

# MACAU'S NEW GAMING LEGISLATION AND CASINO POST COVID-19 RECOVERY CONSIDERATIONS

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shutdown. These have included various travel restrictions, mandated quarantine time periods, entry bans, and multiple targeted lockdowns when COVID-19 cases emerged in Macau and cities in China.

Macau's gross gaming revenue (GGR) was U.S. \$36.6 billion in 2019, this had dropped considerably to U.S. \$7.6 billion and US\$10.9 billion in 2020 and 2021 respectively.<sup>2</sup> While the new gaming bill has been enacted, and moving towards casino retendering, it is ultimately casino recovery and a return to economic growth that remains a crucial factor to consider as well.

Macau's new gaming bill passed, signaling casino request for proposals and re-tendering approach. COVID-19 travel restrictions and lockdowns in mainland China and Macau spanning over two years have meant dramatic and ongoing casino losses. While highlighting key articles in the new legislation, this article discusses the issues of the new legislative framework helping to navigate the city to casino and economic recovery.

## INTRODUCTION

On June 21, 2022, Macau's Gaming Bill,<sup>1</sup> an amendment to gaming law no.16/2001 (Legal Framework for the Operations of Casino Games of Fortune), was approved by Macau's Legislative Assembly. The legislation was enacted within a backdrop of two years continued significant revenue losses to the casino operators, the consequences of a prolonged

With Macau's casino industry combined loses estimated at over U.S. \$1 billion a quarter, Morgan Stanley in addition warned in March 2022 that some Macau concessionaires could run out of cash in a matter of months and struggle to remain free cash flow positive.<sup>3</sup> The new legislation establishes additional revenue commitments to the casino industry. For example, articles 17.1 and 17.2 of the new gaming law outline that share capital cannot be less than U.S. \$625million, and that the share capital be paid in cash in an institution approved by the Macau authorities respectively.<sup>4</sup> This represents an increase of 25 times the share capital required by the casino concessions in 2002, where having U.S. \$625 million in an approved bank will be part of the casino bidding criteria.<sup>5</sup>

The economic downturn has impacted revenues to the Macau authorities as well. With over 80% of total

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<sup>1</sup>Macao Legislative Assembly, *Alteração à Lei no. 16/2021—Regime jurídico da exploração de jogos de fortuna ou azar em casino*, AL.GOV.MO (2022), <<https://www.al.gov.mo/uploads/attachment/2022-06/9803062aa8797492e0.pdf>> (last visited June 27, 2022).

<sup>2</sup>Gaming Inspection and Coordination Bureau, Macao SAR, *Gaming Statistics*, DICJ.GOV.MO (2022), <<https://www.dicj.gov.mo/web/en/information/DadosEstat/2022/content.html#n1>> (last visited June 27, 2022)

<sup>3</sup>B. Blaschke, *Macau concessionaires run low on cash as quarterly losses reach US \$800 million: Morgan Stanley*, INSIDE ASIA GAMING (March 29, 2022), <<https://www.asgam.com/index.php/2022/03/29/macau-concessionaires-running-low-on-cash-as-quarterly-losses-reach-us800-million-morgan-stanley/>> (last visited June 27, 2022).

<sup>4</sup>A. Scott, *What's Another MOP\$5 Billion between Friends? Times Six*, INSIDE ASIA GAMING (June 27, 2022), <<https://www.asgam.com/index.php/2022/06/27/whats-another-mop5-billion-between-friends-times-six/>> (last visited June 27, 2022).

