

# THE CASINO GAMING CONCESSION SYSTEM IN MACAO: PAST, PRESENT, AND FUTURE

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## INTRODUCTION

Macao has long adopted the concession system to select gaming operators, a system wherein the Macao government grants rights to privately owned entities to run commercial gaming operations. The concession system, under a different name, likely had its origins in 1850, just three years after the government legalized gambling.<sup>1</sup> The system has been in continual use since then, except for a short disruption from 1877 to 1880.<sup>2</sup> Its recent application in the casino industry was in 2001 when the last monopoly concession of casino operation ended, and the Macao government decided to introduce more operators into the market.<sup>3</sup> Under the concession system prescribed in the law *Legal Framework for the Operations of Casino Games of Fortune* (Law No. 16/2001) (the “Legal Framework”) and Administrative Regulation No. 26/2001 that implements the Legal Framework,<sup>4</sup> the government chose three concessionaires in 2002 to operate casinos in Macao up to twenty years,<sup>5</sup> with three more operators added in the name of sub-concession.<sup>6</sup> These six concessions and sub-concessions expire in 2022 with a possible extension (or multiple extensions) of up to five years.<sup>7</sup>

Why has the concession system been employed in the gaming industry for so long in Macao? How does the system work practically? Will the government continue to apply the concession system to choose new casino operators after the expiration of the current concessions? This article addresses these issues by first expounding the present features of the gaming concession system in Macao.

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<sup>1</sup> See generally Tingmao Zhang, *A Research on the Monopoly for the Gambling Fantan in Macao During the Late-Qing Dynasty*, Jinan Univ. Press, 9–13 (2011).

<sup>2</sup> See *id.* at 36–37.

<sup>3</sup> *Macao Gaming History*, Gaming Inspection and Coordination Bureau, Macao SAR, <http://www.dicj.gov.mo/web/en/history> (last visited Apr. 2, 2020).

<sup>4</sup> 娛樂場幸運博彩經營法律制度，第16/2001號法律，第十三條(一) [*Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001, art. 13(1)*], Macao SAR (Sept. 24, 2001), [https://bo.io.gov.mo/bo/i/2001/39/lei16\\_cn.asp#16](https://bo.io.gov.mo/bo/i/2001/39/lei16_cn.asp#16) (stating that Law No 16/2001 defines the legal regime for the operation of games of chance in a casino); see also 規範娛樂場幸運博彩經營批給的公開競投、批給合同，第26/2001號行政法規 [*Regulating Open Auctions and Contracts for Casino Lucky Gaming Operations, Administration Regulation No. 26/2001*], Macao SAR (Oct. 29, 2001), [https://bo.io.gov.mo/bo/i/2001/44/re\\_gadm26\\_cn.asp#26](https://bo.io.gov.mo/bo/i/2001/44/re_gadm26_cn.asp#26) (stating that Administration No. 26/2001 regulates the public tender for the award of casino concessions, the concession contract, and the requirement for the suitability and financial standing of the concessionaires).

<sup>5</sup> *Macao Gaming History*, Gaming Inspection and Coordination Bureau, Macao SAR, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *License Contract of Macao Special Administrative Region for the Operation of Games of Fortune or Chance or Other Casino Games*, Gaming Inspection and Coordination Bureau, Macao SAR, <http://www.dicj.gov.mo/web/cn/contract/index.html> (last visited Feb. 1, 2020) (see the concession contracts between the Special Administrative Region of Macao and Wynn Resorts, S.A. and Galaxy Casinos, S.A.); *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Special Administrative Region of Macao, *supra* note 4, at art. 13(3).

Then the article explores the historical development of the system. Finally, the article addresses the challenges of the system when the government chooses new operators after the expiration of the current concessions.

I. THE FEATURES OF THE PRESENT CASINO CONCESSION SYSTEM IN MACAO

Article 7 of the Legal Framework provides the following:

1. The exploitation of games of chance is reserved for the Macao Special Administrative Region and can only be exercised by public limited companies incorporated in the Region, to which a concession has been granted under an administrative contract, under the terms of this law.
2. The maximum number of concessions for the operation of games of chance in casino is three.<sup>8</sup>

The concept that the Macao government reserves the operation of casinos is similar to that of Nevada, USA. The Nevada Gaming Control Act and its corresponding court decisions treat a gaming license as a revocable privilege, and the holder of the license acquires no vested rights in the license.<sup>9</sup> Macao gaming law, however, grants more power to the government than Nevada's gaming law. According to Article 7 of the Legal Framework, the Macao government is supposed to own and operate the entire casino industry.<sup>10</sup> The government, as the de facto proprietor, may entrust a corporation, called a "concessionaire," to carry out the gaming business through an administrative contract between the government and the concessionaire.<sup>11</sup> In some instances, a concessionaire is treated as an agency of the Macao government. For example, if a casino employee steals chips from the casino, he or she would be treated equally with a government official and

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<sup>8</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Special Administrative Region of Macao, *supra* note 4, at art. 7.

