

THE REVERSION OF CASINOS UNDER MACAU'S CONCESSION MODEL

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I. INTRODUCTION

Macau utilizes a concession model, rather than a licensing model,¹ for authorizing the gaming business. The power to operate casino games of chance is reserved² for the Macau Special Administrative Region³ (“Macau” or “Macau SAR”) by law and may be conceded to private entities⁴ through a (casino

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¹ A license never involves reversing or transferring assets to the public licensing entity. Such assets always remain under the licensee’s private ownership. See Anthony Cabot, António Lobo Vilela, & Pedro Cortés, *Comparing Regulatory Systems in Civil and Common Law Countries: How Different Approaches Can Achieve the Same Policy Goals*, 13 UNLV GAMING L. J. (forthcoming).

² “Such a reservation can be explained by the interest of the Macau SAR in the economic results of such exploitation for public interest purposes and to minimize the effects associated with gaming.” See António Lobo Vilela, *The Reversion of Casinos and Gaming Equipment*, ASIAN GAMING L., Sept./Oct. 2015, at 14 [hereinafter *The Reversion*].

³ Macau has been a special administrative region of the People’s Republic of China since the sovereignty handover from Portugal to China on December 20, 1999. See *Macau’s Transfer of Sovereignty*, PORTUGUESE HIST. MUSEUM (last visited Apr. 6, 2022), https://portuguesemuseum.org/?page_id=1808&category=3&exhibit=&event=165.

⁴ In Macau, there are currently three concessionaires who have been granted a casino gaming concession: Wynn Resorts (Macau), Limited; Galaxy Casino Company Limited; and SJM Resorts, S.A. (formerly denominated Sociedade de Jogos de Macau, S.A.). There are also three subconcessions authorized by the Macau SAR government: Venetian Macau Limited (under Galaxy Casino Company Limited’s concession); MGM Grand Paradise Limited (under SJM Resorts, S.A.’s concession);

gaming) concession.⁵ The Macau law⁶ stipulates the *reversion-transfer*⁷ to the Macau SAR of casinos, equipment, utensils, and other “assets or rights which must revert under a contractual clause” upon the extinction of the concession or subconcessions.

The reversion is a typical effect of the extinction⁸ of administrative concessions,⁹ a “common feature of gambling concessions”¹⁰ (along with the redemption right,¹¹ the sequestration right,¹² and termination on public interest

and Melco Resorts (Macau) Limited (formerly denominated PBL Entertainment (Macau) Limited, Melco PBL Gaming (Macau) Limited, Melco Crown Gaming (Macau) Limited, and Melco Crown (Macau) Limited) (under Wynn Resorts (Macau), Limited’s concession). See *History of Macau’s Gaming Industry*, DICJ, <https://www.dicj.gov.mo/web/pt/history/index.html> (last visited Apr. 6, 2022).

⁵ See Law 3/90/M, ch. 1, art. 3 (1990) (Bases do Regime das Concessões de Obras Públicas e Serviços Públicos) [Law on the Concession Regime for *Public Works and Public Services*]; see also Law 16/2001 ch. II, art. 7 (2001) (*Regime Jurídico da Exploração de Jogos de Fortuna ou Azar em Casino*) [Legal Framework for the Operation of Casino Games of Chance] (applying the concession regime to the gaming industry) [hereinafter *Gaming Law*].

⁶ Gaming Law, *supra* note 5, ch. IV, art. 40(1).

⁷ Compare the *reversion-transfer* with the *reversion-return* of assets that the Macau SAR owns and must allocate according to art. 37(1) of the Gaming Law. See ANTÓNIO LOBO VILELA, *MACAU GAMING LAW, ANNOTATED WITH COMMENTS*, VOL. IV, 134 n. 1 (2020) (PC Consulting 2020) [hereinafter *LOBO VILELA VOL. IV*].

⁸ There are two main forms of extinction of casino gaming concessions. The first corresponds to the natural extinction, which occurs with the advent of the contractual term. The second covers different modalities of anomalous or anticipated extinction, in particular the hypotheses of agreement between the Macau government and the concessionaire, redemption, (material) contractual breaches, and on public interest grounds. Gaming Law, *supra* note 5, ch. V, art. 45.

⁹ Gambling concession contracts are administrative contracts. See Law No. 57/99/M (Código do Procedimento Administrativo) [Administrative Procedure Code], Article 165(2)(d) (1999).

¹⁰ See the Statement of Reasons that accompanied the initial draft law of the Gaming Law presented to the Legislative Assembly in 2001, later approved as Law 16/2001 of September 24, 2001, which can be consulted in its entirety at *LOBO VILELA VOL. IV*, *supra* note 7, at 455.

¹¹ Redemption translates the grantor’s optional right to resume operation of the concession through compensation before the expiry of the contractual term. See generally, *LOBO VILELA VOL. IV*, *supra* note 7, at 247–67 (discussing the redemption right).

¹² Sequestration involves the government temporarily replacing the concessionaire and promoting the implementation of necessary measures to ensure that the goals of the concession or subconcession contract are met. Sequestration includes taking over the facilities, materials, and equipment to maintain the continuity of the activity that is the subject of the contract. See *id.* at 205–25 (discussing the sequestration right).

grounds).¹³ The reversion entitles the concession-granting entity¹⁴ to gain possession of certain assets when a concession becomes extinct or any other time upon mutual agreement with a concessionaire or subconcessionaire.¹⁵ The reversion is required to fulfill the *principle of the continued operation of games of chance*, i.e., to continue the casino operations without interruption.¹⁶

Under the concession and subconcession contracts,¹⁷ some casinos and all gaming equipment and utensils will revert to the Macau SAR on June 26, 2022, which coincides with the term of the current casino gaming concessions and subconcessions.¹⁸ The Land, Public Works and Transport Bureau

¹³ Termination on public interest grounds translates the resumption of the operation of the conceded activity throughout the concession term on public interest grounds, entitling the concessionaire to receive fair compensation. *See generally id.* at 309–15 (discussing the termination right).

¹⁴ In Macau, the Macau SAR is the granting entity.

¹⁵ In Macau, the reversion operates at a precise moment in time. Article 43 of the current concession and subconcession contracts provides that the reversion will occur on June 26, 2022, which coincides with the term of the existing concessions and subconcessions. SJM Resorts, S.A., and MGM Grand Paradise, S.A. saw the reversion date postponed from March 31, 2020, to June 26, 2022, at the time of their contractual term prorogation and extension. In March 2022, the Macau government announced the extension of the concessions and subconcessions until December 31, 2022. Thus, the reversion may also be postponed to that date. *See generally* Changbin Wang, *Regulations and Practice of Casino Reversion in Macao: What Further Should be Done?*, 26 GAMING L. REV. 2–3 (2022) (discussing the practice of casino reversion in Macau).

¹⁶ Gaming Law, *supra* note 5, ch. IV, art. 40. *See also, The Reversion, supra* note 2.

¹⁷ Save for rare exceptions, Macau's concession and subconcession contracts have the exact same wording. The contracts were executed in Portuguese and Chinese language only. The concession contracts, along with an unofficial translation into English, its revisions, and the subconcession contracts and respective revisions, can be accessed at DICJ's Website. *See Concession and Subconcession Contracts*, DICJ, <https://www.dicj.gov.mo/web/pt/contract/index.html> (last visited Apr. 6, 2022) [hereinafter *Concession and Subconcession Contracts*]. Examples of English translations can be found at *Wynn Resorts (Macau)*, SEC, https://www.sec.gov/Archives/edgar/data/1174922/000091205702032887/a2085104zex-10_24.htm (last visited Apr. 6, 2022) [hereinafter *Wynn Concession Contract*]; *Galaxy Casino Company Limited*, SEC, <https://www.sec.gov/Archives/edgar/data/850994/000085099403000001/exhibit10-40.htm> (last visited Apr. 6, 2022) [hereinafter *Galaxy Concession Contract*]; *SJM Resorts*, DICJ, https://www.dicj.gov.mo/web/en/contract/SJM/2002_BORAEM014S2Sup.html (last visited Apr. 6, 2022) [hereinafter *SJM Concession Contract*]; *MGM Grand Paradise Limited*, SEC, <https://www.sec.gov/Archives/edgar/data/789570/000119312511297961/d230106dex101.htm> (last visited Apr. 6, 2022) [hereinafter *MGM Subconcession Contract*].

¹⁸ *See, Wang, supra* note 15.

(“DSSOPT”)¹⁹ stated publicly that “the reversion of the respective properties is clearly defined and DSSOPT will strictly comply with the concession contract for each unit of land.”²⁰

This paper analyzes the Macau law’s reversion concept and the casino definition, nuclear to the implementation of the reversion of casinos, gaming equipment, utensils, and other “assets or rights which must revert under a contractual clause” by the Macanese authorities.

II. HISTORICAL BACKGROUND

The reversion of casinos is not new to Macau’s gaming industry. Although the 1961 Gaming Law stated that only the works of exclusive public utility developed by the concessionaire pursuant to contractual obligations will revert to the State,²¹ the law specifically exempted the “model casino and a luxury hotel” that was to be built before December 31, 1964, with characteristics that were fixed in the notice or call for tender.²² The 1964 revision to the Sociedade de Turismo e Diversões de Macau (“STDM”)²³ exclusive concession contract²⁴ provided that “[h]aving completed the period of the concession, the casino of the ‘tourism complex,’ with all of its belongings and equipment, shall revert to the province of Macau, with no payment due from the province of Macau to the concessionaire.”²⁵

¹⁹ DSSOPT is a Macau government department under the Secretariat for Transport and Public Works. See *About DSSOPT*, DSSOPT, <https://www.dssopt.gov.mo/en/home/aboutus> (last visited Apr. 6, 2022).

²⁰ See João Paulo Meneses, *The Imbroglia that will Delay Reversion*, MACAU BUS. (June 20, 2021), <https://www.macaubusiness.com/special-report-the-imbroglio-that-will-delay-reversion/>.

²¹ Legislative Diploma No. 1469, ch. II, art. 15 (1961) (Regulamenta o Estabelecimento de Jogos de Fortuna ou Azar) [Regulates the Establishment of Games of Chance] (repealed) [hereinafter 1961 Gaming Law].

²² *Id.* At the end of the contract, the concessionaire will be obliged to make all constructions and facilities for the operation of games available to the new concessionaire by means of assignment or transfer under conditions determined by mutual agreement; if no agreement exists, these conditions will be equitably determined by the Government.

²³ STDM was the holder of the casino gaming concession monopoly in Macau from 1962 to 2001. See *Macao Gaming History*, DICJ, <https://www.dicj.gov.mo/web/en/history/index.html> (last visited Apr. 6, 2022).

²⁴ See Deed of Dec. 5, 1964, cl. 23 § 3, 1618, Macau Official Gazette No. 49 (Dec. 5, 1964), <https://www.archives.gov.mo/en/bo/1964/12>. It was the first revision to the exclusive concession contract dated Mar. 30, 1962. See also Macau Official Gazette No. 16, 488 (Apr. 21, 1962), <https://www.archives.gov.mo/en/bo/1962/04>.

²⁵ See 1961 Gaming Law, *supra* note 21, ch. VI, art. 53. On December 5, 1964, the day of the 1964 revision to STDM’s exclusive concession contract, the 1961 Gaming

All other revisions to STD M's exclusive concession contract stipulate the same with similar wording.²⁶ The 1982 Gaming Law²⁷ is silent regarding the reversion of casinos, gaming equipment, and utensils.

III. THE CONCEPT OF REVERSION

Based on the *principle of the continued operation of games of chance*,²⁸ the reversion is an essential element of the concession regime²⁹ and one of its defining characteristics.³⁰ The operation of casino games of chance is the

Law was amended, providing that in case of a rescission of the concession contract (for the grounds specified in the law), "the 'Casino-Hotel' complex, whose construction is foreseen, will belong to the province of Macau, without any compensation in favor of the concessionaire." This stipulation lasted until the 1982 Gaming Law, which provided that "[u]pon the concession termination, the guarantee, the assets allocated to gaming, and those carried out under the concession will revert to the Territory without compensation to the concessionaire."

²⁶ These were the second (1976), third (1982), and fourth (1986) revisions to STD M's exclusive concession contract. Macau Official Gazette No. 17, II, cl. 19(1), 631 (Apr. 28, 1976), images.io.gov.mo/bo/i/76/17/bo-i-17-sup2-76.pdf. Macau Official Gazette No. 3 cl. 19(2), 66 (Jan. 15 1983), images.io.gov.mo/bo/i/83/03/bo-i-3-83.pdf; Macau Official Gazette No. 41, cl. 31(2), 2830 (Oct. 13, 1986), images.io.gov.mo/bo/i/86/41/bo-i-41-86.pdf.

²⁷ See Law 6/82/M (Jogos de Fortuna ou Azar) [Games of Chance] (1982) (repealed) [hereinafter 1982 Gaming Law].

²⁸ The Supreme Administrative Court of Portugal upheld the same principle: "The reversion of assets . . . is aimed at ensuring the continued operation of gaming by another concessionaire or by the State itself, at the end of the contract . . ." See, e.g., Judgment of the Supreme Administrative Court [Portugal], Case No. 41808 (July 8, 1999) [hereinafter Judgment of the Supreme Administrative Court 1999].

²⁹ See Administrative Regulation No. 26/2001, art. 48 (2001) (Regulamenta o Concurso Público para a Atribuição de Concessões para a Exploração de Jogos de Fortuna ou Azar em Casino, o Contrato de Concessão e os Requisitos de Idoneidade e Capacidade Financeira das Concorrentes e das Concessionárias) [Regulates on the Public Tender to Award Casino Gaming Concessions, the Concession Contract, and the Requirements of Suitability and Financial Capacity of the Bidders and Concessionaires] [hereinafter Public Tender Regulation] (stating "the concession regime comprises the legal framework, which includes the legal framework for the operation of casino games of chance approved by Law 16/2001, this administrative regulation and other complementary regulations of Law 16/2001, as well as by the concession contracts for the operation of casino games of chance.").

³⁰ João Pacheco de Amorim, *O Princípio da Reversibilidade dos Casinos Para o Domínio Privado do Estado no Termo da Concessão* [The Principle of Reversibility of Casinos to the Private Domain of the State in the Term of the Concession], REVISTA DA ORDEM DOS ADVOGADOS 105, 105–06 (2018).

commercial activity that contributes the most to Macau's public coffers.³¹ Given the relevance of the reversible assets to the performance of this activity, the grantor/Macau SAR³² needs a mechanism to ensure on behalf of the public and general interest that at the end of the concession or subconcession, there will be continuity and regularity—in an automatic, immediate, and uninterrupted manner—of its operation, directly or through the granting of a new concession (or authorization of a new subconcession) to either the previous concessionaire (or subconcessionaire) or a new one.