<sup>5</sup>*Id.*

taxation revenue to government coffers from the casino industry—and which historically has provided annual budget surpluses - the Macau Government turned to its fiscal reserves in 2020 of over U.S. \$70 billion for the first time to make budget. This included paying for additional COVID-19 relief measures and packages, as well as cash payments to the community and small-to-medium enterprises (SMEs).<sup>6</sup>

The final bill permits further government scrutiny, oversight, and ability to control the scale of casino development. Looking at the ongoing economic climate in Macau, one central issue is assuring that Macau's new gaming regulatory framework—including the request for proposal(RFP) terms that will follow in the casino re-tendering—helps provide the impetus to navigate the city from its current economic fallout and casino revenue crisis, to a post-COVID-19 sustainable recovery path. To illustrate, one of the deliberations in the gaming bill had been the management of Macau's 18 satellite casinos run previously under the licenses of the casino concessions. Under the new gaming legislation, the satellite revenue sharing arrangement is no longer permitted, with a threeyear transitional period given to enact this. However, a few of the satellite casinos have now closed.<sup>7</sup> The legislation in this instance could be viewed with longer term development goals, with a casino industry in recovery.

## CASINO REVENUES AND TAXATION REGIME

Casinos currently pay an effective tax to rate the Macau Government of 39% on GGR, of which 35% is direct government tax, and the remainder as a levy to pay various social, cultural, educational, and community activities. 1.6% goes to the Macau Foundation, while 2.4% is collected for the social

security fund and various urban and tourism development projects.<sup>8</sup> In 2019 the casinos directly contributed US\$627 million (36%) to Macau's social fund.<sup>9</sup> While direct tax remains unchanged, these levies are increased to 2% and 3% respectively under the new gaming bill.<sup>10</sup>

In 2006, gaming revenues provided 56% of taxation to government coffers, slowing rising to over 80% as the years followed (FIG.1). Notable is 2013 when Macau GGR reached U.S. \$45.2 billion, providing U.S. \$16.8 billion tax revenue to Macau's public finances.<sup>11</sup> The annual budget surpluses bolstered government reserves. The dramatic impact on GGR in 2020 meant that gaming tax contributed only 29% to total government taxation. With gaming tax at 40% in the new gaming legislation, it is a return to sustainable gaming growth that will again secure revenues to the government.

Casino recovery timeframe remains speculative. Macau and mainland China's zero-tolerance COVID-19 policy approach, and the unknowns of when COVID-19 community cases will emerge, means further travel restrictions and targeted lockdowns linger. As the legislative goals of casino re-tendering remain on schedule, and given the historical importance of gaming to the city's economy, an important consideration will be on when the casino industry will be in a sufficient state of recovery to deliver on the taxation expectations from the legislation. This is naturally linked to casino patronage volumes and visitor growth to the city.

## KEEPING TO THE LEGISLATIVE TIMEFRAME

All six casino concessionaire expiry dates were aligned to June 26, 2022.<sup>12,13</sup> Given license expiry

<sup>6</sup>G. McCartney, J. Pinto and M. Liu, *City Resilience and Recovery from COVID-19: The Case of Macao*, 112, 103130, Cities (2021).

<sup>7</sup>P. Chan, *SJM to Take Over Operations of Three Satellite Casinos Previously Run by Golden Dragon Group*, INSIDE ASIA GAMING (17 June 2022), < <https://www.asgam.com/index.php/2022/06/17/sjm-to-take-over-operations-of-three-satellite-casinos-previously-run-by-golden-dragon-group/> > (last visited June 24, 2022).

<sup>8</sup>N. Moura, *Gaming Tax Increase a Way of Helping Support Social Security Fund—Secretary for Economy*, MACAU BUSINESS (21 June 2022), < <https://www.macao.business.com/gaming-tax-increase-a-way-of-helping-support-social-security-fund-secretary-for-economy/> > (last visited June 24, 2022).