<sup>9</sup> Nev. Rev. Stat. § 463.0129(2) (2019) ("No applicant for a license or other affirmative Commission or Board approval has any right to a license, or the granting of the approval sought. Any license issued or other Commission or Board approval granted pursuant to the provisions of this chapter or chapter 464 of NRS is a revocable privilege, and no holder acquires any vested right therein or thereunder.").

<sup>10</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 7(1).

<sup>11</sup> *See id.*

charged with embezzlement,<sup>12</sup> rather than theft to an ordinary person.<sup>13</sup> While in Nevada, as well as other American gaming states, the government assumes the role of a gaming regulator or controller rather than an ownership holder or an operator.<sup>14</sup>

Compared to that of other jurisdictions, Macao gaming concession system features (1) the maximum number of casino operators rather than the number of casinos is restricted; (2) the concessionaires must be chosen by a public tender (or tenders); and (3) the maximum concession period is limited. These three distinctive features are discussed below.

*A. The Law Restricts the Maximum Number of Casino Operators, But Not the Number of Casinos*

The Legal Framework provides: “The maximum number of concessions for the operation of games of chance is three.”<sup>15</sup> According to this provision, the Macao SAR government granted the casino concession to three companies, namely Sociedade de Jogos de Macao (“SJM”), Galaxy Casino, S.A. (“Galaxy”), and Wynn Resorts (Macao) S.A. (“Wynn”), from twenty-one bidders on February 8, 2002.<sup>16</sup> In December of the same year, the Macao government allowed Galaxy to have a sub-concession relationship with the Venetians Macao S.A. (“Venetian”). Following the first sub-concession, the SJM and the Wynn had also subsequently signed a sub-concession contract with the MGM Grand Paradise, S.A. (“MGM”) and the Melco PBL Jogos (Macao), S.A. (“Melco PBL”) on April 20, 2005 and September 8, 2006, respectively.<sup>17</sup> Altogether, six total concessionaires and sub-concessionaires obtained the rights to carry out casino business in Macao.<sup>18</sup> Although the law limits the maximum number of casino

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<sup>12</sup> Macao Criminal Code No. 46/1995, art. 340 (Nov. 14, 1995), <https://bo.io.gov.mo/bo/i/95/46/codpencn/codpen0001.asp#a300>.

<sup>13</sup> See *Police Nab Two Mainlanders, One Dealer for Chip Embezzlement*, Mac. Daily Times (Aug. 25, 2015), <https://macaudailytimes.com.mo/police-nab-two-mainlanders-one-dealer-for-chip-embezzlement.html>.

<sup>14</sup> Nev. Gaming Comm’n Reg. 5.040 (2019); see also Lionel Sawyer & Collins, Nevada Gaming Law 29 (3d ed. 2000).

<sup>15</sup> *Legal Framework for the Operations of Casino Games of Fortune*, Law No. 16/2001, Special Administrative Region of Macao, *supra* note 4, at art. 7.

<sup>16</sup> *Macao Gaming History*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 3.

<sup>17</sup> *Id.*

<sup>18</sup> See *infra* p.6 and note 28. Concessionaires loosely refer all of six except when necessary to specify.

operators, nothing restricts the number of casinos that each operator can operate.<sup>19</sup> Each operator owns more than one casino in Macao.<sup>20</sup>

### B. *A Public Tender Determines the Selection of the Concessionaires*

The Legal Framework provides that a public tender must precede the award of casino concessions, but prior qualification may limit the scope of the tender.<sup>21</sup> This provision is consistent with the Code of Administrative Procedure of Macao, under which the public tender can be implemented with or without qualification restrictions.<sup>22</sup> If the government carries out a tender with qualification restrictions, a commercial entity cannot submit its bid unless it receives an invitation from the government.<sup>23</sup>

The Macao government did not put any restrictions on the qualifications of the potential bidders in the 2002 public tender.<sup>24</sup> Subsequently, twenty-one companies including those holding capital in Macao, Hong Kong, U.S., Malaysia, Australia, United Kingdom, and Taiwan submitted bids but the government eventually granted concessions to only three bidders.<sup>25</sup>

### C. *The Maximum Concession Period is Restricted*

The Legal Framework stipulates that “The [concession] period...shall be determined in the grant contract and shall not exceed 20 years.”<sup>26</sup> In agreement with the provision of the law, the concession period of all the three original

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<sup>19</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 7(2) stating “The maximum number of concessions for the exploitation of casino games of chance is three.”; art. 5(1) stating “The operation of casino games of chance is confined to government authorized sites and venues.”; art. 5(2) stating “The characteristics, locations and operating rules of the premises referred to in the preceding paragraph shall be determined by administrative regulations or in the award contract.” All of the articles do not mention how many casinos that each concessionaire can be allowed to operate. The concession contracts list only the name and location of each casino that the government has approved, without limiting the number of casinos. The contract must be amended if a new casino needs to be added.

