

LEGALALERT



Manuela António - *Lawyers and Notaries*

20 OCTOBER 2021

THE CONSULTATION PAPER FOR THE AMENDMENTS TO LAW 16/2001



HUGO RIBEIRO COUTO
Senior Partner | Private Notary

GAMING

THE CONSULTATION PAPER
FOR THE AMENDMENTS
TO LAW 16/2001

Contacts

Alameda Dr. Carlos D'Assumpção,
n.ºs 411-417, Edifício Dynasty
Plaza, 15.º andar D-H, Macau,
China

T:
+853 28 591 592 / 128

F:
+853 28 345 678
info@mantonio.net
www.mantonio.net

The consultation paper for the amendments to Law 16/2001 (Legal framework for the operation of casino games of chance in Macau)

The Macau Government has circulated a document aimed at collecting views on the amendments being considered to be made to Law 16/2001 (“Gaming Law”). It contains basically a number of key points that the authorities deem relevant in the preparation of a revised Gaming Law, 20 years after its original enactment.

We intend to dissect in this work certain issues arising from text provided, namely in the perspective of the industry operators, and having also in mind the foreseeable impact of the amended legislation in the wider Macau community.

The paper has listed 9 key points that require input in the consultation process, being: (i) number of concessions; (ii) term of the concessions; (iii) increase in the legal requirements for the supervision of the concessionaires; (iv) guarantees for the workforce; (v) increase of suitability requirements (concessionaries, gaming promoters and certain employees); (vi) appointment of Government representative; (vii) non-gaming projects; (viii) social responsibilities; and (ix) criminal liabilities and administrative sanctions. It should be noted that the text gives factual information on the status of the industry and encompasses the formulation of certain policy objectives that are presented as justification for the underlying changes being suggested to the legislation. We consider that it is important to focus our attention, at this stage, in only 3 of the key points indicated, which address matters that are meaningful in the context of the Macau legal system, as well as material when considered in a business perspective.

1. Term of gaming concessions

Law 16/2001 stipulates, in its Article 13 (1) that the gaming concessions are granted for a term expressed in the respective contract, up to a maximum of 20 years. It is also referred in Article 13 (3) that the Chief Executive may extend the term (one or more times) to a maximum of 25 years, on an exceptional basis.

GAMING

1. Term of gaming concessions

2. Increase of supervisory legal requirements

3. Government representative (also known as “Government delegate”)

Contacts

Alameda Dr. Carlos D'Assumpção,
n.ºs 411-417, Edifício Dynasty
Plaza, 15.º andar D-H, Macau,
China

T:
+853 28 591 592 / 128

F:
+853 28 345 678
info@mantonio.net
www.mantonio.net

The consultation paper for the amendments to Law 16/2001 (Legal framework for the operation of casino games of chance in Macau)

The consultation paper defends that a term excessively long may cause “hindrances” (it does not explain which ones) and can lead the concessionaires to being less “proactive” in the improvement of their services. It concludes that the present legal provisions should eventually contemplate a shorter term for the gaming concessions.

In this type of industry, it is known that fixed capital investments have a long period of return and require specific leverage which has to be negotiated with financial institutions and third party investors. Such entities are particularly sensitive to the matter of the concession term, and a shorter period will mean added difficulties to the operators in the negotiation of the financing conditions.

It is hard to see how a term of 20 years is “excessively long” when considering the perspective of investments that are intensively made. It is also difficult to understand how can be established a “reasonable proportionality” between the term and the exceptional extensions that the Chief Executive may grant (5 years on a total of 20, which means a 1 to 4 ratio).

It is therefore arguable that a decision on the matter of the term extension should be supported by data showing the benefits of a shorter period. In our opinion, the paper is scarce in such data.

2. Increase of supervisory legal requirements

The envisaged expansion of supervisory legal requirements contemplates 3 aspects: (i) increase of the share capital; (ii) increase of the holding percentage for shareholders who are Macau residents; and (iii) limitations in the distribution of dividends.