The reversion also constitutes a consequence of an economic nature in the form of (real) consideration for the granting of the concession (or authorization of the subconcession),³³ along with the annual premium,³⁴ the special gaming tax, and the other contributions due.³⁵ The reversion transfers the rights held by concessionaires and subconcessionaires over the reversible assets to the Macau SAR. From another perspective, the reversion integrates the rights into new assets of the Macau SAR. In a broader sense, the reversion represents the return to the Macau SAR, by means of a transfer of assets to allow for the operation of games of chance. Along these lines, all the assets allocated to the concession or subconcession are reverted as well, even if they are held through a lease or any other type of contract.

Furthermore, the reversibility of assets is not a mere legal expectation. Instead, it is an inalienable right of the Macau SAR, effective *ipso jure*, and the Macau government cannot renounce it. It is a legal power of the Macau SAR, as the grantor, to demand the immediate handover of reversible assets, which

³¹ According to the latest Macau SAR's General Account published, the special gaming tax (USD \$14.6 billion) accounted for 80% of all revenues collected by the Macau SAR (USD \$17.6 billion). See Macau Official Gazette No. 46, II, cl. 5(1) (Nov. 19, 2021) <https://bo.io.gov.mo/bo/ii/2021/46/avisosoficiaisdsf.asp>.

³² Subconcessions were not granted but authorized by the Macau government. Thus, cl. 43 (related to reversion) of the concession contracts provides that the casinos and all gaming equipment and utensils revert to the "grantor" while the subconcession contracts state they revert to the "Macau SAR."

³³ See Judgment of the Supreme Administrative Court 1999, *supra* note 28, (holding "[t]he reversion of assets . . . simultaneously constitu[tes] consideration of the concessionaire for the exercising of the activity in question.>").

³⁴ An annual premium is due to the Macau SAR by the concessionaires "in consideration for the granting of a casino gaming concession." See Public Tender Regulation, *supra* note 29, ch. 2, art. 3(1). See also, Concession and Subconcession Contracts, *supra* note 17, ch. IX, cl. 47(1) ("in consideration for the operation of casino games of chance"). The annual premium comprises a fixed and a variable part. Public Tender Regulation, *supra* note 29, ch. 2, art. 3(2). See also, Gaming Law, *supra* note 5, ch. II, art. 20.

³⁵ Casino gaming operators are bound to make two contributions: one of an annual amount not exceeding 2% of gross gaming revenues to a public foundation, and another of an annual amount not exceeding 3% of gross gaming revenues for urban development, tourism promotion, and social security. Gaming Law, *supra* note 5, ch. II, art. 22(7)–(8).

constitutes a legal obligation, with the Macau SAR government taking “immediate administrative possession of them” when not immediately handed over by the concessionaire or subconcessionaire.³⁶ Diogo Freitas do Amaral noted:

[T]he transfer of ownership occurs, *ipso iuri*, at the time of the expiry of the term of the concession: the concessionaire is merely responsible for the handover, and not for the sale or transfer by any other means, of the assets in question. And let it not be said that the ownership of Tamariz was private and would continue as private after becoming an asset of the State. Addressing the nature of the right . . . does not matter; what matters is addressing the nature of the instrument by which the transfer of the right occurs. And the instrument was an administrative law, combined with a concession³⁷

A. *Government's Original Intent: The Overly Broad Scope of Reversion from the First Draft Law of the Gaming Law*

Based in the Law on the Concession Regime for Public Works and Public Services,³⁸ the initial version of the gaming law draft presented to the Legislative Assembly provided a much broader reversion scope than what was ultimately established. The initial version of the gaming law draft said: “Upon extinction of the concession, all of the assets and rights allocated to it shall revert to the Region.”³⁹

This approach was debated by, and raised concerns within, the Legislative Assembly's Ad Hoc Committee created in 2001 to assess the gaming law draft proposal, which considered it “unfair that all such assets should be reverted to the Macau SAR.”⁴⁰ The Committee further noted that:

³⁶ See Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 43(2)–(3).

³⁷ Diogo Freitas do Amaral, *O Caso do Tamariz: Estudo de Jurisprudência Crítica* [The Tamariz Case – Critical Jurisprudence Study], 96 O DIREITO 208, 269–70 (1964). The case relates to the reversion of the casino located in the Tamariz area, in Estoril, Portugal.

³⁸ Law on the Concession Regime for Public Works and Public Services, *supra* note 5, ch. 2, art. 22(1) (*Reversion of assets allocated to the concession*, which reads that when the concession is extinct by any of the means provided for in Article 19 [expiry, mutual agreement, redemption, and termination on public interest grounds], all of the assets and rights allocated to it shall revert to the grantor).

³⁹ See Draft Law Proposal of the Gaming Law submitted to the Legislative Assembly on Sept. 18, 2001, ch. IV, art. 37(1) at 24, 25.

⁴⁰ *Hearing on the Legal Framework for the Operation of Games of Chance, Before the Ad Hoc Committee*, Diary of the Legislative Assembly, Series I, No. 20/2001 (statement of Lau Cheok Va, President of Ad Hoc Committee).

If such a reversion seemed justifiable and acceptable for casinos and their equipment, the same should not seemingly apply to related facilities, such as hotel units or others of a similar nature, potentially of very high value. Without abolishing the figure of reversion of concessionaires' assets to the MSAR, the enumeration of assets and rights reversible at the end of the concession could at least be established, in the concession contract, as a clearer, more pragmatic means of handling this sensitive subject.⁴¹

The discussion prompted the Macau government to propose a new version of Article 37 (corresponding to the current Article 40 of the Gaming Law), which provided:

Upon extinction of a concession, the respective casinos and all of their equipment and utensils shall revert to the Region, notwithstanding other assets or rights which must revert under a contractual clause.

The Committee found the new proposal for Article 40 appropriate, as they may serve as yet another means of attracting investors to the gaming sector, giving them advance knowledge of the destination of their investments at the end of the concession to operate games of chance.⁴²

B. The Limitation on the Reversible Assets Under the Concession and Subconcession Contracts

Due to the fact that several STDM casinos—which transferred to Sociedade de Jogos de Macau's ("SJM")⁴³ concession in 2001—historically operated in third-party properties, the Macau government created an exception in SJM's concession contract⁴⁴ to the general rule that casinos "must be located

⁴¹ Parecer da Comissão Eventual Relativo à Proposta de Lei Intitulada Regime Jurídico da Exploração de Jogos de Fortuna ou Azar [Ad Hoc Committee Opinion About the Draft Law Proposal Titled Legal Framework *for the Operation of Games of Chance*] [hereinafter Ad Hoc Committee Opinion], Diary of the Legislative Assembly, Series II, No. 8/2001 (Aug. 31, 2001). See LOBO VILELA VOL. IV, *supra* note 7, at 464 (translating Ad Hoc Committee Opinion in English).

⁴² See *id.* at 465 (translating Article 40(1) of the Gaming Law in English).

⁴³ SJM is one of the three casino gaming concessionaires. See *History of Macau's Gaming Industry*, *supra* note 4.

⁴⁴ SJM's concession contract was the first concession contract to be signed. It was signed on March 31, 2001, the date of STDM's casino gaming concession term (following the previous contractual extension from January 1, 2002, to March 31,

in property owned by the concessionaire.”⁴⁵ With proper prior authorization from the Macau government, casinos may be present “within any property where the use and fruition of which rely on a lease contract, irrespective of their nature, or a contract of any other type whereby the full ownership of the property is not assigned to the concessionaire, even though the property is designated under a non-typical contract.”⁴⁶

The draft was complemented⁴⁷ by the Wynn⁴⁸ and Galaxy⁴⁹ concession contract negotiations in specifying that the proper prior authorization:

[M]ay, in particular, impose the condition,⁵⁰ to allow the casinos to revert to the Macau Special Administrative Region, that the concessionaire shall purchase the building units in which the casinos are situated by one hundred and eighty days prior to the date stipulated in [cl. 43(1)], except where the concession is extinct prior to such date, in which case such purchase shall be made at the earliest possible date.⁵¹

At that stage, it was clear to the Macau government that not all casinos would be located in properties owned by the concessionaires and, thus, these casinos' assets would not revert to the Macau SAR.

C. *The Principle of the Reversion of a Casino Only by Concessionaire and Subconcessionaire*

The awarding entities raised concerns during the concession contract negotiations about the reversion of the casinos that they would want to operate outside the scope of the projects referred to in the Investment Plan attached to the concession contracts.⁵² These concerns led the Macau government, through

2002). Order of the Chief Executive No. 260/2001, Macau Official Gazette, Series I, Supplement 243 (2001).

⁴⁵ See SJM Concession Contract, *supra* note 17, ch. VIII, cl. 42(1).

⁴⁶ *Id.* art. 42(3).

⁴⁷ See Wynn and Galaxy Concession Contracts, *supra* note 17, ch. VIII, cl. 42(3). Later, in 2005, the same text was included in SJM Concession Contract. See 2005 revision to SJM Concession Contract, *supra* note 17, ch. VIII, cl. 42(3) *in fine*.

⁴⁸ Wynn Resorts (Macau), Limited, is one of the three current casino gaming concessionaires. See *History of Macau's Gaming Industry*, *supra* note 4.

⁴⁹ Galaxy Casino Company Limited, is one of the three current casino gaming concessionaires. *Id.*

⁵⁰ The condition can only be imposed *with* the authorization, *not after* being granted.

⁵¹ The text is the same as cl. 42(3) of the subconcession contracts, although referring to *subconcessionaire* and *subconcession* instead of *concessionaire* and *concession*, respectively. Compare Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 42(3).

⁵² See LOBO VILELA VOL. IV, *supra* note 7, at 138.

the Macau Gaming Commission, to prepare and present to the “Informal Jurist Group”⁵³ an administrative regulation project entitled “Regulates the location, characteristics, frequency, and functioning of gaming areas”⁵⁴ in May 2005. This project consolidated in a legal instrument the contractual clauses related to reversion, stipulated a procedure for authorizing and classifying casinos and other gaming areas, and stipulated the *principle of the reversion of a casino only by concessionaire or subconcessionaire*⁵⁵ in the main investment referred to in the Investment Plan using the dichotomy “casino” and “other gaming areas.”⁵⁶

The Informal Jurist Group had several discussions and meetings about that specific piece of legislation, and the Macau Gaming Commission reattempted to have it sent to the legislative process in March 2007.⁵⁷ The Macau government made various declarations and assurances that the future administrative regulation would lay down the criteria for the classification of casinos, providing that there shall be only one “casino” per concessionaire and subconcessionaire to revert and that the delimitation of this casino would be circumscribed to the gaming areas contained within a single property, but the

⁵³ The Chief Executive created the Informal Jurist Group as a meeting point between the Macau government and representatives of the concessionaires and subconcessionaires to informally analyze and discuss the draft legislation to be approved on casino gaming.

⁵⁴ This supplementary statute for the Gaming Law included “rules regarding the regulation . . . of the use . . . of the gaming rooms . . . and the operation of the premises allocated to the operation.” See Gaming Law, *supra* note 5, ch. VI, art. 52(2).

⁵⁵ See LOBO VILELA VOL. IV, *supra* note 7, at 137.

⁵⁶ This is one of the reasons why the concession and subconcession contracts repeatedly use the word *casinos* together with the expression *other gaming areas*. See Concession and Subconcession Contracts, *supra* note 17, ch. I, cl. 2(4); ch. II, cls. 9(1), 12, 13(1)–(2). Moreover, the Gaming Law used the expression *gaming rooms and gaming areas*. Gaming Law, *supra* note 5, ch. II, arts. 24, 26. However, this language was revoked by Law No. 10/2012 (Condicionamento da Entrada, do Trabalho e do Jogo nos Casinos) [Entry, Work, and Gaming Restrictions in Casinos Law] for reasons of terminological consistency and the principle of the operation of games of chance confined to casinos set forth in art. 3(2) of the Gaming Law, redirected all of these expressions to the term “casinos.” See *Parecer N.º 2/IV/2012 da Primeira Comissão Permanente da Assembleia Legislativa Relativa à Proposta de Lei Denominada Condicionamento da Entrada, Trabalho e Jogo nos Casinos* [Opinion No. 2/IV/2012 of the First Standing Committee of the Legislative Assembly on the Draft Law Proposal Titled Entry, Work, and Gaming Restrictions in Casinos], Diary of the Legislative Assembly, Series II, No. IV-36 22 (July 31, 2012) [hereinafter Op. 2/IV/2012]. References to *other gaming areas* in the concession and subconcession contracts were “inserted at the time these contracts were drafted in anticipation of the adoption of a regulation (also) addressing the reversion of casinos that was never enacted.” See *The Reversion*, *supra* note 2, at 15.

⁵⁷ The author was a member to the “Informal Group of Jurists” in representation of the Macau government.

regulation was never enacted.⁵⁸ It is legally impossible to uphold the *principle of the reversion of a casino only by concessionaire or subconcessionaire* without a proper legal mechanism.⁵⁹

IV. LEGAL AND REGULATORY FRAMEWORK APPLICABLE TO THE REVERSION

A. Introduction

The legal and regulatory framework for the reversion seems straightforward. According to the Gaming Law,⁶⁰ upon the extinction⁶¹ of a concession (or subconcession),⁶² “the respective casinos and all of their equipment and utensils shall revert to the Region, notwithstanding other assets or rights which must revert under a contractual clause.” In short, the reversion applies to only three classes of assets: casinos; equipment and utensils; and other assets or rights contractually obligated to revert.

In any public services, public works, and gambling concession, the reversion is not a primary way for the Macau SAR to increase its assets. First and foremost, the reversion serves the important public interest of ensuring the continuity and regularity of the object of the concession. In a casino gaming concession (or subconcession), the reversion of the casinos is the only means the Macau SAR has to immediately, and without interruption, continue gaming operations in a regular and orderly manner, fulfilling the principle of the continued operation of games of chance. This goal is unpracticable if the Macau government does not have, at its disposal, the full capacity installed, at least at the time of the extinction of the concession (or subconcession), thereby protecting the stability of the gaming industry as Macau’s main commercial activity and the major source of government revenue.