<sup>20</sup> *See infra* p.13–14 and notes 81–82.

<sup>21</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 8.

<sup>22</sup> 行政程序法典, 第169 (1) 条 [*Code of Administrative Procedure of Macao* art. 169)], Macao (Oct. 11, 1999), <https://bo.io.gov.mo/bo/i/99/41/codpacn/codpal51.asp>.

<sup>23</sup> *Id.*

<sup>24</sup> *See* 第217/2001號行政長官批示 [*Order of the Chief Executive, Law No. 217/2001*], Macao SAR (Nov. 2, 2001), [https://bo.io.gov.mo/bo/i/2001/44/extra2/despce\\_cn.asp](https://bo.io.gov.mo/bo/i/2001/44/extra2/despce_cn.asp).

<sup>25</sup> *Macao Gaming History*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 3.

<sup>26</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 13(1).

cessionaires does not exceed twenty years.<sup>27</sup> SJM has been granted eighteen years of concession, from April 1, 2002, to March 31, 2020, while Wynn and Galaxy have twenty years, from June 27, 2002, to June 26, 2022.<sup>28</sup> The concession period of the three sub-concessionaires—Venetians, Melco, and MGM—is the same as those of their concessionaires.<sup>29</sup>

The Legal Framework further provides that, if the granted period is less than twenty years, the government may approve to extend it to twenty years.<sup>30</sup> Under this provision, in March 2019 SJM and its sub-concessionaire MGM obtained an extension of the concession to June 26, 2022.<sup>31</sup> Following the extension, the concessions of SJM and MGM are now in line with the expiry date of the other concessionaires, so that the government can avoid organizing multiple public tenders within just a few years.

After the expiration of the twenty-year concession period, the Chief Executive of the Macao SAR may still extend the concession once or several times, but the total accumulated extension must not exceed five years.<sup>32</sup> Therefore, the maximum period for the casino concessions in Macao is twenty-five years.<sup>33</sup> After that, according to the current gaming law, the government will have to revoke the concessions and re-organize a new public tender (or tenders) for recruiting

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<sup>27</sup> See *Concession Contracts*, Gaming Inspection and Coordination Bureau, Macao SAR, <http://www.dicj.gov.mo/web/cn/contract/index.html> (last visited Apr. 1, 2020); *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 13(1).

<sup>28</sup> *SJM Concession Contracts*, Gaming Inspection and Coordination Bureau, Macao SAR, <http://www.dicj.gov.mo/web/en/contract/SJM/2002BORAEM014S2Sup.html> (last visited Apr. 1, 2020); *Wynn Concession Contracts*, Gaming Inspection and Coordination Bureau, Macao SAR, <http://www.dicj.gov.mo/web/en/contract/Wynn/2002BORAEM27S2Sup.html> (last visited Apr. 1, 2020); *Galaxy Concession Contracts*, Gaming Inspection and Coordination Bureau, Macao SAR, [http://www.dicj.gov.mo/web/en/contract/Galaxy/2002\\_BORAEM27S2Sup.html](http://www.dicj.gov.mo/web/en/contract/Galaxy/2002_BORAEM27S2Sup.html) (last visited Apr. 1, 2020). The reason that SJM was granted 18 years of concession is because the firm is the successor of STDM, the monopolist before competition was introduced, and it could start its business immediately after receiving the award of concession while the other concessionaires could not before their casinos were built up.

<sup>29</sup> See sources *supra* note 28. See also Bruno Beato Ascensão, *Macao Gaming Concessions: A Brief Insight into their Term and Renewal*, Asian Gaming Lawyer, 9, 9–10 (May 2017), [https://www.imgl.org/sites/default/files/media/publications/macaugamingconcessions\\_beatoascencao\\_agl\\_spring2017.pdf](https://www.imgl.org/sites/default/files/media/publications/macaugamingconcessions_beatoascencao_agl_spring2017.pdf).

<sup>30</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 13.

<sup>31</sup> Agreement between Sociedade de Jogos De Macau, S.A. and MGM Grand Paradise, S.A., Ex. 10.2, SEC (Mar. 15, 2019), <https://www.sec.gov/Archives/edgar/data/789570/000119312519078383/d718626dex102.htm>.

<sup>32</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 13(3).