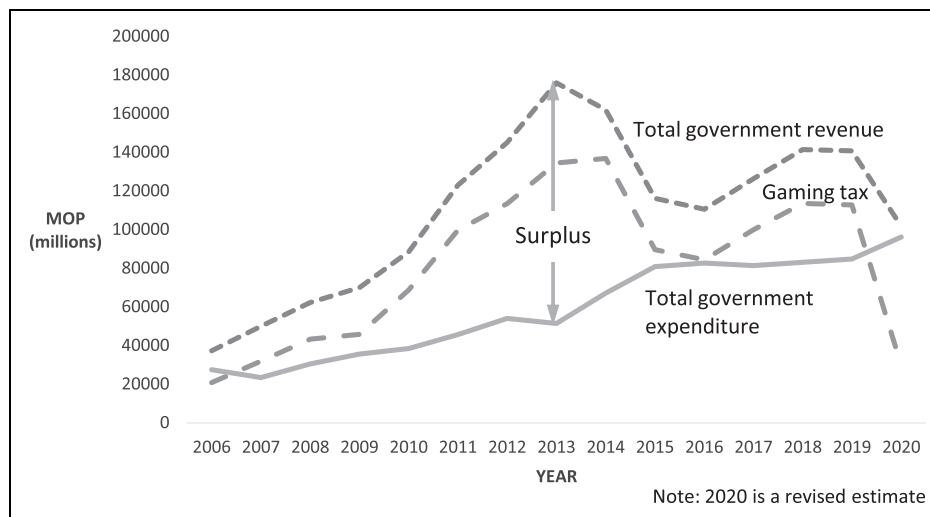
<sup>9</sup>Fundo de Segurança Social, *Gestão Financeira 2020*, FSS.GOV.MO <[https://www.fss.gov.mo/uploads/wizdownload/202107/433\\_o27m8.pdf](https://www.fss.gov.mo/uploads/wizdownload/202107/433_o27m8.pdf)> (last visited June 24, 2022).

<sup>10</sup>Moura, *supra* note 6.

<sup>11</sup>Macao Statistics and Census Service, *Macao in Figures*, DSEC.GOV.MO <<https://www.dsec.gov.mo/en-US/Home/Publication/MacaoInFigures>> (last visited June 24, 2022).

<sup>12</sup>Law No. 16/2001 stipulates that each concessionaire will have a license term not exceeding 20 years which could be extended by the Macao Government of up to 5 years maximum. Should the casino concessionaire expire, any new concessionaire would need to be granted through a public tender process.

<sup>13</sup>The Macao Government had previously approved the requests from two of the casino concessionaires, Sociedade de Jogos de Macau SA and MGM Grand Paradise SA, to extend their license expiry date from March 2020 to June 26, 2022 to align with the other 4 operators. They each paid U.S. \$24.7 million for this extension. See GGRASIA, *SJM, MGM concessions extended to June 2022: Macau*



**FIG. 1.** Macau Government revenues, expenditure, and gaming tax receipts 2006–2020 (in Macau pataca [MOP]) millions (1US\$ = 8MOP)\*

was only days away, the final amendment to the city's new gaming law was approved by a sitting assembly despite a city-wide lockdown due to the emergence of several dozen COVID-19 community cases. The Macau Government had already agreed to extend the gaming licenses for six more months to the end of December 2022 to permit time for the preparation of a casino public tender.<sup>14</sup> Each casino concession had paid a license extension premium of U.S. \$5.8 million.<sup>15</sup> Macau's Chief Executive confirmed the signing of the concessionaire license extensions on June 23, 2022, with the casino concessionaires signing letters of an undertaking to transfer any related assets to the Macau Government without compensation upon termination of their gaming concession contracts.<sup>16</sup> Each casino in addition affirmed their preparations to participate in the tendering process.<sup>17</sup>

The legislation had taken almost half-a-year to deliberate on. Prior to this, a 45-day public consultation on the gaming law commenced in mid-September 2021, with the Macau Government presenting a consultation doc-

ument with nine discussion points which included the number of casino concessions and concession period, the promotion of non-gaming, and corporate social responsibility measures. A central theme was to advance casino supervisory efforts which the authorities felt had been to some extent lagging and insufficient over the past two decades.<sup>18</sup> Gaming stocks however immediately lost a record U.S. \$18.4 billion when the consultation document was announced on the perspective of greater restrictions and government appointed representatives to supervise casino companies.<sup>19</sup>

The authorities have been deliberate in consolidating opinions over many months in forming the final gaming bill. These deliberations have been as the casino industry continues to absorb monthly losses, emphasizing the need for those in legislation and operators to continue to reinforce a collaborative framework, and to communicate to other stakeholders.