⁵⁸ The concessionaires and the Venetian (the only subconcessionaire at the time) never really pushed for the enactment of this legislation, most likely because they understood that the land concession contracts entered into with the Macau SAR conveniently addressed the issue. These contracts specify the areas with the purpose *casino* (absurdly smaller than those actually used) that must be registered with the Property Registry under strata title as an independent unit or units for the purposes of reversion.

⁵⁹ See LUIS PESSANHA, *STUDIES ON MACAU GAMING LAW* 103 n.250 (Salvatore Mancuso ed., 2012) (“There has been some lobbying by the local gaming industry in order to restrict the reversion of property to only the flagship casino of each casino gaming sub/concessionaire whenever a concession elapses . . . This would be, in our view, not in the public interest . . .”).

⁶⁰ See Gaming Law, *supra* note 5, ch. IV, art. 40(1).

⁶¹ *Id.* ch. V, art. 45.

⁶² Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 43(1).

*B. Classes of Reversible Assets**i. Casinos**a. Introduction*

Casinos are the first and most important class of reversible assets from a public interest point of view. The legal stipulation of the reversion of casinos is embedded in the conceptual idea that each concessionaire would operate a single casino.⁶³

Bearing in mind the Macau law-Portuguese matrix (historically speaking, mainly due to the view that gaming is a “necessary evil”), casino gaming concessions were always granted as exclusives by the State and by territorial bands (“gaming zones”), with the sole purpose of developing certain areas or locations.⁶⁴ It was unfeasible for operators to build more than one property due to the short term of the concessions and the desire for timely returns on investments.

Even in Macau during the negotiations of the concession contracts in 2001, apart from the so-called *city clubs*,⁶⁵ the expectation of the Macau government was that each concessionaire would build a single *Resort-Hotel-Casino*,⁶⁶ mainly due to shortage of land for large-scale properties and the

⁶³ See CHI CHUEN CHAN ET AL., PROBLEM GAMBLING IN HONG KONG AND MACAO: ETIOLOGY, PREVALENCE, AND TREATMENT 17 (2016) (discussing that in Macau, under the 1962 exclusive casino concession contract, STDM was bound to build a casino-hotel). See Concession and Subconcession Contracts, *supra* note 17, annex (the investment plan includes the construction of only one “Resort-Hotel-Casino”).

⁶⁴ In Portugal, casino gaming concessions are granted by gaming zones. There are ten gaming zones but currently only eight have casinos in operation. *Legal Regime*, SERVICE OF REGULATION AND GAMING INSPECTION, <https://www.srij.turismodeportugal.pt/en/casinos-and-bingos/legal-regime/> (last visited Apr. 6, 2022). From these eight gaming zones, each has only concessionaire and one casino in operation, except for Algarve—Portugal’s primarily tourism destination—which has three casinos: Vilamoura, Portimão, and Monte Gordo, and Estoril, which has two casinos: one in Estoril and the other in Lisbon. *Casino Concessionaires*, SERVICE OF REGULATION AND GAMING INSPECTION, <https://www.srij.turismodeportugal.pt/en/casinos-and-bingos/casino-concessionaires/> (last visited Apr. 6, 2022).

⁶⁵ A wise mechanism envisaged to start operating and consequently generating revenues before the end of construction of the *Resort-Hotel-Casino* referred to in the Investment Plan annexed to the concession and subconcession contracts. Save the case of Wynn Macau Limited (new to the market) and SJM (which already operated several casinos), Venetian Macau Limited and Galaxy Casino Company Limited operated *city clubs*. See Concession and Subconcession Contracts, *supra* note 17, annex.

⁶⁶ Concession and Subconcession Contracts, *supra* note 17, annex.

investment amount⁶⁷ committed.⁶⁸ However, all concessionaires and subconcessionaires ended up building more than one *Resort-Hotel-Casino*.

The *real* right of concessionaires and subconcessionaires against some of the reversible assets consists of an ownership right that is: (1) *subject to termination*, because it entails a domain threatened from the standpoint of time—a right of domain with a term either by time or that is fixed (*dies certus an*) and specific (*dies certus quando*)—as its exercise is subject to the advent of this term; and (2) *limited in its transmission (jus abutendi)*, which is limited regarding the establishment of charges or encumbrances.

b. Definition of “Casino”

According to the Gaming Law, *casinos* are defined as “the places and premises authorized and classified as such by the Macau Special Administrative Region Government.”⁶⁹ This legal definition is important because of the *principle of the operation of games of chance confined to casino*, which provides that “games of chance, as well as electric or mechanical machine games, may only be operated in casinos.”⁷⁰ There are two exceptions:⁷¹ the operation “aboard vessels or aircraft registered in Macau, when outside of the Macau Special Administrative Region and operating on touristic routes,” and, in the case of electrical or mechanical gaming machines, operation “in the customs-cleared area for international departures at the Macau International Airport.”⁷²

The classification of the “*places and premises*” as a *casino* has effects at different levels, in particular to:

⁶⁷ On average, MOP 4 billion (2001), equivalent to USD \$500 million.

⁶⁸ The 1961 legislator had the same expectation: the minimum condition to granting a casino gaming concession was the construction of a *model casino and a luxury hotel whose characteristics will be fixed in the notice or call for tender*. 1961 Gaming Law, *supra* note 21, ch. II, art. 7(a).

⁶⁹ Gaming Law, *supra* note 5, ch. I, art. 2(1). *See also Public Tender Regulation, supra* note 29, ch. I, art. 2(2). Compare Gaming Law, *supra* note 5, ch. I, art. 2(1) with *N.J. Stat. Ann. § 5:12-6 (2013)* (“*Casino or casino room or licensed casino – One or more locations or rooms in a casino hotel facility that have been approved by the commission for the conduct of casino gaming in accordance with the provisions of this act.*”).

⁷⁰ Gaming Law, *supra* note 5, ch. I, art. 3(2), 5(1).

⁷¹ *Id.* ch. I, art. 5(3).

⁷² Administrative Regulation No. 26/2012, ch. VI, art. 46 (2012) (Regime de Fornecimento e Requisitos das Máquinas, Equipamentos e Sistemas de Jogo) [Regime of Supply and Requirements for Gaming Machines, Equipment, and Systems] [hereinafter Gaming Machines Regulation]. For more information on the (il)legality of the *special* authorization for the opening of gaming machine halls pursuant to the Gaming Machines Regulation, *see* ANTÓNIO LOBO VILELA, MACAU GAMING LAW, ANNOTATED WITH COMMENTS, VOL. I, 196 n.11 (2020) [hereinafter LOBO VILELA VOL. I].

- gaming crimes, as there are types of crimes that only apply if the crime is committed inside casinos;⁷³
- government supervision of the casino industry, namely by the Gaming Inspection and Coordination Bureau (“DICJ”⁷⁴);⁷⁵
- restrictions on the entry, stay, and work at casinos, and practice of casino games of chance;⁷⁶
- assessing the concessionaires and subconcessionaires’ joint and several liability with gaming promoters⁷⁷ for the promoters’ activities inside casinos;⁷⁸
- legal reservation of the use of the term *casino* for casino gaming concessionaires and subconcessionaires;⁷⁹ and

⁷³ For example, the crime of illegal gambling operation in an authorized place and the crime of practice of a game in an authorized place. Law No. 8/96/M (Jogo Ilícito) [Illegal Gambling], ch. I, art. 7–8 (1996). Another example is the crime of disobedience by those entering a casino in violation of an expulsion order or a judicial or administrative decision. *See* Entry, Work, and Gaming Restrictions in Casinos Law, *supra* note 56, ch. III, art. 12.

⁷⁴ The DICJ is Macau’s gaming regulator, a Macau government department under the Secretariat for Economy and Finance. *Natureza e Dependência* [Nature and Dependence], DICJ, <https://www.dicj.gov.mo/web/pt/introduction/index.html> (last visited Apr. 6, 2022).

⁷⁵ Administrative Regulation No. 19/2021, ch. I, arts. 2(4), 2(6), 6(1)(1), 6(6) (2021) (Organização e funcionamento da Direcção de Inspeção e Coordenação de Jogos) [Organization and Functioning of the Gaming Inspection and Coordination Bureau] [hereinafter DICJ Regulation]. *See also* PESSANHA, *supra* note 59, at 90 (“The restriction of gaming activities to certain authorized casino venues or locations is especially relevant for the purpose of control and supervision by the Macau government of the ongoing gaming operations and revenues, which can only be exercised at such official authorized gaming venues.”).

⁷⁶ Entry, Work, and Gaming Restrictions in Casinos Law, *supra* note 56.

⁷⁷ Also known as *junkets*, gaming promoters are defined as “casino games of chance promoters who operate by providing facilities to players, in particular with regard to transportation, accommodation, food and entertainment, receiving a commission or other remuneration paid by a concessionaire [or subconcessionaire].” Gaming Law, *supra* note 5, ch. I, art. 2(1)(6).

⁷⁸ Administrative Regulation No. 6/2002, ch. III, art. 29 (2002) (Regula a Actividade de Promoção de Jogos de Fortuna ou Azar em Casino) [Regulates the Activity of Promoting Casino Games of Chance] [hereinafter Gaming Promotion Regulation]. The courts have been sentencing gaming promoters and concessionaires jointly to reimburse patron’s funds on deposit with VIP rooms. António Lobo Vilela, *The Liability of Macau Casino Operators for the Activity Rendered Inside Casinos by Gaming Promoters (Junkets) – An Update on the Current Litigation*, 25 GAMING L. REV. 66–67 (2021).

⁷⁹ Gaming Law, *supra* note 5, ch. I, art. 2(2).

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- prohibition of use in casinos of the consumption card given to all Macau residents to promote the economic activities of the Macau SAR following the COVID-19 pandemic.⁸⁰

c. “VIP Rooms”

According to the *principle of the operation of games of chance confined to casinos*, “VIP rooms”⁸¹ shall be considered an integrant part of the casino.⁸² No doubts about this assertion seem to exist among the legislature, the courts, and the DICJ. The Opinion of the First Standing Committee of the Legislative Assembly on the draft law entitled “*Entry, work and gaming restrictions in casinos*” said:

[C]asinos are not only places or premises that are immediately identifiable as casinos (either because they are located in standalone buildings, like the oldest casinos in Macau, or because they are included in integrated resorts, with their space delimited). . . . Also considered casinos are VIP gaming rooms, whether they are inside casinos or integrated (with more or less autonomy) within hotel spaces or other buildings. The core criterion is that these are places or premises where the operation of games of chance is permitted. Whatever these games are, whether or not they are all authorized or only some.⁸³

The Macau courts have ruled that “[t]he ban on entry to Macau casinos has the same meaning as the prohibition on entry into rooms where games of chance take

⁸⁰ Administrative Regulation No. 6/2020, art. 3(3)(1) (2020) (Plano de Subsídio de Consumo) [Consumption Subsidy Plan].

⁸¹ A VIP room is a restricted-access area reserved for certain games and players (*gaming rooms* or *special areas*) provided for in concession and subconcession contracts. See Concession and Subconcession Contracts, *supra* note 17, ch. IX, cl. 47(5)(1). Access to a VIP room is conditional, corresponding by statute to *special spaces* allocated to gaming promoters. Gaming Promotion Regulation, *supra* note 78, ch. III, art. 24(5)(2). The term may also signify the gaming floor used by concessionaires and subconcessionaires for the so-called “premium” mass gaming segment.

⁸² See Wang, *supra* note 15, at 6–7 (“[T]he government needs to decide whether some other areas, such as VIP gaming rooms, should be treated as casinos and revert”).

⁸³ See Op. 2/IV/2012, *supra* note 56, at 39.

place since there is no autonomy between the casinos and the said gaming rooms.”⁸⁴

As also noted by the DICJ,⁸⁵ the casino legal and regulatory framework does not distinguish between VIP gaming areas⁸⁶ and common areas, notwithstanding that the concession and subconcession contracts differentiate between gaming tables reserved and gaming tables not reserved for certain games and players to assess the variable part of the annual premium.⁸⁷ The Macau regulator stated:

[G]aming areas with access restricted to certain games and players are [considered] those gaming areas located in casinos in separate units that are distinct and isolated from each other or in adequately delimited spaces in areas demarcated through physical separators or architectural barriers to identify the exclusive use to which they have been allocated, and which are linked to a common part of the casino or its building or group of buildings or the public thoroughfare [where] the operation of games of chance . . . is identified by the following cumulative characteristics:

⁸⁴ See, e.g., Judgment of the Superior Court of Justice, Case No. 599 (Jan. 22, 1997), 1 TSJ Jurisprudência 97, at 88–96 (SUP. CT. J. 1997). See also, e.g., Judgment of the Superior Court of Justice, Case 668 (May 21, 1997), 2 TSJ Jurisprudência 97, at 609–21, (SUP. CT. J. 1997).

⁸⁵ See Resposta à interpelação Escrita Apresentada pela Deputada à Assembleia Legislativa, Kwan Tsui Hang [Response to Written Interpellation presented by the Member of the Legislative Assembly, Kwan Tsui Hang], Order No. 1302/V/2014 (Health Serv. Jan. 12, 2015), <https://www.al.gov.mo/uploads/attachment/written-consultation/2014/375135861ddfa768b6.pdf> [hereinafter Health Services Response 2015].

⁸⁶ The 1961 Gaming Law foresaw the existence of *rooms or special areas* by allowing the concessionaire “to have separate, but contiguous, rooms for the games of ‘Boule,’ baccarat and others the practice of which was to be authorized,” as well as “reserving access to a particular room, provided that it stays in operation, with the same games practiced there, with another room intended for most of the visitors.” These rules were in force until the approval of the current legal framework on casino gaming. Compare 1961 Gaming Law, *supra* note 21, ch. III, art. 20–21 with Gaming Law, *supra* note 5, art. 54(2).

⁸⁷ See Concession and Subconcession Contracts, *supra* note 17, ch. IX, cl. 47(5). Concessionaires and subconcessionaires pay an annual premium of MOP 300,000 (equivalent to USD \$37,500) for each gaming table reserved for certain games and players, and MOP 150,000 (equivalent to USD \$18,750) for each gaming table not reserved for certain games and players. For reference, in Q4 of 2021, there were 6,198 gaming tables in operation in all 42 casinos. *Quarterly Gaming Statistics*, DICJ, <https://www.dicj.gov.mo/web/en/information/DadosEstat/2021/content.html#n5> (last visited Apr. 6, 2022).