<sup>33</sup> See *id.*

new concessionaires whereas the current concessionaires can participate in the public tender if they are willing.<sup>34</sup>

## II. THE ORIGIN AND HISTORICAL DEVELOPMENT OF GAMING CONCESSION SYSTEM IN MACAO

Macao was a little village of fishermen of just around 2.78 square kilometers when the Portuguese came and took residence in 1557.<sup>35</sup> It then became a foothold for the Western people to enter China, as well as a trade center between China and the Western countries between the 17th century and the middle of the 19th century.<sup>36</sup> After the Opium War (also known as the First Anglo-Chinese War) from 1840 to 1842, Hong Kong replaced Macao's status as the major international trading port and Macao began a long decline.<sup>37</sup> Under this circumstance, the Portuguese government in Macao decided to legalize the gaming industry in 1847 hoping to increase tax revenue to finance its governance.<sup>38</sup>

The government originated the concession system in the gambling industry around 1850, learning from the experience of wholesale businesses such as pork and beef.<sup>39</sup> With this system, the government could collect fixed periodic fees from the contractor.<sup>40</sup> It did not have to play cat and mouse with the contactors and could also avoid being affected by market fluctuations.<sup>41</sup> In the gaming industry, different operators obtained concessions solely to operate a particular type of gambling game such as Fantan or Pacapio (a Chinese lottery) in a specified area of Macao (such as the Macao Peninsula, the Taipa island, and the Coloane island) through a public tender.<sup>42</sup> The modern gaming concession system inherited this feature. Macao still grants concessions for the operation of casinos,

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<sup>34</sup> See also 娛樂場幸運博彩經營法律制度, 第16/2001號法律, [*Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*], Macao SAR (Dec. 27, 2018), <https://bo.io.gov.mo/bo/i/2018/52/lei16.asp> (Article 45(1) stating "The concession for the exploitation of casino games of chance shall be revoked due to the expiry of the period for which it was allocated."; article 8(1): "Awards for the exploitation of casino games of chance are preceded by a public tender.").

<sup>35</sup> See Huang Hanqiang, *Economic Yearbook of Macao* 3, 147 (Aomen Jingji Nianjian ed., 1984–1986). Portuguese later occupied the Taipa Island and the Coloane Island. Macao now has around 30 square kilometers with the two islands' occupation and continuous land reclaim.

<sup>36</sup> See Austin Coates, *A Macao Narrative* 67–75 (2009).

<sup>37</sup> *Macao Gaming History*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 3.

<sup>38</sup> *Id.*

<sup>39</sup> See generally Zhang, *supra* note 1, at 2–4.

<sup>40</sup> Zhao Lifeng et al., *The Establishment, Rise and Development of Macau Gaming Industry* 38 (2010).

<sup>41</sup> *Id.*

<sup>42</sup> See *id.* at 50–51, 98.

lotteries, horse racing, and sports betting to different corporations.<sup>43</sup> According to the Legal Framework, a casino operator cannot operate other types of gaming activities such as lotteries and sports betting unless the government extends special permission in writing into the concession contract.<sup>44</sup>

The gaming concession system in Macao was interrupted from 1877 to 1880 after more than twenty years of implementation.<sup>45</sup> It was interrupted because the contract price of the concession significantly decreased.<sup>46</sup> For example, in July 1877, the contract price was reduced one third from that of the previous year, down to the lowest point since 1864.<sup>47</sup> The government suspected that the bidders had conspired to control the price and made the government suffer financial losses.<sup>48</sup> The government thus decided to replace it with a special licensing system under which the government issued several licenses to different persons who were willing, and were considered eligible, to run a gambling house.<sup>49</sup> The new system could be called a controlled licensing system as the government specified the number and the location of the gambling houses operated in Macao.<sup>50</sup> The concession system, however, was resumed in August 1880 because the government found that the license fee fell again in the third year after the adoption of the new licensing system, although it fared well in the first two years.<sup>51</sup> Several people at that time expressed their willingness to pay a higher price to the government to obtain the concession of operating all the gambling houses.<sup>52</sup> The government eventually decided to bring the concession system back and has retained it ever since.

Macao gaming industry underwent a revolutionary uplift in 1937 when Macao's Portuguese government passed a regulation to integrate the operations of different games.<sup>53</sup> "Tai Heng Company," headed by Fu Tak Iong and Kou Ho Neng, obtained the concession.<sup>54</sup> Tai Heng introduced Baccarat (currently the most popular game in Macao) and many new Western game types.<sup>55</sup>

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<sup>43</sup> See generally *Concession Contracts*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 27.

<sup>44</sup> *Legal Framework for the Operations of Casino Games of Fortune*, Law No. 16/2001, Macao SAR, *supra* note 4, at art. 3.

<sup>45</sup> Zhang, *supra* note 1, at 36.

<sup>46</sup> *Id.* at 37.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 36.

<sup>49</sup> *Id.* at 37–38.

<sup>50</sup> *Id.* at 39–40.

<sup>51</sup> Zhang, *supra* note 1, at 46.

<sup>52</sup> *Id.* at 47.

