



How will Macau treat casino gaming license renewals?

Macau's current casino gaming concessions are scheduled to expire in 2020, or 2022, depending on the contract signed between the government and the operator, but as the deadline looms there remains a question mark over how the administration plans to handle the renewal process. Will it simply renew the licenses of the existing casino gaming operators and keep everything unchanged? Or will it open a new round of public bidding for casino gaming concessions that would allow new entrants to participate?



Changbin Wang*

This article analyzes the ways the Macau government may choose to renew the casino gaming licenses, as well as the potential legal problems relating to each choice.

Law mandates public bidding

There seems little chance the Macau government will be able to renew the existing concessions without public bidding. Law No. 16/2001 "Legal Framework for the Operations of Casino Games of Fortune" provides that the period of a concession shall not exceed 20 years and, once it has reached the end of the period, "the duration of the concession may exceptionally be extended by reasoned order of the Chief Executive [of Macao S.P.R.], by one or more times, not exceeding in the aggregate five years" (Article 13). According to this Law, even if the current concessions are indeed extended up to five years, they will not be allowed to continue any further after that. In addition, the Law clearly provides that a public tender must be conducted in order to award licenses for the operation of casino games of chance in Macau (Article 8). Although this rule was mainly directed to the public tender conducted in 2001-2002, it remains a good law. Therefore, if the concession system continues to be applied to the gaming industry after the expiry of the current concession period, public bidding seems inevitable unless the Law is amended.

Six licenses or more? Possibly

A legal as well as practical problem needs to be resolved if the Macau government eventually takes the public tender procedure -- how many licenses should be granted for the next period of concession?

It is not an easy job due to the complicated situation both legally and in the marketplace.

The Law provides that the gaming concessionaires shall not be more than three (Article 7) while currently six casino operators are doing business, namely SJM Holdings, Galaxy Entertainment, Wynn Resorts, Sands China, MGM Resorts and Melco Crown Entertainment. Initially only the first three were granted a license (Galaxy and Sands were jointly granted a license, in the name of Galaxy). Galaxy and Sands, however, were allowed to split and Wynn and SJM were later allowed to sign a sub-concession with MGM and Melco Crown respectively. The change leads to a technical division between the "concessionaires" and the "sub-concessionaires". However, in essence there are no differences among the six operators. At the time, the Macau government came under intense criticism from some who said the sub-concessions were not legal.

Now all the six operators have built their own casinos and are expanding their presence through new multi-billion dollar casinos at the Cotai Strip. It would therefore be difficult to drive any one of them out of the Macau gaming market after the expiry of the current concessions. Accordingly at least six licenses need to be granted to keep all the operators in, as well as to solve the legal disputes caused by the sub-concessions.

Six licenses, however, might still not be good enough. We can reasonably imagine that the Macau government would be fiercely criticized if only the incumbents survived the "public" bidding procedure while not even one new player makes it through. Therefore, the government will probably have to increase the number of casino licenses to seven or eight in order to alleviate public criticism. Indeed, there has been a persistent rumor recently that

the government intends to add one more license, probably to a local bidder.

Will the concession system go down in history?

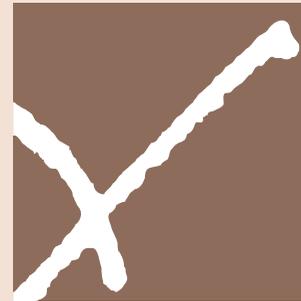
The current casino concession system was inherited from when STDM, the parent company of SJM, held the monopoly for gaming operations in Macau. At that time, the casino industry was treated the same as a public utility service. The government was the legal owner of the casinos and it entrusted a private company to build and run them. The private company was supposed to be able to make stable money during the period of the concession because of its monopoly. When the concession expired, the casino was supposed to be returned to the government. Law No. 16/2001 ended the monopoly in Macau by increasing the number of casino concessions to maximum three but did not change the concession system at all. The concession system may work well in the public utility services which are characterized by natural monopolies, but it probably does not make much economic sense when it is applied to Macau's casino gaming industry. Firstly, it is the unique location of Macau, rather than any monopolistic or oligopolistic status in the gaming market that has attracted investment from developers. Macau is connected to mainland China where casino gaming is not allowed. And for decades the general economy of China has experienced dramatic expansion. Thousands of mainland Chinese are eager to come to Macau to try their luck. Without the protection of a monopoly, or oligopoly, the investors would

still be interested in Macau's gaming market. Secondly, the concession system may hinder growth of Macau's economy due to its anti-competitive nature. As we all know, in general, competition rather than monopoly promotes efficiency. Finally, under the concession system the government loses the flexibility to replace "a bad player" because the government would be reluctant to conduct a public tender which is quite time and cost consuming.

The Macau government, in my opinion, should consider a normal licensing system without limiting the number of casino operators and the maximum period of operation. Any investor group that complies with the guidelines set up in the laws and regulations can come to Macau and stay as long as it likes unless it has to be removed due to legal reasons. However, there is no sign, at least so far, to show that the Macau government is considering giving up the concession system to take on a normal licensing system. Both the government and the community worry that the abolition of the concession system might cause further expansion of the gaming sector in Macao, which is not believed to be in line with the strategy of economic diversification.

***About the author**

Changbin Wang is an Associate Professor teaching Gaming Law and Regulation at the Gaming Teaching & Research Center, Macao Polytechnic Institute (MPI). Before joining MPI in 2009, he worked in the central government of China as a law expert. He is the author of two monographs Major Issues of Macao's Gaming Law and Macao Gaming Law.



PEDRO REDINHA
Lawyers & Private Notary
雷正義大律師 私人公證員

Avenida da Praia Grande no. 409 China Law Building, 11th Floor, Macau
Tel: (853) 28785795 Fax: (853) 28785797
mail@pedroredinha.com | www.pedroredinha.com