- 1) Practice of certain casino games of chance as well as electrical or mechanical gaming machines, including “slot machines,” authorized by the Macau government;
- 2) Access restricted to certain players through the registration and verification of the identity of the respective player as part of loyalty programs or the marketing of the casino, through the issuance of a temporary membership card or permanent access;
- 3) Use of said areas for the operation of the activity of casino games of chance by the gaming promoters licensed by the DICJ or for promotional activities for concessionaires and subconcessionaires authorized by the DICJ . . . ;
- 4) Use of own and different gaming chips to be added to the gaming chips used in the common gaming areas of casinos;
- 5) Subject to specific internal operating procedures defined by the DICJ under instructions.⁸⁸

Finally, in a reply to a written interpellation, the Macau government stated that the concessionaires and subconcessionaires “may, in accordance with their development needs, adjust the proportion of VIP areas and common areas, requiring prior authorization from the DICJ.”⁸⁹

d. Ownership and Location of Casinos

1. General Rule

The general rule on ownership and location of casinos is that they “must be located in property owned by the” concessionaire or subconcessionaire “in buildings or building complexes, even when comprising one economic and functional unit, under strata title, so that they comprise one or more independent units, whose areas shall be clearly identified and delimited.”⁹⁰ Following the mandatory physical separation of casinos (by registering the *buildings or building complexes* with the Property Registry under strata title), concessionaires and subconcessionaires are contractually obligated to:

- timely deliver to the Macau government a property registry certificate on the registration under strata title (issued by

⁸⁸ See Instruction No. 1/2014, §§ 6.1–6.2 (Áreas Comuns de Jogo e Áreas de Acesso Condicionado para Efeitos do Regime Jurídico de Prevenção e Controlo do Tabagismo da RAEM) [Common Gaming Areas and Restricted Access Areas for the Purposes of the Macao SAR’s Legal Framework for Smoking Prevention and Control] (promulgated by the DICJ, Jun. 23, 2014) [hereinafter Instruction No. 1/2014].

⁸⁹ See Health Services Response 2015, *supra* note 85.

⁹⁰ See Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cls. 42(1), 42(5).

the Property Registry), including specifications of all of the independent units and a blueprint that defines and delimits their respective areas;

- register with the Property Registry any changes to the strata title deed, and deliver to the Macau government the respective property registry certificate through the Financial Services Bureau (“DSF”)⁹¹; and
- submit the condominium internal regulations to the Macau government for approval.⁹²

2. *Exception*

The concession and subconcession contracts provide the *exception of the leasing or use of third-party spaces to install casinos*.⁹³ This exception is granted on an exceptional basis only.⁹⁴ With the Macau government’s prior authorization,⁹⁵ casinos may “be located within any property, the use and fruition of which rely on a lease contract, irrespective of their nature, or a contract of any other type whereby the full ownership of the property is not assigned to the [concessionaire/subconcessionaire], even though the property is designated under a non-typical contract.” Notwithstanding the prior authorization, the Macau government may:

[I]mpose the condition, to allow the reversion of the casinos to the Macau Special Administrative Region, that the [concessionaire/subconcessionaire] shall purchase the building units in which the casinos are situated by one hundred and eighty days before the date stipulated in clause 43(1) [date established for the reversion to operate its effects], except where the [concession/subconcession] is extinct before such date, in which case such purchase shall be made at the earliest possible date.⁹⁶

⁹¹ DSF is a Macau government department under the Secretariat for Economy and Finance. See *Government of the Macao Special Administrative Region, Financial Services Bureau*, <https://www.dsf.gov.mo/default.aspx?lang=en> (last visited Apr. 6, 2022).

⁹² See Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 42(6)–(8).

⁹³ *Id.* cl. 42(3).

⁹⁴ See generally *id.* (explaining that the exception is rarely granted because the authorization limits the object of the reversion of casinos).

⁹⁵ The condition can only be imposed *with* the authorization, *not after* being granted.

⁹⁶ See Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 42(3).

When duly authorized, concessionaires and subconcessionaires must deliver to the Macau government a copy of the contracts executed “together with all amendments and modifications, including those effective retroactively.”⁹⁷

The draft law proposal to amend the Gaming Law (“Draft Law Proposal”)⁹⁸ ends with this exception. If the amendment is approved, the operation of games of chance in casinos can only take place in properties wholly owned directly by the concessionaires.⁹⁹

e. Casino Opening Authorization

The legislator’s broad definition of *casino* gives the Macau government wide latitude to decide what should be authorized and classified as such on a case-by-case and discretionary basis, enabling the imposition of conditions deemed necessary during the process for the approval and classification of the *places and premises*.¹⁰⁰ Casinos are authorized by the Chief Executive¹⁰¹ upon request of the concessionaires and subconcessionaires.¹⁰² The authorization is granted based on a blueprint of the casino floor, including the gaming floor and its dependences.

The authorization is granted when the “requirements for such authorization and being open to the public have been fulfilled, e.g.: ownership of the property, registration under strata title, organization of the space, security conditions, physical and visual access, installation of video surveillance

⁹⁷ See *id.* cl. 42(4).

⁹⁸ A draft law proposal to amend the Gaming Law was submitted to the Legislative Assembly on January 14, 2022 and approved at the first reading on January 24, 2022. It is currently being analyzed by the Second Standing Committee of the Legislative Assembly [hereinafter Draft Law Proposal].

⁹⁹ See Draft Law Proposal, *supra* note 98, art. 5(4) (granting a moratorium of three years from the entry into force of the law amending the Gaming Law, subject to the authorization of the Chief Executive, for concessionaires to continue operating casino games of chance in casinos located in third-party properties). See also *id.* new proposed art. 5-A(1) to the Gaming Law.

¹⁰⁰ See FERNANDO VITÓRIA & ÓSCAR MADUREIRA, *DIREITO DO JOGO EM MACAU – EVOLUÇÃO, HISTÓRIA E LEGISLAÇÃO* [Gaming Law in Macau – Evolution, History, and Legislation] 30 (Rui Cunha Foundation ed., 2015) (stating that because the creation and definition of casinos are acts of an administrative law, the Macau government has wide discretionary powers so long as it is not exercised arbitrarily).

¹⁰¹ The competence is delegable given that the law does not expressly prohibit the competence delegation. See *id.*

¹⁰² *Government Has Not Received a Request to Open a Casino in a Hotel in Coloane*, Government Information Bureau of the Macao SAR (June 11, 2015), <https://www.gcs.gov.mo/archive/showNews.php?PageLang=P&DataUcn=89545> (the Secretary for Economy and Finance stated that if a hotel venture intends to open a casino, only the gaming operators can submit the application and the actual hotel company cannot express that intention).

equipment and certification of all gaming equipment.”¹⁰³ The Secretary for Economy and Finance stated:

[W]hen any new request [to open a casino] is received from casino companies, we [Macau government] will certainly carry out a comprehensive assessment during the procedure for analyzing and granting the authorization, taking into consideration its size, location, and its positive effects, from the perspective of Macau becoming an international tourism and leisure center, as well as the environment and policies of the gaming industry at the time, including the 3% annual gaming tables growth ceiling set for the 70 [read, 10] years from 2013. The Macau government will make the decision only after gathering and fully hearing the opinion of the community.¹⁰⁴

According to the Draft Law Proposal, the application to open a casino must be accompanied by:

- blueprints with details of the boundary of the authorized casino;
- in the case of buildings in strata title, Property Registry certificates with the description of the independent units, together with the respective blueprints;
- in the case of an amendment to the strata title, Property Registry certificates regarding the alteration to the casino areas (if any), with the description of the independent units, together with the respective blueprints.¹⁰⁵

¹⁰³ See Resposta à Interpeleção Escrita Apresentada pela Deputada Lee Chong Cheng, de 25/04/2008 [Response to Written Interpellation from Legislator Lee Chong Cheng, of 04/25/2008], Order No. 277/III/2008 (DICJ June 5, 2009), <https://www.al.gov.mo/uploads/attachment/written-consultation/2008/5465458623b458226f.pdf> [hereinafter DICJ Director Response 2009].

¹⁰⁴ *Interpeleção do Secretário de Economia e Finanças Leong Vai Tac Perante a Assembleia Legislativa* [Interpellation of Secretary for Economy and Finance Leong Vai Tac Before the Legislative Assembly] (Jul. 13, 2015), Diary of the Legislative Assembly, Series I, No. V-56, 18 (*response of Secretary for Economy and Finance to legislator Au Kam San*).

¹⁰⁵ See Draft Law Proposal, *supra* note 98, new proposed art. 5-A(5) to the Gaming Law.

ii. *Equipment and Utensils*

Equipment and utensils are the second class of reversible assets. They are as crucial as casinos from a public interest point of view.

a. *Equipment, Systems, and Utensils that Require DICJ Approval*

The DICJ¹⁰⁶ has the power to “approve the *equipment, systems,*¹⁰⁷ and *utensils* allocated by concessionaires [or subconcessionaires] to the operation of their respective concessions [or subconcessions].” The Gaming Inspection Department is responsible for “studying and dealing with matters” related to the gaming equipment, systems, and utensils technical specifications.¹⁰⁸ The Gaming Equipment Inspection Division has the task of “proposing the equipment, systems, and utensils technical specifications” and “undertaking the analysis and submit proposals concerning requests for approval of gaming equipment, systems, and utensils, as well concerning requests that affect their functioning.”¹⁰⁹

All equipment, systems, and utensils that require approval by the DICJ (to be allocated to the operation of the concession or subconcession) fall unquestionably within the scope of assets that revert to the Macau SAR. They are an essential part of the gaming/casino operation—because most of them may influence the outcome of the games—and more broadly of the regular operation of the concession (or subconcession).

The lack of a statutory definition of *equipment, system, and utensil*, and the inexistence, to the best of our knowledge, of any DICJ instruction or guideline on the matter has consequently created the need to rely on the DICJ’s discretion on whether specific equipment, system, or utensil is subject to regulatory approval. Nevertheless, determining which equipment, systems, and utensils revert seems to be solved by the fact that all are mandatorily inventoried¹¹⁰ and annually updated¹¹¹ by the concessionaires (and subconcessionaires).

¹⁰⁶ See DICJ Regulation, *supra* note 75, ch. I, art. 1(1).

¹⁰⁷ Although the Gaming Law only refers to the reversion of equipment and utensils, we will consider *systems* to be an equipment subtype, namely in accordance with art. 15 of the Gaming Machines Regulation, which deems *other equipment* to include the mobile gaming systems, the electronic monitoring systems, and the linked jackpot arrangements. *See id.* art. 2(12).

¹⁰⁸ See DICJ Regulation, *supra* note 75, ch. II, art. 6(6).

¹⁰⁹ *See id.* ch. II, art. 9(1)–(2).

¹¹⁰ *See* Gaming Law, *supra* note 5, ch. VI, art. 41(1).

¹¹¹ *See id.* art. 41(2).

In particular, gaming machines¹¹² and specific gaming equipment and systems—specifically TITO (Ticket-In, Ticket Out) machines,¹¹³ mobile gaming systems and devices,¹¹⁴ electronic monitoring systems,¹¹⁵ and linked jackpot arrangements¹¹⁶—follow a specific regime in their supply, approval, and certification.¹¹⁷ The technological progress of gaming machines (and gaming equipment and systems) over the past few decades has led to casino operators making the commercial decision to not purchase the ownership of the gaming machines (and gaming equipment and systems) in their casinos.

¹¹² *Gaming machines* are legally defined as:

[A]ny device, including gaming programs and associated software, memory compartment, random number generator and storage media for the gaming programs operated wholly or partially by electrical, electronic or mechanical means and designed, adapted or programmed to:

- 1) The practice of a game the outcome of which depends solely or mainly on luck;
- 2) Payment, as a result of a bet placed on a gaming machine, of a cash prize, gaming chips, tickets redeemable for cash or goods convertible to gaming chips, cash or cash equivalents.

Gaming Machines Regulation, *supra* note 72, ch. I, art. 1(2).

¹¹³ *TITO machines* are legally defined as “machines equipped with a ticket printer, connected to an electronic monitoring system and equipped with a centralized ticket validation module.” *Id.* ch. IV, art. 25.

¹¹⁴ *Mobile gaming systems* are legally defined as those “characterized by the use of new information technology, whether as wireless local area networks, Wi-Fi, microwaves or computerized data networks, through which players are given information on games.” Mobile gaming devices “may only be activated in gaming operating locations specifically authorized by the DICJ, making them inoperable outside of these locations.” *Id.* art. 27(1)–(2).

¹¹⁵ *Electronic monitoring systems* are legally defined as “any electronic, computerized or communications device or system intended to be used or adapted to send or receive data on gaming machines, particularly with regard to their security, integrity, accounting control, auditing and exploration.” *Id.* ch. V, art. 36(1). It is incumbent upon the Secretary for the Economy and Finance, through an external regulatory order, to approve the operational requirements of the electronic monitoring system. *Id.* art. 36(2). However, these requirements have not been approved so far.

¹¹⁶ *Linked jackpot arrangements* are legally defined as “the connection of two or more gaming machines to a device which, without affecting the outcome of the game on those machines, receives data from each of them and periodically records an amount which, in the event of a jackpot or other outcome agreed in one of the covered gaming machines, is paid, in whole or in part, as a prize.” *Id.* art. 39(2).

¹¹⁷ *See id.* ch. I, art. 2; ch. II, art. 4; ch. III, art. 16; ch. IV, arts. 26(5), 27(3); ch. V, arts. 36(2), 39(4).

This technological progress, combined with fierce competition between gaming machine (and gaming equipment and systems) manufacturers, has resulted in new products being presented in a frenetic cadence, with more attractive and sophisticated features being offered every time. Bearing this trend in mind, the legislator included a provision in the Gaming Machines Regulation stating:

[W]hen the supply of gaming machines¹¹⁸ does not involve the transfer of their ownership, the contracts [for the supply of gaming machines] . . . should include a purchase option which may be exercised, at any time, by the concessionaire, or an assignment of the concessionaire's contractual position to the Government ensuring the reversion provided for in Article 40 of Law 16/2001.¹¹⁹

In summary:

Gaming machines and other gaming equipment and systems	
Property of the concessionaire or subconcessionaire: • <i>Ab initio</i> ; or • By the exercise of the option to purchase the gaming machines (or gaming equipment or systems) provided for in the contracts for the supply of gaming machines (or gaming equipment or systems).	Not property of the concessionaire or subconcessionaire
The gaming machines (or other gaming equipment or systems) revert when the reversion option triggers.	The rights and obligations deriving from the contracts for the supply of gaming machines (or gaming equipment or systems) revert by assignment to the Macau government from the concessionaire or subconcessionaire's contractual position.