<sup>53</sup> *Macao Gaming History*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 3.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

Tai Heng monopolized Macao gaming industry for more than two decades.<sup>56</sup> In July 1961, Macao's Portuguese government enacted Legislative Diploma No. 1496 before the concession expired on December 31, 1961.<sup>57</sup> The legislation focused on the implementation of an open and transparent gambling bidding system while not changing the concession system itself.<sup>58</sup> Although it underwent several revisions, Legislative Diploma No. 1496 provided the fundamental legal system of Macao gaming until the Macao SAR Government promulgated the Legal Framework in 2001.<sup>59</sup>

On May 29, 1982, Macao's Portuguese government issued Law No. 6/82/M that revised a few provisions of Legislative Diploma No. 1496.<sup>60</sup> The most prominent point of the Law is the groundbreaking revision for the gambling concession system: "Concessions for the exploitation of games of chance may be made on an exclusive or special license basis."<sup>61</sup> This special license system is intended to increase the number of operators.<sup>62</sup> Article 5(2) of the Law states: "The maximum number of concessions for the operation of games of chance in casino is three."<sup>63</sup> The government intended to issue four individual licenses, two for Macao Peninsular, one for Taipa island, and one for Coloane island.<sup>64</sup> The special licenses also were to be granted on a tender basis.<sup>65</sup> Macao's Portuguese government never implemented the special license system.<sup>66</sup> Nonetheless, Law No. 6/82/M laid the groundwork for the Macao SAR government to bring competition into the gambling industry after Macao's return to the motherland.

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Pinliang Liu, *The History of Macao Gaming Industry* 47 (2002).

<sup>59</sup> See 管制幸運博彩之設立, 第1496號立法性法規 [*Regulation of the Establishment of Lucky Betting, Legislative Diploma No. 1496*], Macao (July 4, 1961), [https://bo.io.gov.mo/bo/i/61/26/dil1496\\_cn.asp](https://bo.io.gov.mo/bo/i/61/26/dil1496_cn.asp).

<sup>60</sup> 幸運博彩法律制度, 第6/82/M號法律, 第29(1)條 [*Legal System for Lucky Betting, Law No. 6/82/M, Art. 29(1)*], Macao (May 29, 1982), [https://bo.io.gov.mo/bo/i/82/22/lei06\\_cn.asp](https://bo.io.gov.mo/bo/i/82/22/lei06_cn.asp) (stating the repealing rule includes "[a]ll general and special legislation that contradicts the provisions of this law, specifically Articles 1 to 14, 36 and 53 of Legislative Diploma No. 1496 of 4 July 1961.>").

<sup>61</sup> *Id.* at art. 5(1).

<sup>62</sup> Liu, *supra* note 58, at 298.

<sup>63</sup> *Legal System for Lucky Betting, Law No. 6/82/M*, Macao, *supra* note 60, at art. 5(2). The number was changed into 3 by Law No. 10/86/M. See generally 修改第6/82/M號法律 [*Amend Law No. 6/82/M, Law No. 10/86/M*], Macao (Sept. 22, 1986), [https://bo.io.gov.mo/bo/i/86/38/lei10\\_cn.asp](https://bo.io.gov.mo/bo/i/86/38/lei10_cn.asp).

<sup>64</sup> Liu, *supra* note 58, at 299.

<sup>65</sup> *Legal System for Lucky Betting, Law No. 6/82/M*, Macao, *supra* note 60, at art. 18(3) and 19(1).

<sup>66</sup> See *Macao Gaming History*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 3.

The Macao SAR Government enacted the Legal Framework, which limits the number of casino concessions to three.<sup>67</sup> This time the government did put the law into practice and awarded three concessions as mentioned above. The Legal Framework does not use the concept of “special license”—as in Law 6/82/M—but continues to use the word “concession” and retains the entire concession system as well.<sup>68</sup>

### III. THE EVOLUTION OF THE NUMBER OF CASINO CONCESSIONS

The Legal Framework sets the maximum number of casino concessions at three but does not limit how many casinos each concessionaire can operate.<sup>69</sup> This practice of limiting the number of concessionaires but not the number of casinos is rare in other countries.<sup>70</sup> Nonetheless, it is a significant feature of the Macao gaming concession system.

Such restriction, however, was not always the case in the history of Macao’s gaming industry. At the beginning of gaming legalization, the number of gambling houses was restricted. For example, the Fantan Concession Contract signed on July 13, 1858 by Macao’s Portuguese government stipulated that “according to the price of the concession, the maximum number of gambling houses shall be twenty and each house can only be allowed one table.”<sup>71</sup> The Macao concession contracts in 1873–1874 and 1876–1877 stipulated that “the maximum gambling houses shall be twenty six.”<sup>72</sup> From 1877 to 1880 Macao’s Portuguese government limited the number of gambling houses: sixteen in 1877 and twelve in 1878.<sup>73</sup> After the restoration of the concession system in 1880, until 1901, the gambling houses were “limited to 16” and the government could not permit any more houses beyond what the contract specified.<sup>74</sup>

Macao’s Portuguese government eventually eliminated the restriction on the number of gambling houses in 1901.<sup>75</sup> The concession contract of the year stipulated that the concessionaire can open as many gambling houses as they intended so long as the concessionaire obtained location approval from the government.<sup>76</sup> From then on, Macao’s Portuguese government never imposed restrictions on the number of gambling houses or casinos, either by the laws and

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<sup>67</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 7.