Providing no further extensions are granted, Macau's casino RFP and tendering process should conclude by the end of 2022. Under Article 13.0 of the new

govt, (March 15, 2019), <<https://www.ggrasia.com/sjm-mgm-concessions-extended-to-june-2022-macau-govt/>> (last visited June 27, 2022).

\**Id.*

<sup>14</sup>INSIDE ASIA GAMING, *Macau Government to Sign Six-Month Extension to Casino Concessions on 23 June: Reports*, (June 15, 2022) <<https://www.asgam.com/index.php/2022/06/15/macau-government-to-sign-six-month-extension-to-casino-concessions-on-23-june-reports/>> (last visited June 27, 2022).

<sup>15</sup>*Id.*

<sup>16</sup>GGR ASIA, *Macau Ops Sign Extension, Eye Fresh Public Tender*, (June 24, 2022) <<https://www.ggrasia.com/macau-ops-sign-contract-extension-eye-fresh-public-tender/>> (last visited June 27, 2022).

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

<sup>18</sup>MACAO GOVERNMENT, *Government Holding a 45-day Public Consultation on Proposed Revision of Gaming Law*, GOV.MO (Sept. 15, 2021), <<https://www.gov.mo/en/news/242064/>> (last visited June 27, 2022).

<sup>19</sup>S. Zhao and C. Palmeri, *Macau Casinos See \$18 Billion Wipeout as China Tightens Grip*, BLOOMBERG (Sept. 14, 2021), <<https://www.bloomberg.com/news/articles/2021-09-14/macau-casinos-downgraded-by-jpmorgan-as-relicensing-begins#xj4y7vzkg>> (last visited June 27, 2022).

gaming bill, the operation of a concession contract cannot exceed 10 years, although under well-founded reasons the Chief Executive may authorize one or more extensions to the concession period to not exceed three years in total. With a scenario that current operators receive a new casino license, each will be keen to recoup their significant losses, discharge debt accrued, and assess levels of future capex. Any new entrant will also be keen to address return on investment. A key fiscal consideration for Macau's current operators and investors will be a calculation on a return to profitability within the 10-year timeframe.

## DIVERSIFICATION BEYOND GAMING AND A HEALTHY SUSTAINABLE DEVELOPMENT

Article 1.0 of the new gaming legislation stipulates seven objectives pertaining to an adequate, fair, and honest management of casino to safeguard the interests and national security of the Macau SAR, including the collection of taxes and fees.<sup>20</sup> Objective two specifies the promotion of adequate diversification and sustainable economic development of the city<sup>21</sup>. Some articles make reference to non-gaming development. Article 16 lays out corporate social responsibility actions in six areas, including supporting small and medium enterprises, and those focusing on diversification efforts, protecting social security rights, training of local employees, hiring of disabled individuals, as well as supporting various public interest, educational, cultural, and technological efforts.

According to the new gaming legislation, the 5% levy could be reduced should the casino operator source new visitor markets.<sup>22</sup> Mainland Chinese visitation to Macau was over 70% of total visitation prior to COVID-19, increasing to more than 90% when Macau closed its borders to Hong Kong, re-

gional and international visitors. Like mainland China, Macau maintains a zero-tolerance COVID-19 strategy, establishing a travel corridor with each other in September 2020.<sup>23,24</sup>

As evident in Figure 1, a more diversified economy will mean less dependency on the gaming economy. Given the city's reliance on tourism, it has been argued that diversification will therefore be within the tourism sector, in non-gaming sectors such as accommodation, restaurants, leisure, events, entertainment, trade shows, conventions, finance and medical.<sup>25</sup> In several points such as levy reduction and non-gaming development expectations, the legislation does not provide an evaluation matrix for the operators upon which to calculate, leaving it therefore to future legislation such as the RFP or Chief Executive dispatches to include:

‘the original casino liberalization had limited metrics, or KPIs, to judge and steer gaming and non-gaming development over 20 years . . . Themes such as non-gaming development, economic diversification, CSR, and oversight have been consistent (and expected) from the casino license consultation to the gaming bill. Consequently, this will undoubtedly be illustrated further in the RFP/tendering process’ (page 31).<sup>26</sup>

## SUMMARY

A robust analysis of the development and influences on Macau's gaming and tourism sectors are a sum of many parts—e.g., ongoing zero-tolerance COVID-19 policy, Macao's development within the Greater Bay Area, and the decline of VIP junkets. However, the new gaming bill remains one of the most significant pieces of legislation in recent times on public policy towards casino governance and

<sup>20</sup>Macao Legislative Assembly, *supra* note 1.