Concessionaires and subconcessionaires must keep the gaming machines' mandatory inventory permanently updated.¹²⁰ This requirement

¹¹⁸ See *id.* ch. II, art. 15 (applying to other gaming equipment and systems under the Gaming Machines Regulation).

¹¹⁹ See *id.* ch. II, art. 13(2).

¹²⁰ *Id.* ch. III, art. 24.

makes it possible to know at any given moment the number of gaming machines (or the inherent rights in the case of assignment of the concessionaire or subconcessionaire contractual position in the contracts for the supply of gaming machines) that revert to the Macau SAR, as well as their location.

b. Equipment, Systems, and Utensils that do Not Require DICJ Approval

What about the *equipment, systems, and utensils* that the DICJ does not need to approve? It is necessary to differentiate between equipment, systems, and utensils that, although not required to be approved by the DICJ, are necessary or relatively necessary for gaming/casino operations or to the regular operation of the concession (or subconcession).¹²¹

The distinguishing criterion of these two categories must be the ability to use the equipment, system, or utensil to implement the *principle of the continued operation of games of chance*, i.e., the equipment, systems, or utensils without which the gaming/casino operations cannot regularly or fully function. The only equipment, systems, or utensils that fall outside the reversion scope are the ones *relatively necessary*, as opposed to necessary, for the gaming/casino operations or the regular operation of the concession or subconcession. Examples that fall outside the reversion scope include all decoration pieces, like paintings or flowerpots.

iii. Other Assets or Rights

The third and final class of reversible assets is *other assets or rights which must revert under a contractual clause*. The concession and subconcession contracts are silent in this regard.¹²² The Macau SAR and the concessionaires and subconcessionaires did not contractually agree to revert any rights or other assets.

However, the concessionaires and subconcessionaires must assign to the Macau SAR, at no charge, intellectual and industrial property rights in relation to all of their “studies, projects, plans, drawings, documents and other materials, of any nature, which may be necessary or useful for the performance of its [Macau SAR] duties” as prescribed by the concession and subconcession contracts.¹²³ The concessionaires and subconcessionaires must also undertake,

¹²¹ Law No. 18/2008 (Código dos Contratos Públicos) [Public Contracts Code], ch. II, art. 419(2) (2008) (Port.) (referencing assets “indispensable for the adequate development of the activities granted by concession.”).

¹²² We believe that the assignment to the Macau government of the concessionaire or subconcessionaire’s contractual position in the supply contracts of gaming machines (or gaming equipment or systems) should fall in the reversion of equipment and utensils category.

¹²³ See Concession and Subconcession Contracts, *supra* note 17, at ch. XXII, cl. 85(3).

by request of the Macau SAR, to “prepare any type of document or statement for the purpose of confirming or registering the rights” referred to above, and the Macau SAR can “intervene in defense of these rights” if the concessionaire or subconcessionaire “fails to resolve any existing third-party disputes involving the breach of intellectual or industrial property rights attributed or to be attributed to the grantor.”¹²⁴

iv. “Gaming Investment Projects”

The Draft Law Proposal includes a new class of reversible assets: all “gaming investment projects” that have not been concluded.¹²⁵ This new class of reversible assets is outside the reversion scope and closer to a pure confiscation of assets. Aside from no compensation of any kind being due, the assets are not able—because they are not yet concluded—to be used in the operation of casino games of chance; thus, they are not apt to fulfill the principle of the continued operation of games of chance.

C. *Inventory and Principle of the Non-Relevance of the Physical Location*

The location of the equipment and utensils at the time of reversion is irrelevant. The concession and subconcession contracts establish the *principle of the non-relevance of the physical location* of the equipment and utensils, stating that they revert even when they are located outside of casinos (or inside casinos located in third-party properties).¹²⁶

All assets reversible to the Macau SAR must be inventoried by the concessionaires and subconcessionaires. This inventorying is done through an inventory drawn up in triplicate, with the respective concessionaire or subconcessionaire retaining a copy and delivering the remaining two copies to both the DICJ and DSF.¹²⁷ According to the Minimum Internal Control Rules, the mandatory inventory must comprise all fixed assets, including:

- assets allocated to gaming, i.e., assets used by the concessionaires or subconcessionaires to allow or improve casino activity development, including assets and basic equipment necessary to the functioning of the gaming tables (cards, dice, etc.) and gaming machines;
- assets not allocated to gaming, i.e., other fixed assets that are not linked to gaming activity; and

¹²⁴ *Id.* ch. XXII, cl. 85(4)-(5).

¹²⁵ See Draft Law Proposal, *supra* note 98, amendment to arts. 40(1), 47(3) of the Gaming Law.

¹²⁶ *Id.* ch. VIII, cl. 43(1).

¹²⁷ Gaming Law, *supra* note 5, ch. IV, art. 41(1). See also, Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 44(1).

- assets used in the casino activities that are not the property of the concessionaires or subconcessionaires (e.g., furniture and casino equipment bought by the gaming promoters).¹²⁸

Moreover, the inventory must include the description of the asset and information, its location, and estimated lifetime. The concessionaires (or subconcessionaires) are obligated to keep the inventory up to date and send the updated inventory annually to the DICJ and DSF with the corresponding schedule of changes updated before May 31 of each year.¹²⁹

The Finance Auditing Division of the DICJ is responsible for supervising and keeping up to date the inventory of all assets and rights assigned to the concessions and subconcessions reversible to the Macau SAR, as well as carrying out the respective inspections.¹³⁰ In the final year of the concession or subconcession, the inventory is done, on a mandatory basis, sixty days before the final date of the term¹³¹ or the date that the reversion operates.¹³² In other cases of extinction,¹³³ the concession or subconcession must do inventory “on a date and at a time to be determined by the government.”¹³⁴ Concessionaires and subconcessionaires must maintain an updated inventory of gaming machines to ascertain “at any time, the number of gaming machines, their respective supplier and their location.”¹³⁵ Moreover, the locations for the storage of gaming machines are subject to prior notice to the DICJ.¹³⁶

During the last year of the concession or subconcession,¹³⁷ authorization is required from the DICJ to “decommission . . . gaming machines and other equipment,” including those that although are not considered gaming machines, supplement them, regardless of whether they are connected in any way, so long

¹²⁸ Instruction No. 1/2006 (Requisitos Mınimos de Controle Interno) [Minimum Internal Control Rules] at 123 (promulgated by the DICJ, Aug. 1, 2006).

¹²⁹ Gaming Law, *supra* note 5, ch. IV, art. 41(2). *See also* Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 44(1).

¹³⁰ DICJ Regulation, *supra* note 75, ch. II, art. 16(3).

¹³¹ *See* Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 44(2).

¹³² *See* Wang, *supra* note 15.

¹³³ Gaming Law, *supra* note 5, ch. V, art. 45.

¹³⁴ *See* Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 44(3).

¹³⁵ Gaming Machines Regulation, *supra* note 72, ch. III, art. 24.

¹³⁶ *Id.* ch. I, art. 3(3).

¹³⁷ Given that these contracts run until June 26, 2022, their last year began on June 27, 2021. *See* Antonio Lobo Vilela, *Possible Legal Course of Action Upon the Term Expiration of the Macau SAR Casino Concessions and Casino Sub-concession Contracts Vis-a-Vis the Macau Gaming Law*, 23 GAMING L. REV. 1, 3 (2019) [hereinafter Lobo Vilela Possible Legal Course of Action]. The Macau government recently announced the extension of the concessions and subconcessions up to December 31, 2022, making the last year of the contracts begin January 1, 2022.

as they are not subject to legal regulations or DICJ instructions.¹³⁸ For this purpose, during the last year of the concession or subconcession, concessionaires and subconcessionaires must send to the DICJ a copy of the gaming machines' inventory in reference to "the 15th and the last day of each month . . . within five days of the end of the respective period."¹³⁹

D. *Timing of the Reversion*

The reversion is set to operate in a specific moment in time that does not necessarily have to coincide with the moment of extinction of the concession or subconcession.¹⁴⁰ Generally, it is a common practice for concession contracts to make a reversion clause's effectiveness expressly dependent on the verification of the term of the concession clause.

This practice was not used, however, in the case of the casino gaming concession and subconcession contracts. If the extinction of the concession or subconcession does not occur before the term for which it was granted or authorized, the concession and subconcession contracts provide for the reversion clause to go in effect on a specific date coinciding, *in casu*, with the end of the term of the concession or subconcession pursuant to the related clause.¹⁴¹ The effectiveness of the reversion on a specific date is embodied in the obligation to hand over reversible assets on a date specified by contractual agreement: June 26, 2022.¹⁴²

i. *Postponement of Reversion*

With clear prejudice to public interest,¹⁴³ the *effectiveness of the reversion on a specific date* was set aside by the Macau government in the case of SJM and MGM, whose contracts provided for the reversion to take place on March 31, 2020. On March 15, 2019, the Macau government prorogated and

¹³⁸ Gaming Machines Regulation, *supra* note 72, ch. IV, arts. 42(1), 44(2).

¹³⁹ *Id.* ch. IV, art. 42(2)–(3).

¹⁴⁰ The reversion may operate before or with the extinction of the concession or subconcession, but it can never supersede the extinction.

¹⁴¹ *See* Concession and Subconcession Contracts, *supra* note 17, ch. I, cl. 8(1).

¹⁴² *Id.* ch. VIII, cl. 43(1). The Macau government announced in March 2022 the extension of the concession and subconcession until December 31, 2022. Only following the revision to the concession and subconcession contracts we will know if the timing of the reversion will be postponed to December 31, 2022.

¹⁴³ The Macau government did not invoke any clear reasons to substantiate the postponement of the reversion and the consequent loss of compensation for the use of the casino unit(s) by SJM and MGM. *See generally* Gaming Law, *supra* note 5, ch. IV, arts. 37(1), 39(1).

extended¹⁴⁴ SJM's concession, and authorized the prorogation and extension of MGM's subconcession. The Macau government inexplicably did not address the reversion clause at the time.

A senior executive of an affected gaming operator said, "[A]fter discussions with the companies, the government has decided it will not execute Clause 43(1)¹⁴⁵ of the company's subconcession contract as written. The government's opinion is that Clause 43(1) [reversion clause] is tacitly amended by the subconcession extension which was executed on [March 15,] 2019 with the government's approval." The executive added, "Therefore, the reversion will only occur at the extended term of the subconcession or of its further extension(s), in the exact same terms as with all the other concessionaires/subconcessionaires."¹⁴⁶

The idea that Clause 43(1) of the concession and subconcession contracts were "tacitly amended by the subconcession extension" was a legal aberration, thus on March 23, 2021, the Macau government formally revised SJM's concession contract (and authorized the formal revision to MGM's subconcession contract) to alter the reversion date to June 26, 2022.

All concessions and subconcessions will—as expected¹⁴⁷—be extended until December 31, 2022. The reversion may be again postponed upon the end of the concession and subconcession's new term.

E. Handover

The reversion operates automatically. The concessionaires and subconcessionaires must immediately hand over all reversible assets under

¹⁴⁴ We differentiate between *term prorogation* (the increase in the length of time of a concession or subconcession contract *within* the 20-year maximum term allowed by law) and *term extension* (the increase in the length of time of a concession or subconcession contract *beyond* the 20-year maximum term allowed by law). See Lobo Vilela Possible Legal Course of Action, *supra* note 137, at 3.

¹⁴⁵ MGM Subconcession Contract, *supra* note 17, ch. VIII, cl. 43 ("On thirty-one March of two thousand and twenty, unless the subconcession is extinct before this date, the casinos of the subconcessionaire and the equipment and utensils allocated to gaming, even when located outside of the casinos, shall be automatically reverted to the Macau Special Administrative Region free of charge; the subconcessionaire undertakes to hand them over in a proper state of upkeep and operation, except for normal wear and tear from their use for the purposes of this subconcession contract, free of any charge or encumbrance.")

¹⁴⁶ Martin John Williams, *Macau Government Overrides Property Reversion Dates in SJM, MGM Contracts*, GAMBLING COMPLIANCE (Nov. 19, 2019).

¹⁴⁷ See Tony Lai, *Gaming Concessions Likely Extended for Short Time Period if Law Revision Not Ready by June – Gov't*, MACAU BUS. (Jan. 14, 2022), <https://www.macaubusiness.com/gaming-concessions-likely-extended-for-short-time-period-if-law-revision-not-ready-by-june-govt/>; see also António Lobo Vilela, *Casino Gaming in Macau After 2022: New Beginning or Mere Continuity?*, IMGL MAG., July 2021, at 15–19, <https://online.flippingbook.com/view/391103448/>.

penalty of the Macau government taking administrative possession of them.¹⁴⁸ All associated costs are paid by the bond to fulfill the concessionaire or subconcessionaire's legal or contractual obligations.¹⁴⁹

The reversible assets must be surrendered in a proper state of upkeep and functioning, except for their "normal wear arising from use" and their "normal renovation."¹⁵⁰ On the reversion date, the Macau government performs an inspection to verify "the state of conservation and maintenance" of the reversible assets and produces an inspection certificate.¹⁵¹

The Draft Law Proposal proposes a different solution: to apply the provisions on eviction set out in the Legal Framework for Urban Construction.¹⁵² This proposal is not in the public interest because it collides with the reversion's basilar *principle of the continued operation of games of chance*.

Abandoning the current solution—administrative possession, which operates immediately—used, namely, for expropriations for public utility¹⁵³ or public works contracts,¹⁵⁴ the solution envisaged by the Draft Law Proposal presupposes the eviction order to formally notify the recipients of the duty to surrender the reversible assets (owners, tenants, or occupants) "by posting the notice at the entrance of the building or independent units and publishing the notice in two newspapers of the . . . Macao SAR, one in Chinese language and another in Portuguese language."¹⁵⁵ Recipients of the eviction have forty-five days to comply with the eviction order.¹⁵⁶

F. Assets Decommission and Destruction

The lack of aptness of reverted assets results in their consideration as "inappropriate for use." As a result, they are "decommissioned or destroyed, following the write-off process provided for in legislation applicable to the writing off of assets of the Region."¹⁵⁷ The DICJ is responsible for determining

¹⁴⁸ See Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 43(2)–(3).

¹⁴⁹ *Id.* ch. XII, cl. 61(2).

¹⁵⁰ *Id.* ch. VII, cl. 43(1)–(6).