<sup>68</sup> *Id.* at ch. 2.

<sup>69</sup> *See supra* note 19 and accompanying text.

<sup>70</sup> *See* Jennifer S. Graham, *Limited Versus Unlimited Casino Licenses: The Benefits and Consequences of Restricting the Number of Casinos in a Jurisdiction*, 6 *Gaming L. Rev.* 319, 319 (2002).

<sup>71</sup> Zhang, *supra* note 1, at 17.

<sup>72</sup> *Id.* at 30.

<sup>73</sup> *Id.* at 41.

<sup>74</sup> *Id.* at 50–51.

<sup>75</sup> *Id.* at 72–73.

<sup>76</sup> *Id.*

regulations or by policies.<sup>77</sup> Before Macao was handed over to China there were a total of eleven casinos operated by the then-concessionaire, including eight in the Macao Peninsular and three on the Taipa island.<sup>78</sup>

The Legal Framework, as the new fundamental law for the gaming industry, was enacted after Macao's return to its motherland.<sup>79</sup> In terms of the number of casinos, the law has inherited the tradition and does not put restrictions on the number of casinos by each concessionaire or in total.<sup>80</sup> As of the end of 2018, there were a total of forty-one casinos in Macao, with twenty-five casinos located in the Macao Peninsula and sixteen casinos on the Taipa island.<sup>81</sup> Among the total number of casinos, the SJM has twenty-two casinos; Galaxy has six casinos; the Venetian has five casinos; Melco has four casinos; Wynn has two casinos, and MGM has two casinos.<sup>82</sup>

A few third-party investors, in the name, or under the umbrella, of a concessionaire operate nearly twenty casinos dubbed "satellite casinos," which are generally smaller in size and operate in the grey area of regulations.<sup>83</sup> The existence of "satellite casinos" has undermined the gaming concession system that is supposed to prevent other investors or operators from entering the gaming market in Macao. Furthermore, "satellite casinos" are a regulatory hazard to the regulators. Under current law, shareholders who possess five percent or more shares of a concessionaire, directors, and senior employees must go through suitability checks before they can be involved in the Macao gaming industry.<sup>84</sup> Operators of "satellite casinos" do not need to go through these suitability check procedures.<sup>85</sup>

#### IV. THE EVOLUTION OF CONCESSION PERIOD

After the legalization of Macao's gambling, until the late 1880s, the Macao gambling concession period remained short, generally two years for Pacapio and

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<sup>77</sup> *Id.* at 216–17; *Macao Gaming History*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 3.

<sup>78</sup> Liu, *supra* note 58, at 96.

<sup>79</sup> The Legal Framework was enacted in 2001 while the return was in 1999. *See Macao Gaming History*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 3.

<sup>80</sup> *See Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 7(2).

<sup>81</sup> *Macao Gaming History*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 3.

<sup>82</sup> *Id.*

<sup>83</sup> Phillip Conneller, *Macau Satellite Casinos Could be Under Threat in Relicensing Process*, Casino (Mar. 26, 2019), <https://www.casino.org/news/macau-satellite-casinos-could-be-under-threat-in-relicensing-process/>.

<sup>84</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 14(3)–(6).

<sup>85</sup> *See id.* at art. 14(2). The article only covers the bidding company and the concessionaire without mentioning other companies. *See also* Conneller, *supra* note 83.

one year for Fantan.<sup>86</sup> This is mainly because the gambling houses were small and simple at that time, mostly with one room and one table, and did not need substantial capital investment.<sup>87</sup> The gambling concession period began lengthening after 1885.<sup>88</sup> For example, a Chinese businessman received the award of Pacapio concession for three consecutive periods, for a total of sixteen years from 1887 to 1903.<sup>89</sup> In 1889, Lou Kau, a well-known businessman, signed a six-year contract with the government, and later extended it for another six years to 1901.<sup>90</sup>

Article 8 of Legislative Diploma No. 1496 promulgated in 1961, which opened the modern era of Macao gaming industry, states: “The concession period for operating gambling is eight years from January 1, 1962 and shall not be extended.”<sup>91</sup> But three years later, in 1964, Macao’s Portuguese government made significant changes to the concession period through Legislative Diploma No. 1649.<sup>92</sup> It stipulates that “The concession period for operating gambling shall be 25 years and shall not be extended, starting from January 1, 1962 and terminating on December 31 of the expiry year of the relevant contract period.”<sup>93</sup> According to this legislation, the concession company “Sociedade de Turismo e Diversões de Macao (STDM)” was able to postpone the gambling concession contract to December 31, 1986.<sup>94</sup>

Law No. 6/82/M, promulgated in 1982, provided that the concession period shall not be less than eight years and no more than twenty years.<sup>95</sup> If the original period is less than twenty years at the time of grant, one or more renewals may be approved if the full period does not exceed twenty years.<sup>96</sup> According to this provision, the then-concessionaire obtained a five-year extension ending on December 31, 1991.<sup>97</sup> Law No. 10/86/M in 1986 revised and provided that upon expiration the contract could be renewed once or multiple times, with each period of up to five years.<sup>98</sup> The concession contract of STDM was eventually extended

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<sup>86</sup> See generally Zhang, *supra* note 1, at 18–19; see also Zhao Lifeng et al. *supra* note 40, at 132.