<sup>21</sup>*Id*

<sup>22</sup>Moura, *supra* note 6.

<sup>23</sup>G. McCartney, C. O.L. Ung and J. Pinto, *Living with COVID-19 and Sustaining a Tourism Recovery—Adopting a Front-Line Collaborative Response between the Tourism Industry and Community Pharmacists*, 3 TOURISM AND HOSPITALITY, 47–68 (2022).

<sup>24</sup>Diversification of players would mean attracting visitors beyond mainland China and Hong Kong. Hong Kong visitors made up nearly 20% of annual visitors prior to COVID-19 restrictions. Hong Kong residents may enter Macao but would require

hotel quarantine for medical observation for up to 2 weeks if they have not completed the COVID-19 vaccinated process. This period of time will vary depending on medical circumstances. See Government Information Bureau of the Macao SAR, *Latest Epidemic-Prevention Measures for Arrivals at Macao*, (June 19, 2022), <<https://www.gcs.gov.mo/ncv/annex/index.html?p=0&l=en>> (last visited July 19, 2022).

<sup>25</sup>G. McCartney, *What Is Diversification in Macau?* MACAU BUSINESS (May 28, 2022) <<https://www.macaubusiness.com/opinion-what-is-diversification-in-macao/>> (last viewed June 27, 2022).

<sup>26</sup>G. McCartney, *Macau Bidders Need to Pay Close Attention to Government Vision*, ASIA GAMING BRIEFINGS, Feb. 30-31 (2022).

economics. Highlighting some key articles from the new legislation, this paper underlined the importance of ensuring this framework helps direct the city to recovery.

The new legislation will require clarity and measurements in the months ahead and during retendering. The legislation allows for clear benchmarks to be established and understood by operators. One illustration is regarding table and slot numbers and measurement. In 2010, the authority's announcement on casino table capping to promote a healthier development of the casino market as revenues surged, caused confusion on the potential approval of casino tables on future casino openings.<sup>27</sup>

In 2001, the government commission set up to assess the casino tenders for the liberalization of Macau's gaming industry highlighted the liberalization vision

of the social and economic importance of a healthy and sustainable development of the gaming industry, including the development of other economic sectors besides gaming.<sup>28</sup> This sentiment is reiterated in the new gaming bill 20 years on. In 2001, Macau had just emerged from the turbulence of the triad and gang turf wars of the 1990s. There was greater onus then on enhancing a positive reputation for Macau's gaming industry. Macau in 2022 wrestles with a different crisis, with dramatic and continued economic fallout to the gaming sector as has been seen with COVID-19 and periodic targeted lockdowns and travel restrictions in mainland China and Macau.

A litmus test for the new gaming bill will be on securing its vision which is aligned to the city's recovery in the near term—and a more diverse tourism economy in the longer term, within the next 10-year concession period specified in the law.

<sup>27</sup>*Macau to Cap Gambling Tables to Rein Rapid Growth*, INSIDE ASIA GAMING (26 Mar. 2010) <<https://www.asgam.com/index.php/2010/03/26/macau-to-cap-gambling-tables-to-rein-in-rapid-growth/>> (last seen June 27, 2022).

<sup>28</sup>COMMISSION FOR THE FIRST PUBLIC TENDER TO GRANT CONCESSIONS TO OPERATE CASINO GAMES OF CHANCE OF THE MACAO SPECIAL ADMINISTRATIVE REGION, INFORMATION MEMORANDUM, November 2001.