¹⁵¹ *Id.* ch. VII, cl. 43(4). This inspection also serves to be a permanent documentary record ("ad perpetuam rei memoriam").

¹⁵² Law No. 14/2021 (Regime Jurídico da Construção Urbana) [Urban Construction Law], ch. IV, arts. 28–29 (2021).

¹⁵³ Law No. 12/92/M (Regime das Expropriações por Utilidade Pública) [Regime of Expropriations for Public Utility], ch. II, art. 16 (1992).

¹⁵⁴ Decree-Law No. 74/99/M (Aprova o Regime Jurídico do Contrato das Empreitadas de Obras Públicas) [Approves the Legal Regime of Public Works Contracts], ch. III, art. 138(4) (1999) (when the contractor fails to comply with the work plan).

¹⁵⁵ See Urban Construction Law, *supra* note 152, ch. IV, art. 29(1).

¹⁵⁶ *Id.* art. 29(2).

¹⁵⁷ See Gaming Law, *supra* note 5, ch. IV, art. 40(3).

which assets must be decommissioned or destroyed, sending them, with due authorization from the Chief Executive or the Secretary for Economy and Finance, to the DSF for sale in public auction (if possible) or to be routed for destruction.

G. *Compensation Due*

The reversion does not entitle the concessionaires or subconcessionaires to compensation unless the contract provides for it.¹⁵⁸ The amended version of the draft gaming law submitted to the Legislative Assembly included the phrase “unless contractually provided for otherwise,” which made the reversion potentially onerous to the grantor based on negotiation between the parties at the time of signing the concession contract, for the immediate purpose of establishing another means of attracting investors to the gaming sector.¹⁵⁹ While the concession and subconcession contracts do not contractually provide for the gratuity of the reversion, they affirm the gratuity of the reversion.¹⁶⁰ The Draft Law Proposal erases the possibility of the contracts providing for otherwise. If the amendment is approved, concessionaires will never be entitled to compensation.¹⁶¹

H. *Charges or Encumbrances*

In Macau, a prohibition of the free establishment of charges or encumbrances applies: casinos, equipment, and utensils must be free and clear of any charge or encumbrance unless authorized by the Macau government.¹⁶² This limitation is aimed to impede the concessionaire and subconcessionaire from establishing charges and encumbrances at its discretion, which may result in the practical disruption of the reversion by the exclusive will of the concessionaire or subconcessionaire.

Notwithstanding the Macau government’s authorization, the handover of the reversible assets is always done free of any charge or encumbrance.¹⁶³ The concessionaires and subconcessionaires have an obligation to terminate all charges and encumbrances before the extinction of the concession or subconcession¹⁶⁴ or before the reversion.¹⁶⁵

¹⁵⁸ *Id.* ch. IV, art. (40)(2).

¹⁵⁹ LOBO VILELA VOL. IV, *supra* note 7, at 465 (translating the Opinion of the Ad hoc Committee in English).

¹⁶⁰ *See* Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 43(1); ch. IX, cl. 80(8).

¹⁶¹ *See* Draft Law Proposal, *supra* note 98, amendment to art. 40(2) of the Gaming Law.

¹⁶² *Id.* ch. VIII, cl. 42(1).

¹⁶³ *Id.* cl. 43(1).

¹⁶⁴ *Id.* cl. 42(2).

¹⁶⁵ *Id.* cl. 43(1).

An example of an encumbrance that a concession or subconcession may have is a mortgage. The casino unit may only be subject to real rights of guarantee by means of a mortgage. But given the reversibility of the mortgaged casinos, this encumbrance is materially and temporally compromised in its legal effectiveness. Therefore, the judicial enforcement of a mortgage against casinos is in breach *per se* of the Macau SAR's right to reversion, as with the transfer to third parties, by means of voluntary or other representation of rights of legal or factual provision against the casinos.

Marcelo Rebelo de Sousa noted:¹⁶⁶

[R]eversibility pursuant to the law obviously supersedes real rights of contractual origin; furthermore, the legal source precedes them. The prevalence of the State's right reversion of legal origin against the mortgage entails the extinction of it. In other words, it is legal to establish mortgage rights against assets whose reversibility to the State remains unknown, and which thus cannot be disposed of or mortgaged. Creditors, however know that their rights are extinguished for lack of a purpose if the assets subject to mortgage become reversible to the State. We speak of extinction, due to lack of a purpose, since the situation is legally identical to the total deterioration or loss of the mortgaged asset

I. *Improvements*

Improvements made to assets that are reversible to the Macau SAR do not entitle the concessionaires or subconcessionaires to receive any kind of compensation.¹⁶⁷ According to the concession and subconcession contracts, improvements need not be removed.¹⁶⁸ Improvements are defined as "all expenses incurred to preserve or improve the asset" and are classified as:

¹⁶⁶ See Judgment of the Évora Appeal Court [Portugal], Case No. 2327/06 (Sept. 20, 2007), <http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/f6a893761345b54480257de100574bb1?OpenDocument>.

¹⁶⁷ Gaming Law, *supra* note 5, ch. IV, art. 42. See also, Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 45.

¹⁶⁸ The provision that the improvements "need not be removed" stems from an express request during the concession contract negotiations by one of the awarding entities out of fear that the Macau government could demand their withdrawal. See Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 45. In fact, as prescribed by civil law, useful and voluntary improvements may be removed by the lessee, when such removal is not to the detriment of the asset, i.e., "unless affecting the substance of the property or its economic purpose." See Decree-Law No. 39/99 (Código Civil) [Civil Code], Book II, Title II, ch. III, Sec. XI(VI), art. 1054(1) (1999).

- necessary improvements (meant to avoid the loss, destruction, or deterioration of the asset);
- useful improvements (dispensable, but enhance the asset's value); and
- voluntary improvements (dispensable, do not enhance value, and are for the mere enjoyment of the improver).¹⁶⁹

J. Insurance

The concessionaires and subconcessionaires are obliged to ensure the existence and ongoing effectiveness of a wide range of insurance contracts, namely against damages to buildings, furniture, equipment, and other assets allocated to the integrated activities of the concession or subconcession.¹⁷⁰ The concessionaires and subconcessionaires must prove the existence and effectiveness of insurance contracts by sending a copy of them to the government, at the time of their execution or renewal, without the ability to cancel, suspend, modify, or replace the insurance contracts, unless authorized by the government, or if merely changing the insurer, then the concessionaire or subconcessionaire must promptly notify the government.¹⁷¹

Furthermore, the Macau government may proceed, on behalf of the concessionaire or subconcessionaire, by calling on the bond to fulfill the concessionaire or subconcessionaire's legal or contractual obligations to pay the insurance premiums directly when the concessionaire or subconcessionaire has not done so.¹⁷²

K. Related Documents of Public Statements

Several written interpellations to the Macau government were made regarding the reversion of casinos. The most significant ones are:

¹⁶⁹ See *id.* at Book I, Title II(II), art. 208(3).

¹⁷⁰ See Concession and Subconcession Contracts, *supra* note 17, ch. VII, cl. 40(2).

¹⁷¹ *Id.* ch. VII, cl. 40(6), 40(8).

¹⁷² *Id.* cl. 40(9).

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Date	Legislator	Order No.	Publication - Diary of the Legislative Assembly, Series II, No.	Date	Replied by	Publication - Diary of the Legislative Assembly, Series II, No.	Descriptor
29-09-2006	Au Kam San	506/III/2006	III-13, 15-10-2006, p. 67–68	28-01-2008	DICJ director	III-30, 31-01-2008, p. 153–54	Reversion – Casino Lisboa
11-01-2008		39/III/2008	III-30, 31-01-2008, p. 60	24-07-2008		III-37, 31-08-2008, p. 139–40	
17-09-2010		801/IV/2010	IV-12, 30-09-2010, p. 63–65	15-11-2010	DSSOPT director	IV-15, 30-11-2010, p. 124	Reversion
14-10-2010		879/IV/2010	IV-14, 31-10-2010, p. 28–29	11-02-2011		IV-18, 28-02-2010, p. 171	

The 11-01-2008 written interpellation (No. 39/III/2008) questioned if “only Casino Lisboa must revert to the Macau SAR” given that STDM operated “more than a dozen casinos.”¹⁷³ The Macau government responded by clarifying that the STDM exclusive concession contract specified only the reversion of the casino in the Casino-Hotel Lisboa, including all of its furniture and utensils: “[I]t only provided for the reversion of the Casino, its furniture and utensils, located at the Casino-Hotel Lisboa Complex, with no contractual clause or legal provision providing for an identical stipulation for other casinos authorized as locations for operating games of chance.”¹⁷⁴

V. THE CASINO STRUCTURE

Considering the *principle of the continued operation of games of chance*, the casino *structure* comprises the gaming floor (i.e., the *casinos* and *other gaming areas*)¹⁷⁵ where games of chance are offered and whose access

¹⁷³ Interpeleção Escrita do Deputado Au Kam San [Written Interpellation From Legislator Au Kam San], Order No. 39/III/2008 (Jan. 11, 2008), <https://www.al.gov.mo/uploads/attachment/written-consultation/2008/3953758623c22dfd8b.pdf>.

¹⁷⁴ Resposta à Interpeleção Escrita Apresentada pelo Deputado Au Kam San [Response to Written Interpellation From Legislator Au Kam San], Order No. 39/III/2008 (DICJ, Jul. 24, 2008), <https://www.al.gov.mo/uploads/attachment/written-consultation/2008/7397758623c23c7720.pdf>.

¹⁷⁵ As noted by Jorge Costa Oliveira, “several concessionaires and subconcessionaires have misinterpreted the law in separating ‘casino’-designated areas within ‘gaming areas’ to try to circumscribe the effect of the reversion mechanism set forth in [Gaming Law] . . . [T]hat is not the correct interpretation.

points do not offer general and free circulation) and all other areas necessary for the regular operation of the concession or subconcession. These areas are what the Gaming Law refers to as *casino dependences and annexes*¹⁷⁶ and what the concession and subconcession contracts refer to as *casino dependences and other premises and annexes related to the operation of the* [concession or subconcession],¹⁷⁷ which concessionaires and subconcessionaires are obligated to run regularly and “for their intended or authorized use.”¹⁷⁸

This operating mandate is a fundamental obligation¹⁷⁹ of the concessionaires and subconcessionaires. Its breach may be considered grounds for termination of the concession or subconcession contract.¹⁸⁰ Furthermore, a casino is a functional unit. It shall include all the physical space of the gaming floor and dependences, i.e., areas for operational services and support facilities for the gaming operations, regardless of whether these spaces are physically adjacent.¹⁸¹

At the time of reversion, all gambling zones will return to the Macau SAR.” See Meneses, supra note 20.

According to Carlos Lobo:

[W]ithout an amendment to Law 16/2001, as well as a contractual amendment to the concession and subconcession contracts, the operators (concessionaires and subconcessionaires) will not be able to avoid the reversion of their casinos as well as the “other gaming zones” in 2020 and 2022, which will allow the government, if so wishes, to start a new chapter in the operation of games of chance with new operators while maintaining the current operational capacity.

Carlos Lobo, *Do Instituto da Reversão no Regime de Exploração de Jogos de Fortuna ou Azar RAEM* [The Reversal in the Regime of Operation of Games of Chance MSAR], 2 MAC. J. LEGIS. JURIS. 23, 29 (2017).

¹⁷⁶ Gaming Law, *supra* note 5, ch. II, art. 22(1).

¹⁷⁷ See Concession and Subconcession Contracts, *supra* note 17, ch. XV, cl. 68; see also ANTÓNIO LOBO VILELA, MACAU GAMING LAW, ANNOTATED WITH COMMENTS, VOL III, 17–18 (2020) [hereinafter LOBO VILELA VOL. III].

¹⁷⁸ *Id.*

¹⁷⁹ LOBO VILELA VOL. III, *supra* note 177, at 18.

¹⁸⁰ This breach cannot be sanctioned as an administrative offense because a framework for administrative offenses in the area of games of chance has not yet been approved. See Gaming Law, *supra* note 5, art. 47(1); see also, Concession and Subconcession Contracts, *supra* note 17, ch. XIX, cl. 80(1). The regulation on administrative offenses “is widely expected (and has been pending for quite some time now), and has once again been announced by the government as a legislative priority for the fiscal year of 2012.” PESSANHA, *supra* note 59.

¹⁸¹ For instance, the crime of usury for gaming is applicable if the crime is committed in the casinos, including all the dependences specifically supporting the operation of

In short, *casinos* are the places and premises authorized and classified as such by the Macau government, located in establishments belonging to the private domain of the Macau SAR¹⁸² and allocated to the concession or subconcession,¹⁸³ or in private establishments.¹⁸⁴ Casinos must be registered with the Property Registry under strata title as an independent unit or units in case they revert to the Macau SAR on the date contractually agreed upon or upon the extinction of the concession or subconcession. Casinos comprise the gaming floor¹⁸⁵ and all dependences that are ancillary, complementary, or directly and necessarily related to the regular operation of the concession or subconcession.

A. *Casino Dependences*

The dependences ancillary, complementary, or directly and necessarily related to the regular operation of the concession or subconcession are an integrant part of the casino. They include but are not limited to the areas destined for:

- the Judiciary Police agents and DICJ inspectors on duty in the casinos;
- the cages and, if separated, money exchange counters;
- storage and counting of gaming tokens and chips, cash and cash equivalents;
storage of equipment, systems, and utensils;
- the “assembly, installation, programming, repair, adaptation, modification, servicing, and maintenance” of gaming machines (if separated from the area destined for its storage); and
- surveillance of the casinos through electronic surveillance and control equipment.

Other areas, namely those intended for casino employees—such as rest areas, canteens, and changing rooms, as well as other social areas¹⁸⁶ such as bathrooms, cloakrooms, and receptions—need to be assessed on a case-by-case basis whether they are ancillary, complementary, or directly and necessarily related to the regular operation of the concession or subconcession. For example, a canteen that indiscriminately serves all employees of a property, including

games of chance, as well as adjacent facilities in which artistic, cultural, recreational, commercial, and hotel industry-related activities are carried out. *Illegal Gambling Law*, *supra* note 73, ch. III, art. 13(2).

¹⁸² LOBO VILELA VOL. IV, *supra* note 7, at 91.

¹⁸³ *Gaming Law*, *supra* note 5, ch. IV, art. 37(1).

¹⁸⁴ *Civil Code*, *supra* note 168, at Book III, Title II, ch. V, sec. 1, arts. 1317–22.

¹⁸⁵ The gaming floor includes places where VIP, mass market, and premium mass gaming is offered.