<sup>87</sup> Zhang, *supra* note 1, at 17.

<sup>88</sup> Zhao Lifeng et al., *supra* note 40, at 191.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 194.

<sup>91</sup> See *Regulation of the Establishment of Lucky Betting, Legislative Diploma No. 1496*, Macao, *supra* note 59, at art. 8.

<sup>92</sup> *Diploma Legislativo no. 1649, Boletim Oficial de Macau [Legislative Diploma no. 1.649, Macau Official Bulletin art. 8]*, Macao (Dec. 5, 1964), <https://bo.io.gov.mo/bo/i/64/49/dil1649.asp>.

<sup>93</sup> *Id.*

<sup>94</sup> Liu, *supra* note 58, at 295.

<sup>95</sup> *Legal System for Lucky Betting, Law No. 6/82/M*, Macao, *supra* note 60, at art. 7(1).

<sup>96</sup> *Id.* at art. 7(2).

<sup>97</sup> Liu, *supra* note 58, at 303.

<sup>98</sup> *Amendment to Law No. 6/82/M, Law No. 10/86/M*, Macao, *supra* note 63, at art. 27(1).

to December 31, 2001.<sup>99</sup> From 1962 to 2002, the STDM legally monopolized Macao's gaming market for forty years.

The provisions of the Legal Framework regarding the concession period are a mixture of the above-mentioned laws and regulations. Article 13 of the Legal Framework stipulates that the concession period shall not exceed twenty years.<sup>100</sup> If a concession is awarded for a period shorter than twenty years, the government may, at any time and up to six months before the end of the concession, authorize one or more extensions of the concession, provided that the total period does not exceed the maximum period.<sup>101</sup> The provision is similar to the provisions of Law 6/82/M. The third paragraph of Article 13 of the Legal Framework, however, provides that upon reaching the maximum period, the duration of the concession may exceptionally be extended one or more times, but may not exceed a total of five years.<sup>102</sup> This provision is like Legislative Diploma No. 1649, which provides that the gambling period shall be up to 25 years.<sup>103</sup>

#### V. THE CONCESSION SYSTEM NEEDS TO BE REFORMED: BUT HOW?

As the current concessions will expire by June 2022, according to the current law, the government shall organize a public tender (or tenders) to recruit new concessionaires for the gaming industry in Macao.<sup>104</sup>

##### A. *How Many Concessionaires Should be Allowed?*

As mentioned previously, the current law allows only three concessionaires at most in the market, but six concessionaires and sub-concessionaries, as well as more than twenty third-party investors, are operating casinos in Macao. Therefore, the government should use the public tender to solve this issue, probably by amending the laws and regulations.

Keeping three concessions while allowing more operators in the market through the so-called sub-concessions is not good policy. The practice of casino sub-concessions has widely been criticized in Macao because it has violated the provision that the concessions are not allowed to be more than three. The government argued that sub-concession was generally allowed, subject to government approval, according to the legal theory and other concession practices such as in public utility in Macao. The argument is incorrect, as the gaming concession is different from other concessions such as building a public utility project. When

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<sup>99</sup> Liu, *supra* note 58, at 311.

<sup>100</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 13(1).

<sup>101</sup> *Id.* at art. 13(2).

<sup>102</sup> *Id.* at art. 13(3).

<sup>103</sup> *Regulation of the Establishment of Lucky Betting, Legislative Diploma No. 1496*, Macao, *supra* note 59, at art. 8.

<sup>104</sup> *Legal Framework for the Operations of Casino Games of Fortune, Law No. 16/2001*, Macao SAR, *supra* note 4, at art. 8(1).

a public utility project allows the concessionaire to sub-contract parts of the project to other companies, it is acceptable because the sub-contract is confined to one individual project and will not produce another different project from the original one. In contrast, with a gaming concession, the sub-concession extends the sub-contractor a privilege to operate casinos different from the concessionaire's operations. Therefore, the sub-concession undermines the nature of control enshrined in a gaming concession. It also undermines the government's authority because the power of choosing sub-concessionaires should be kept to the government rather than the concessionaires.

How many concessionaires should be allowed in the gaming market after 2022? There may be different answers from different perspectives or for different purposes. From the perspective of market stability, at least six would be necessary so that all the current concessionaires and sub-concessionaires can be retained, ensuring no dramatic changes in the market. This resolution, however, is not perfect as it has at least two problems. First, even with the six concessions, some current concessionaires or sub-concessionaires would possibly be replaced by newcomers. If this happens, some degree of market fluctuation is possible. If no current concessionaires or sub-concessionaires are replaced, why should the government bother to organize a public tender? Second, those so-called "satellite casinos" would barely be addressed and be continually kept in the grey area of regulations.

