In special, they are bound to keep in favour of the Executive an *independent banking guarantee on first demand* (see Commercial Code, Arts. 942 ff.; Pereira, *Business Law*, 112 ff.). For example, SJM has to keep in favour of the Executive an independent banking guarantee on first demand the amount of which is 700 million MOP until March 2007 and 300 million MOP thereafter. Moreover, concessionaires have to provide a specific banking guarantee of payment of the *special gaming tax*, which is also an independent banking guarantee on first demand. The Executive can also demand the *dominant shareholder* or other shareholders of the concessionaire to provide a guarantee concerning the obligations of the concessionaire, which can be provided for example by deposit in money, banking guarantee or insurance-bail.

These are instruments to reinforce the accomplishment of the obligations by the concessionaires, as the Executive can use these guarantees independently of court decision whenever the concessionaire does not fulfil any of its legal or contractual obligations (e.g. do not pay in time concession premiums or the special gaming tax).

§ 9. Casino Junket promoters

9.1. Administrative Regulation 6/2002 provides the regulation of access and exercise of the activity of (Junket) *promoters of casino games of fortunes*. Gaming promoters are important actors. They promote casino games of fortunes to potential gamblers, by providing facilities, including transportation, hosting, food and entertainment, in exchange for a commission or other remuneration to be paid by the casino concessionaire.

9.2. In order to be eligible for the exercise of this activity, promoters have to be commercial entrepreneurs or companies and comply with certain requirements. In case of commercial companies, their object can be only the promotion of games of fortune and their capital can be owned by human persons only. In case they are public companies, their shares have to be nominative and their capital must be fully accomplished at the moment of the act of incorporation of the company. Registration of gaming promotion companies and entrepreneurs is dependent upon previous obtaining of the gaming promoter license.

9.3. The Executive grants a license of gaming promoter through the Gaming Inspection and Coordination Bureau. Applicants must demonstrate suitability for this activity submitting special application forms. In order to appraise the suitability of applicants the Executive has access to all their documents and information as deemed necessary, and applicants have a special duty of cooperation.

The Executive can also demand a risk evaluation report. In case the suitability of the applicant is positive, he can be granted a license of promoter of games of fortune for one year renewable upon request.

9.4. In the exercise of their activity, licensed gaming promoters can choose collaborators and must communicate to the Gaming Bureau their identities for approval. Gaming promoters have to be registered by a gaming concessionaire, upon approval of the Executive. Unless otherwise stipulated, their activity is not exercised in conditions of exclusivity, as they can act with more than one concessionaire.

9.5. Gaming promoters are also subject to full disclosure and to strict control by public authorities. In fact, they have to communicate any change of corporate structure to the Gaming Bureau and agreements outside the company also have to be searched for by the concessionaire and communicated to the Executive. Moreover, transfers of company shares and voting or other rights are subject to authorization from the Executive. On the other hand, the promoter cannot exercise the activity through another person and cannot transfer by any means his contract with the concessionaire.

9.6. Promoters exercise their activity with the concessionaires according to the contract concluded by them and which seems an agency contract (Commercial Code, Art. 581; see Pereira, *Business Law*, 91 ff.). This is of special importance, as concessionaires are jointly

liable with promoters for the activity of promotion they conduct in their casinos. Moreover, concessionaires have an obligation to control gaming promoters and to communicate to the authorities any fact that may indicate the criminal offences by gaming promoters, such as money laundering. The same goes for gaming promoters, as they are jointly liable for the activity conducted by their employees and collaborators in the casino.

§ 10. Casino gaming credit operations

Law 5/2004 provides the regulation of *casino gaming credit operations*. In short, there is a casino credit operation where a gambler or a promoter receives casino chips without immediate payment in money. Only concessionaires, sub-concessionaires and authorized in writing managers and promoters are allowed to grant credit for casino gaming. Casino credit granters have to provide all solicited information to Public Authorities, and their workers are bound by confidentiality. As provided in the regulation of casino gaming credit operations, this activity is not considered gaming usury, i.e. lawful casino gaming credit operators are not deemed extortionate money-lenders, as provided in Law 8/96/M, of July 22, on gaming crimes (Art. 13). Nonetheless, perhaps some criterion on limitation of interest rates should apply, not to mention that gaming credit operations are subject to the general regulation of legal transactions and the specific rules of such operations provided by the Civil Code (Art. 1171°).

§ 11. Closing remarks

Casino gaming law in Macao follows a restrictive regulatory model, following the theory of gaming as a “privileged business”. Despite the economic importance of the gaming industry in Macao, public policy concerns feature a legal framework that takes into consideration the sensitive nature of gaming.

To begin with, gaming is a legal monopoly of the Executive of Macao SAR, and the exploitation of this activity is only available to three concessionaires that comply with strict requirements concerning suitability of actors and financial capacity. In return for gaming concessions, the concessionaires pay significant premiums, taxes and contributions, and are bound to a program of relevant investments in the Region.

In the operation of casinos, these concessionaires are subject to a high degree of control by the Executive within a relationship ruled by a principle of full disclosure and straight cooperation; and in order to assure accomplishment of their obligations to the Region, concessionaires provide significant financial guarantees.

Then, casino junket promoters need to be licensed by the Executive of the Region and therefore they have to demonstrate suitability. In conducting their activities they are

subject to a high level of control not only by the Executive but also by concessionaires with which they work, for concessionaires are jointly liable for the acts of their promoters.

Another relevant aspect of casino gaming law in Macao is that it does not deem as game usury casino gaming credit operations that are conducted by the concessionaires, sub-concessionaires and authorized managers and promoters.

Despite restrictive, this legal framework has introduced competition in the gaming marketplace. (See Ricardo Siu and William Eadington, *Between Law and Custom - Examining the Interaction between Legislative Change and the Evolution of Macao's Casino Industry*, Conference Paper, 2005). Casino gaming is now exploited by three concessionaires and two sub-concessionaires. Monopoly has been replaced by oligopoly, Junket promoters can work with more than one concessionaire, and moreover casino credit operations are allowed under certain circumstances.

In summary, the regulatory system is shaped by a public policy perspective that spotted Macao as a world leading provider of gaming services to the advantage of the development of the Region.

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