¹⁸⁶ Excluding any social areas necessary for the unit to be registered under strata title with the Property Registry.

gaming employees, likely does not fit the criteria for being ancillary, complementary, or directly and necessarily related to the regular operation of the concession or subconcession. Car park spaces, namely those reserved to the Judiciary Police agents, DICJ inspectors, or some VIP patrons do not fit this criterion and therefore will not revert.

The Draft Law Proposal intends to solve the issue of what areas the casino comprises. It states that shall be clearly identified and delimited the areas for:

- operation of games of chance;
- the cage/treasury;
- surveillance of the casino, their entrances, and exits, as well as their dependences;
- transportation, deposit, storage, and safekeeping of chips or money for games of chance;
- counting chips or money for games of chance;
- electromechanical, water supply, and similar installations;
- sanitary facilities;
- other logistical services, to be defined in the concession contracts.¹⁸⁷

B. Dependences Non-Adjacent to the Gaming Floor

The casino dependences need not be adjacent to the gaming floor or any other dependence. As an integrant part of the casino, they revert to the Macau SAR even if they are not adjacent. If a facility cannot be considered suitable for registration as an independent unit or units with the Property Registry under strata title, a possible solution would be to try to negotiate with the Macau government to allocate another equivalent space for the same purpose.¹⁸⁸

¹⁸⁷ See Draft Law Proposal, *supra* note 98, new proposed art. 5-A to the Gaming Law.

¹⁸⁸ The Macau government and the concessionaires and subconcessionaires undertook “to carry out consultations whenever questions or differences ar[o]se between them in terms of . . . application, execution, interpretation or integration of the rules governing . . . [the concession or subconcession] contract.” Sands China Ltd. stated, “If any disagreement arises between VML and the Macau Government regarding the interpretation of, or our compliance with, a provision of the Subconcession Contract, we will be relying on the consultation process with the [DICJ].” SANDS CHINA LTD., GLOBAL OFFERING 42 (2009) [hereinafter SANDS CHINA LTD.]. Similar wording is found in MGM China Holdings Ltd.’s global offering: “[A]ny disagreement arises between MGM Grand Paradise and the Macau Government regarding the interpretation of, or our compliance with, a provision of the Subconcession Contract, we will be relying on the consultation process with the Macau Government as described above.” MGM CHINA HOLDINGS LTD., GLOBAL OFFERING 53 (2011).

C. Shared Dependences

Generally, all casino dependences shall revert if they are deemed as ancillary, complementary, or directly and necessarily related to the regular operation of the concession or subconcession. In the case of a shared dependence, a possible solution would be to reduce the area to the one that effectively proves to be ancillary, complementary, or directly related to the regular operation of the concession or subconcession, or after negotiations with the Macau government, try the allocation of another equivalent space for the same purpose.

The concessionaires and subconcessionaires are aware of the object of the reversion since at least the date of execution of their respective concession or subconcession contracts.¹⁸⁹ Furthermore, with the exception of most of the casinos operated by SJM, all other casino properties were built after the execution of the concession or subconcession contracts. Having not changed the casino layout at the project stage,¹⁹⁰ the concessionaires and subconcessionaires had more than enough time over the last fifteen to nineteen years to make the necessary changes to overcome the problem of existing shared dependences. However, despite being contractually bound in the matter,¹⁹¹ nothing seems to have been done concerning registration with the Property Registry.

The Macau government is also not without criticism. Following the problems raised with the reversion of Casino Lisboa from STDM, the Macanese authorities have apparently not done much to mitigate the issues. Over the past nineteen years, the oversight has proved to be nonexistent or at least weak, insufficient, and inadequate. Concessionaires and subconcessionaires will likely

¹⁸⁹ SJM in March 2002, Wynn and Galaxy in June 2002, Venetian in December 2002, MGM in April 2005, and Melco in September 2006. Moreover, after the current concessionaires and subconcessionaires listed in the Hong Kong Stock Exchange were granted a concession or authorized a subconcession, they referred to the reversion of casinos and gaming equipment and utensils in the Global Offering. *See* WYNN MACAU LTD., GLOBAL OFFERING, 36–37 (2009). *See also* SANDS CHINA LTD., *supra* note 188, at 10 (“Upon such termination, all of VML’s casinos, slot machine operations and related gaming equipment as well as all property rights to the casino premises in Macau would be automatically transferred to the Macau Government without compensation to VML.”). *Id.* at 41–42 (“VML’s Subconcession Contract expires on June 26, 2022. Unless VML’s Subconcession is extended, or legislation with regard to reversion of casino premises is amended, all of VML’s casino premises and gaming-related equipment will be automatically transferred to the Macau Government on that date without compensation to us, and we will cease to generate any revenues from such gaming operations.”).

¹⁹⁰ *See* LOBO VILELA VOL. I, *supra* note 72, at 197 (describing “the *semi-open, conservative or Macanese casino design* of the majority casinos in Macau”). Even though operators know that the casinos revert, they nevertheless design them in a manner that gives rise to difficulties upon reversion with shared facilities (e.g., a surveillance room that serves the casino and the rest of the property).

¹⁹¹ *See* Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 42(5)–(8).

be contractually bound, as SJM was in relation to Casino Lisboa,¹⁹² to cooperate with the government, carrying out acts needed for the registration of the casino property in the name of the Macau SAR, and other acts resulting therefrom.

The DICJ possesses power¹⁹³ to oversee concessionaires and subconcessionaires, namely compliance with their legal and contractual obligations, and the express duty¹⁹⁴ to monitor the timely fulfillment of those contractual obligations and submit a quarterly report to the Secretary for Economy and Finance. However, the Macau regulator has apparently not determined the fulfillment of the concession and subconcession contracts concerning the obligation related to reversible assets. Specifically, it seems the DICJ has not analyzed the annual mandatory inventory of reversible assets, as required.

The issue under analysis is not merely legal. If the Macau government claims the reversion of a shared dependence, a possible solution would be opening negotiations and trying to reach an agreement to the satisfaction of both parties.¹⁹⁵ It does not seem fair that shared dependences revert in their entirety, nor would it be fair if they did not revert at all.

An example of shared dependence is shared surveillance room. Casino surveillance is a major issue for the Macau government. For many years now, the Macau government has been demanding an increased oversight of the gaming activities, a task partially performed by a continued reinforcement of casino supervision through visual surveillance systems.¹⁹⁶ According to a 2017 governmental report on tourism:

Concessionaires have invested in advanced surveillance technology, from chips with built-in radio transmitters to high-definition, multi-lens, digital cameras that can scan huge gaming floors. About 100,000 of the most advanced security cameras in the market have been installed since 2013.

¹⁹² See SJM Concession Contract, *supra* note 17, ch. XXIII, cl. 111(4). To share dependences was a decision taken solely by the respective concessionaire and subconcessionaire. To defend that a dependence should not revert because it is shared is, to say the least, *venire contra factum proprium*.

¹⁹³ DICJ Regulation, *supra* note 75, ch. I, art. 2(2).

¹⁹⁴ Order of the Chief Executive No. 112/2002 (2002).

¹⁹⁵ SANDS CHINA LTD., *supra* note 188, at 42.

¹⁹⁶ See *Government Policy Address Report for 2012*, GOV'T OF MACAU SAR 84 (Nov. 15, 2011), https://www.gov.mo/pt/wp-content/uploads/sites/3/2017/10/pt2012_copies.pdf; *Government Policy Address Report 2013*, GOV'T OF MACAU SAR 147 (Nov. 13, 2012), https://www.gov.mo/pt/wp-content/uploads/sites/3/2017/10/pt2013_copies.pdf.

Concessionaires have 24 hours monitoring 7 days per week. Another 50,000 cameras will be installed until 2018.¹⁹⁷

Moreover, the “installation of video surveillance equipment” is required before Macau will authorize the opening of a casino,¹⁹⁸ mainly because an important part of the DICJ’s supervision of casino operations is conducted through “viewing the images captured by the video cameras in casinos.”¹⁹⁹

The Gaming Law and the concession and subconcession contracts specify the duty to install electronic surveillance and control equipment in casinos, and other areas “as a means of ensuring protection and security of people and property.”²⁰⁰ “The installation of . . . electronic surveillance and control equipment”—generally translated in the deployment of cameras all over the casino, other dependences, and of monitors in the surveillance rooms—“is a fundamental obligation of the concessionaires and subconcessionaires.”²⁰¹ Its breach may be considered grounds for termination of the concession or subconcession contract.²⁰²

The electronic surveillance and control equipment is subject to approval²⁰³ by the DICJ, which is conditional upon confirmation that the surveillance and control equipment is of high international quality.²⁰⁴

Altogether, these facts suggest that casino surveillance is an activity directly related to the gaming/casino operations and the surveillance room is a dependence ancillary, complementary, or directly and necessarily related to the regular operation of the concession or subconcession.

Additionally, the “electronic surveillance and control equipment” is necessarily “equipment” subject to reversion under the law and the concession

¹⁹⁷ *Macao Tourism Industry Development Master Plan – Comprehensive Report*, MACAU GOV'T TOURISM OFFICE 222 (Sept. 2017), https://masterplan.macaotourism.gov.mo/2021/download/Comprehensive_Report_en.pdf. According to some concessionaires and subconcessionaires, in July 2019, the DICJ issued an informal instruction “requesting them to strictly comply with . . . measures which would enter into force on 1 August 2019,” including the need to request approval to install any “electronic monitoring devices, including CCTV, facial recognition system, etc., at the casino gaming rooms and gaming areas.”

¹⁹⁸ DICJ Director Response 2009, *supra* note 103.

¹⁹⁹ Projecto de Reposta ao Deputado Chan Meng Kam [Draft Response to Legislator Chan Meng Kam], Order No. 557/III/2007, DICJ (June 19, 2008).

²⁰⁰ Gaming Law, *supra* note 5, ch. II, art. 22(6); Concession and Subconcession Contracts, *supra* note 17, ch. II, cl. 13(1)–(2).

²⁰¹ VILELA LOBO VOL. III, *supra* note 177, at 84.

²⁰² See Gaming Law, *supra* note 5, ch. V, art. 47(1); see, also, Concession and Subconcession Contracts, *supra* note 17, ch. XIX, cl. 80(1).

²⁰³ See Concession and Subconcession Contracts, *supra* note 17, ch. II, cl. 13(1).

²⁰⁴ *Id.* ch. VII, cls. 13(1), 13(3).

and subconcession contracts. We also incorporate here *mutatis mutandis* the reasoning expended before on shared dependences.

VI. CASINOS THAT REVERT: PRACTICAL PROBLEMS

Which casinos revert? As we discussed before, all casinos revert except those authorized to be located on a third-party property on which the Macau government did not impose the condition to allow the reversion nor require that the concessionaire or subconcessionaire own the building units in which the casinos are situated.²⁰⁵

However, some practical problems exist because there are buildings that are:

- not registered with the Property Registry;²⁰⁶
- registered with the Property Registry but not under strata title; or
- registered with the Property Registry under strata title but with a specified casino area different from the actual existing area of the casino in operation.

A. *Buildings Not Registered with the Property Registry or Registered but Not Under Strata Title*

Under contractual obligation,²⁰⁷ the concessionaires and subconcessionaires must register buildings where the casinos are located with the Property Registry under strata title so that the casinos constitute one independent unit (or more).²⁰⁸ If this obligation is infringed, the outcome will be largely the same as if the building was registered with the Property Registry under strata title in the first place.

In fact, the reversion is automatic, operating *ipso iuri*, independent of any formality.²⁰⁹ Based on the mandatory inventory of reversible assets²¹⁰ and

²⁰⁵ *Id.* ch. VIII, cl. 42(3).

²⁰⁶ *See id.* cl. 42(5)–(6) (only the land concession is registered).

²⁰⁷ *See id.*

²⁰⁸ “Building units that may be subject to strata title are those which, in addition to being independent units, are distinct and isolated from each other, with their own exit to a common part of the housing condominium or to the public thoroughfare.” Civil Code, *supra* note 168, Book III, Title II, ch. V, sec. 1, art. 1315(1).

²⁰⁹ *E.g.* Concession and Subconcession Contracts, *supra* note 17, cl. 43(1).

²¹⁰ Casinos must describe all their assets and identify whether they are related to gaming. Minimum Internal Control Rules, *supra* note 128, at 123.

the existing blueprints²¹¹ of all casinos in operation,²¹² the Macau government knows (or should know) the exact location of the existing casino areas, including their dependences and respective physical areas. That knowledge should suffice for the Macau government taking immediate administrative possession of any casino²¹³ and thereafter handle the registration or other formalities.

The lack of registration of properties under strata title enables the reversion to rest over an aliquot part of the property and of the land itself. To reflect such change, the respective land concession contract would need to be revised.²¹⁴ The Macau government already has experience in handling these matters. Although the Casino Lisboa reverted in March 2002 upon the extinction of STD M's casino gaming concession, the complex Casino-Hotel Lisboa was never registered under strata title. Only in July 2007 was the Macau government able to complete all formalities needed.²¹⁵

B. *Discrepancies in Casino Areas*

In regard to buildings registered with the Property Registry under strata title where the specified casino unit area is different from the actual existing area of the casino in operation, one must differentiate the cases where the casino is located in or outside the main investment referred to in the Investment Plan annexed to the concession and subconcession contracts.

²¹¹ See Instruction No. 1/2014, *supra* note 88, art. 7 (aside from the blueprints submitted by the concessionaires and subconcessionaires for opening a casino or any layout change, the DICJ also has “stamped copies” of blueprints identifying gaming areas “delivered to the Health Services according to the procedure defined in the guidelines on smoking rooms.”). See, also, Draft Law Proposal, *supra* note 98, new proposed art. 5-A(5) (casino blueprints to be submitted to the DICJ).

²¹² See LOBO VILELA VOL. IV, *supra* note 7, at 157 n.3 (for the sake of certainty, and on behalf of the public interest, we have defended the need to publicize the casino areas through suitable means).

²¹³ See Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 43(2)-(3) (the government takes immediate administrative possession of a casino when the concessionaire or subconcessionaire does not immediately hand it over).

²¹⁴ See Law No. 6/80/M (Lei de Terras) [1980 Land Law], ch. X, art. 154 (1980) (repealed); Law No. 10/2013 (Lei de Terras) [2013 Land Law], ch. XV, art. 216(1) (2013) (land concessionaires may opt to continue to have their land concession governed by the previous legislation).