Replacing the concession system with a licensing system similar to Nevada's is a consideration. In other words, no restriction would be imposed on the maximum number of operators in the market. But a licensing system may have little chance of adoption in Macao due to historical and political reasons. Although legalized gaming has been in operation in Macao for centuries, some still believe that gambling is a vice business and therefore should not be freely expanded. Under a licensing system, however, the size or the scale of gambling would generally not be under control.

#### *B. Re-Bidding or Renewal by Negotiation?*

According to current law, the Macao government must organize a new public tender (or tenders) to select the new concessionaires when the current concession reaches the maximum limit of the concession period. No alternative approaches exist so far for the current concessionaires to renew their concessions. The existing and potential operators must compete for a new concession. If an existing concessionaire loses its concession, it will lose the privilege of operating casinos in Macao and the casinos it has owned will have to revert to the government, as the casinos are treated as the assets of the government by law in Macao, while the operator is allowed to retain its non-gaming sectors such as hotels and exhibition halls.<sup>105</sup> If a casino that needs to be reverted locates in the same

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<sup>105</sup> *Id.* at art. 40.

building with non-gaming sectors, the reversion will be handled pursuant to the principles of strata title.<sup>106</sup>

This current re-bidding approach needs to be reconsidered by the government. First, the approach has caused uncertainty and efficiency loss to the market. Due to the fears of possible loss of their concession status after 2022, some concessionaires are hesitating to invest more into Macao's market as the concession expiration date approaches. Second, it is not easy in practice to replace a current operator with a new one. On the one hand, Macao does not have the land resources to build new casinos. On the other hand, if newcomers operate casinos under the same roof with the replaced operator which retains the non-gaming facilities after 2022, it would produce many managerial problems. The replacement of operators also may cause significant social problems such as unemployment and economic problems at least within the short-term because the new operators may not operate as successfully as the replaced one did. Finally, it may bring awkwardness or embarrassment to the government. If the government retains all the concessionaires after the public tender, the entire re-bidding procedure will be redundant, wasteful, and easily criticized as just an "ordinary procedure" of the government.

Therefore, the government should consider introducing different ways to select gaming operators rather than just re-bidding. The current concessionaires should be offered a way of negotiation to renew the concession if the government hopes to retain them in the market, while other prospective operators may compete for the new concessions if the government decides to increase the number of concessions.

### *C. How Long is Appropriate for the Concession Period?*

The purpose of a longer concession period is to make sure the concessionaires make a profit from the concession, so they have incentives to invest more. That is why the Legal Framework provides that the concession period can be up to twenty years, even with possible extensions of up to five more years in some exceptional cases. In practice, each concessionaire has invested heavily in Macao in the past two decades, giving Macao numerous magnificent casino-hotel complexes and creating one of the biggest gaming markets in the world. However, a significant disadvantage of the extended period is that it is difficult for the government to replace a possibly unsatisfied concessionaire or introduce more operators into the market in a timely way. Nowadays, gaming is changing rapidly in Asia, and Macao is facing more and more competition from its neighboring countries. But with the current limitation of the concession system, the Macao government cannot respond to the changes quickly. To solve the problem, the Macao government may consider shortening the concession period to make timely decisions. For example, a ten-year concession with every five years' review and

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<sup>106</sup> *Concession Contracts*, Gaming Inspection and Coordination Bureau. Macao SAR, *supra* note 27 (listing separate contracts for SJM, Wynn, and Galaxy).

license renewal could be considered. A ten-year concession should generally be long enough for an operator to develop a large-scale project while a review and renewal every five years extends the government flexibility to make some changes if necessary. The practice with twenty years of concession and then re-tendering should be replaced as it seems too long and too rigid.

#### CONCLUSION

The concession system of gaming has not changed much since its adoption 170 years ago. Its long life is primarily due to no dramatic changes in and outside of Macao's gaming industry. Until the beginning of this current century, Macao had enjoyed an almost-monopolistic position in legalized casino gaming in East and Southeast Asia. In Macao, the casino gaming market had also been monopolized until the beginning of this century. Therefore, for a long time, the Macao government did not have to make substantial reforms to its concession system to deal with external and internal changes. The situation nowadays is different. Quite a few neighboring countries have legalized casino gaming, and the gaming market in East and Southeast Asia has changed rapidly in the past two decades. Additionally, within Macao, the monopolistic situation in the casino gaming market no longer exists. Many, rather than one, operators are in the market. The re-tendering method seems awkward and inefficient in finding new casino operators for Macao. It is time for the Macao government to consider reforming or even overhauling the current concession system which is largely shaped by tradition. Under the new situation, the Macao government must find some new ways to renew the concessions while keeping the casino market growing or at least stable.