²¹⁵ See Deed of July 6, 2007 (Contrato de Reversão e Alienação do Imóvel “Conjunto Casino-Hotel Lisboa”) [Agreement for the Reversion and Sale of the Property “Casino-Hotel Lisboa”], DSF (2007) [hereinafter Casino-Hotel Lisboa Deed].

i. *Casinos Located in the Main Investment of the Concessionaires and Subconcessionaires*

The Macau government granted land to the concessionaires and subconcessionaires or, in some cases, to companies belonging to the same group of companies of the concessionaires or subconcessionaires,²¹⁶ so they carry out the investment commitments by executing the projects referred to in the Investments Plan.²¹⁷ These land concession contracts provide that the extinction of the concession or subconcession implies the reversion of the itemized casino unit, as well as the equipment and utensils allocated to gaming.

If the land is granted to a third party, the respective concessionaire or subconcessionaire is also a party to the land concession contract, which provides that the land concessionaire must transfer the casino unit to the concessionaire or subconcessionaire within 30 days of registering with the Property Registry under strata title.

The land concession contracts specify the casino unit areas. These areas show a great discrepancy between concessionaires and subconcessionaires:

Property	Square Meters	Square Feet
City of Dreams ²¹⁸	2,200	23,681
Galaxy Cotai ²¹⁹	2,500	26,910
The Venetian Macao ²²⁰	2,600	27,986
Wynn Macau ²²¹	8,214	88,415
Grand Lisboa ²²²	20,304	218,550
MGM Macau ²²³	28,976	311,895

²¹⁶ This is the case for all concessionaires, except Wynn, and all subconcessionaires, except MGM. The concessionaires and subconcessionaires may execute indirectly, through a third party, the project(s) referred to in the Investment Plan if authorized by the Macau government. *Compare* Concession and Subconcession Contracts, *supra* note 17, ch. VII, cls. 35(5), 39, *with* Wynn Concession Contract, *supra* note 17, ch. VII, cl. 39.

²¹⁷ *See*, Concession and Subconcession Contracts, *supra* note 17, ch. VII.

²¹⁸ Order of the Secretary for Transport and Public Works No. 25/2008, cl. 1 (2008), <https://bo.io.gov.mo/bo/ii/2008/33/despstop.asp#25>.

²¹⁹ Order of the Secretary for Transport and Public Works No. 48/2009, cl. 1 (2009), <https://bo.io.gov.mo/bo/ii/2009/42/despstop.asp#48>.

²²⁰ Order of the Secretary for Transport and Public Works No. 27/2007, cl. 1 (2007), <https://bo.io.gov.mo/bo/ii/2007/16/despstop.asp#27>.

²²¹ Order of the Secretary for Transport and Public Works No. 81/2004, cl. 1 (2004), <https://bo.io.gov.mo/bo/ii/2004/32/despstop.asp#81>.

²²² Order of the Secretary for Transport and Public Works No. 28/2008, cl. 1 (2008), <https://bo.io.gov.mo/bo/ii/2008/38/despstop.asp#28>.

²²³ Order of the Secretary of Transport and Public Works No. 47/2006, cl. 1 (2006), <https://bo.io.gov.mo/bo/ii/2006/14/despstop.asp#47>.

Moreover, the casino areas specified are most likely smaller (and in some cases ridiculously smaller)²²⁴ than the actual existing areas of the casinos in operation. However, this (lack of) coincidence of the area sizes is irrelevant for the purpose of reversion.

Firstly, the Gaming Law (which is crystal clear on the scope of reversion) prevails, as any law, over any contract that in any way may limit its commands.²²⁵ Secondly, the concession and subconcession contracts establish the *principle of subordination of land concession contracts*,²²⁶ under which these contracts are, in applicable part, subordinate to the provisions of the concession and subconcession contracts, which provide that the casinos revert. Lastly, concessionaires and subconcessionaires are contractually bound²²⁷ to register any changes to the strata title deed or, if the property is not yet registered under strata title, to proceed with its registration, disclosing the actual existing area of the casino in operation.

In relation to those properties registered with the Property Registry under strata title, the area of the casino unit registered may not match with the actual existing area of the casino in operation. The registration of the casino unit under strata title was (probably in all cases) prior to the completion of the construction of the building where the casino is located. Based on the following

²²⁴ 2020 Annual Report, WYNN MACAU, LTD 7 (2021), http://en.wynnmacaulimited.com/system/files-encrypted/nasdaq_kms/assets/2021/04/26/18-17-04/E_Annual%20Report.pdf (stating that Wynn Macau has “approximately 252,000 square feet of casino space”); 2013 Annual Report, GALAXY ENT. GRP. LTD. 23 (2014), <https://www.galaxyentertainment.com/uploads/investor/35c576069a35e6ed2c0ee4fa7c207a963a22b8d2.pdf> (stating that Phases 2, 3, and 4 will have “[a] total floor area of approximately 1 million square metres, with non-gaming amenities accounting for 95% of the total floor space.” This information allows us to infer that the remaining 5% of floor area—i.e., 50,000 square meters or 538,195 square feet—will be for gaming purposes); 2020 Annual Report, SANDS CHINA LTD. 20 (2021), <https://investor-hk.sandschina.com/static-files/6cac0355-7d7c-4e68-af78-7482641246aa> (stating the “total gaming facility” of the Venetian Macao is 374,000 square feet, equivalent to 34,746 square meters).

²²⁵ We are of the opinion that a clause that limits the extent of the reversion of the casino shall be deemed illegal for violation of the law.

²²⁶ *E.g.*, Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 46(2) (the rationale behind this subordination is: (1) the need to make the institution of the reversion operational as designed in the concession and subconcession contracts, and (2) the fact that the Macau SAR is contractually obligated to enable only the execution, by concessionaires and subconcessionaires and under the law, of the projects referred to in the Investment Plan).

²²⁷ *See id.* ch. VIII, art. 42(5)–(7).

factors and the legal definition of *casino*,²²⁸ it is reasonable to conclude that the actual existing area of the casino in operation abounds in any case:²²⁹

- the *principle of the operation of games of chance confined to casinos*,²³⁰
- the legal precept determining that all casinos revert,²³¹
- the *principle of the continued operation of games of chance*;
- the *principle of subordination of land concession contracts* [to casino gaming concession and subconcession contracts],²³² and
- the concessionaires and subconcessionaires' contractual obligation to register the casino unit under strata title, and to register any changes to the strata title deed.²³³

To regularize the situation, the concessionaires and subconcessionaires need to amend the strata title deed and register the appropriate changes with the Property Registry.

ii. *Casinos Located Outside the Main Investment of the Concessionaires and Subconcessionaires*

Some concessionaires and subconcessionaires directly own the casinos located outside the investments referred to in the Investment Plan. Being the property owners, those casinos will also revert under the Macau law. Simple legal engineering would have avoided this situation.

In cases where the casinos are located in buildings not registered with the Property Registry, not under strata title, or specified casino areas smaller than the actual existing area of the casino in operation, the above discussion is applicable *mutatis mutandis*.

²²⁸ Gaming Law, *supra* note 5, ch. I, art. 2(2).

²²⁹ That was not the case with the reversion of Casino Lisboa. The Macau government interpreted the reversion clause in STDM's concession contract as only applying to the original area of the casino. Accordingly, the casino area that reverted (7,586 square meters) corresponded to the original area of the casino, significantly lower than the actual existing casino area at the time (27,902 square meters). *See* Casino-Hotel Lisboa Deed, *supra* note 215.

²³⁰ Gaming Law, *supra* note 5, ch. I, arts. 3(2), . 5.

²³¹ *Id.* ch. IV, art. 40(1).

²³² *E.g.*, Concession and Subconcession Contracts, *supra* note 17, ch. VIII, cl. 46(2).

²³³ *Id.* cl. 42(7).

VII. RESTRICTIONS IMPEDING ON THE REVERSIBLE ASSETS

A. *Casino Unit*

The Gaming Law allows the temporary transfer “of the enjoyment, fruition and use of assets owned by the Region” needing to be allocated to the operation of casino games of chance.²³⁴ The *temporary transfer* is nothing more than an *allocation of domain*,²³⁵ which is merely optional and not a mandatory outcome of the concession or subconcession, as occurs in other jurisdictions²³⁶ and happened in Macau in the past.²³⁷ The “assets owned by the Region needing to be allocated to the operation” are *prima facie* those *reverted* under the law and the concession and subconcession contracts.

Although those assets belong to the Macau SAR’s private domain,²³⁸ the law establishes a special framework regarding the exercise of private rights against these same assets by only allowing the temporary transfer of the enjoyment, fruition, and use. We submit that their availability (*jus disponendi*), i.e., the possibility of any business deal aimed at the definitive transfer of such assets, is thus restricted.²³⁹

These assets should be considered as belonging to an unavailable private domain of the Macau SAR (*res extra commercium*),²⁴⁰ given the possibility of

²³⁴ Gaming Law, *supra* note 5, ch. IV, art. 37(1). The transfer is always temporary because the concessions and subconcessions are always temporary, as well. The transfer of the enjoyment, fruition, and use may not exceed the duration of the concession or subconcession.

²³⁵ *Id.* art. 38 (finding that this allocation is formally done through a *conservation notice*).

²³⁶ See Law No. 422/89 (Reformula a Lei do Jogo) [Portugal Gaming Law], ch. II, art. 19(1) (1989); Law No. 1/2010 (Concemente às Concessões Relativas à Exploração de Jogos de Fortuna ou Azar, no Território da República de Moçambique) [Mozambique Gaming Law], ch. III, art. 25(1) (2010); Law No. 5/16 (Lei da Actividade de Jogos) [Angola Gaming Law], ch. IV, art. 33(1) (2016).

²³⁷ 1982 Gaming Law, *supra* note 27, ch. II, art. 13 (“Movable assets, such as all furniture and utensils, allocated to the operation of games of chance in the geographic zone covered by the concession and already integrated in the Territory, or which should be due to the termination of contracts in progress, shall be rented by the new concessionaires for a time period identical to that of the concession,” with the expiry of the rental of movable assets that “are replaced by others for the same purposes . . . as soon as the assets in question are no longer allocated to the operation of gaming”).

²³⁸ Civil Code, *supra* note 168, at Book I, Title II(I), ch. II, sec. I, art. 193 *a contrario*.

²³⁹ See Wang, *supra* note 15, at 6 (some authors advocate that the Macau SAR can sell the property of a casino unit).

²⁴⁰ See Cristina Freire, *O Regime Jurídico da Gestão do Património Imobiliário do Domínio Privado do Estado No Ordenamento Jurídico Português* [The Legal

their allocation to a relevant public interest, performing an important function of an administrative nature in and of itself. Accordingly, they are assets which, in addition to restrictions regarding their availability, are restricted in terms of their encumbrance, by which no business deal compromising the purpose for their temporary transfer may be carried out against them.

Moreover, belonging to an unavailable private domain, the “assets owned by the Region needing to be allocated to the operation” are absolutely unattachable pursuant to the Civil Procedure Code.²⁴¹ Finally, the temporary transfer must be always onerous given that it is done by means of consideration in the form of remuneration to the Macau SAR.²⁴² The assets whose enjoyment, fruition, and use are transferred must appear in an inventory for this purpose,²⁴³ and the improvements done to them give no entitlement to compensation of any kind.²⁴⁴

B. *Equipment and Utensils*

According to the Draft Law Proposal, the definitive transfer of the gaming equipment and utensils is allowed if authorized by the DICJ.²⁴⁵

VIII. ADMINISTRATIVE AND CRIMINAL SANCTIONS

Any delimitation of an undersized or disproportionately limited casino area may be regarded as a breach of the essential or core content of the Macau SAR reversion right and have administrative and criminal consequences for those who make such a decision.

Civil servants must exclusively service the public interest and carry out their activity in a dignified manner, thus contributing to the prestige of the Public Administration.²⁴⁶ The breach of general duties—namely the duty of

Regime of the Management of Real Estate Assets in the Private Domain of the State in the Portuguese Legal Framework] 25, UNIV. LUSÍADA (2012), <http://repositorio.ulusiada.pt/bitstream/11067/163/1/mdcristinafreiredissertacao.pdf>.

²⁴¹ See Decree-Law No. 55/99/M (Código de Processo Civil) [Civil Procedure Law], Book IV, Title II, ch. I, sec. II(I), art. 705(1) (1999).

²⁴² Gaming Law, *supra* note 5, ch. IV, art. 39.

²⁴³ See *id.* art. 41.

²⁴⁴ *Id.* art. 42.

²⁴⁵ See Draft Law Proposal, *supra* note 98, new proposed art. 41(3) of the Gaming Law.

²⁴⁶ See Decree-Law No. 87/89/M (Estatuto dos Trabalhadores da Administração Pública de Macau) [Macau Civil Service Workers Statute], Title VI, ch. I, Sec. I, art. 279 (1) (1989).

exemption,²⁴⁷ the duty of care,²⁴⁸ and the duty of loyalty²⁴⁹—triggers disciplinary action against the employee and may end with a written reprimand, fine, suspension from function, compulsive retirement, or dismissal from Public Administration.

As to criminal consequences, the crime of abuse of power²⁵⁰ is applicable to any Public Administration employee²⁵¹ who “abuses powers or violates duties inherent to his functions, with the intention of obtaining, for himself or for a third party, an illegitimate benefit or of causing damage to another person,” and is punishable with imprisonment for up to three years or with a fine, if a more serious penalty is inapplicable due to another legal provision.

²⁴⁷ See *id.* art. 279(3) (“The duty of exemption consists of not taking advantages that are not due by law, direct or indirect, pecuniary or otherwise, from the functions performed, acting with impartiality and independence in relation to particular interests and pressures of any kind, from the perspective of the respect for the equality of citizens”).

²⁴⁸ See *id.* art. 279(4) (“The duty of care consists of performing the duties with efficiency and commitment and, namely, knowing the legal and regulatory norms and the instructions of their hierarchical superiors, as well as possessing and improving their technical knowledge and working methods”).

²⁴⁹ See *id.* art. 279(6) (“The duty of loyalty consists in carrying out the duties in accordance with superior instructions in subordination to civil service objectives and with a view to pursuing the public interest”).

²⁵⁰ In Portuguese, “*Abuso de poder.*” See Decree-Law No. 58/95 (Código Penal) [Criminal Code], Title III, ch. V, sec. IV, art. 347 (1995).

²⁵¹ *Id.* at Title III, ch. V, sec. III, art. 336(2)(a) (according to the Criminal Code, the Chief Executive and the government secretaries are equivalent to Public Administration employees).