GAMING

1. Term of gaming concessions

2. Increase of supervisory legal requirements

3. Government representative (also known as “Government delegate”)

Contacts

Alameda Dr. Carlos D'Assumpção,
n.ºs 411-417, Edifício Dynasty
Plaza, 15.º andar D-H, Macau,
China

T:
+853 28 591 592 / 128

F:
+853 28 345 678
info@mantonio.net
www.mantonio.net

The consultation paper for the amendments to Law 16/2001 (Legal framework for the operation of casino games of chance in Macau)

Although it is not easy to determine how the first two points will contribute to enhance the supervision powers of the Government, it must be said that the share capital increase (presently MOP200 million) may indeed be justified considering the volume of investments that the concessionaires are contractually required to undertake. In the same sense, imposing an obligation of shareholding increase for Macau resident shareholders (presently 10%) can be supported with the policy intention of having locals more directly involved in the activity of these entities.

On the other end the matter of the limitations that the paper considers should be contemplated in the distribution of dividends of the gaming concessionaires is controversial, to say the least.

In fact, it contends not only with basic principles of the present legal framework in Macau (the right of the shareholders to earnings deriving from the profits of a company), but also with established pillars of market economy theory.

It appears, from the explanation given in the consultation paper, that the Government seeks to retain the earnings of the concessionaires in a way that will enable the respective application in a proper as well as more diversified and sustainable manner. With such objective, it may include in the revised law “specific requirements” to permit the dividend distribution, which would be subject to prior authorization to be given by the Government.

These serious restrictions to shareholders rights are poorly justified in the document and deserve a more in-depth analysis and discussion, considering the profound implications in the proper governance of a commercial company. It should be said as well that the earnings retention sought by the Government can be achieved by other means, namely by the imposition of specific assets/equity and debt/equity ratios.

GAMING

1. Term of gaming concessions
2. Increase of supervisory legal requirements
3. Government representative (also known as “Government delegate”)

Contacts

Alameda Dr. Carlos D'Assumpção,
n.ºs 411-417, Edifício Dynasty
Plaza, 15.º andar D-H, Macau,
China

T:
+853 28 591 592 / 128
F:
+853 28 345 678
info@mantonio.net
www.mantonio.net

The consultation paper for the amendments to Law 16/2001 (Legal framework for the operation of casino games of chance in Macau)

3. Government representative (also known as “Government delegate”)

The paper indicates the intention of having Government delegates appointed to follow closely the activity of each concessionaire. It refers as justification that this is needed to safeguard the public interest and to ensure the effective and prompt compliance of the concession obligations.

In order to have such objectives achieved, it is said in the paper that the legal framework of Decree-Law 13/92/M should serve as reference in the definition of the Government delegate role.

It should be noted that the said Decree-Law does not contemplate the existence of Government delegates in companies such as the gaming operators, which do not have monopolistic rights (contrary to the situation prevalent at the time Decree-Law 13/92/M was enacted, when there was only a gaming operator with a monopoly of such activity).

At present, the concessionaires are in competition, taking their own commercial decisions and holding sensitive information. Therefore the introduction of a Government delegate in the works of the corporate bodies implies careful consideration and adequate legal provisions to define clearly the powers to be given, thus defending the legitimate corporate interests of the concessionaires.

In view of such circumstances, the Government delegates for gaming concessionaires will have to be subject to strict duties of confidentiality in order to ensure that the above referred interests are not jeopardized.

Therefore it seems that the existing framework given by Decree-Law 13/92/M should be carefully evaluated, and specific legislation might have to be passed for the purpose of defining the role of Government delegates in gaming concessionaires.

GAMING

1. Term of gaming concessions

2. Increase of supervisory legal requirements

3. Government representative (also known as “Government delegate”)

Contacts

Alameda Dr. Carlos D'Assumpção,
n.ºs 411-417, Edifício Dynasty
Plaza, 15.º andar D-H, Macau,
China

T:
+853 28 591 592 / 128

F:
+853 28 345 678
info@mantonio.net
www.mantonio.net

LEGAL ALERT



Manuela António - *Lawyers and Notaries*

20 OCTOBER 2021

The consultation paper for the amendments to Law 16/2001 (Legal framework for the operation of casino games of chance in Macau)

CONCLUSION

The above comments express our view on particular features of the consultation paper and should not be read as legal advice on those matters. Our Gaming Team will be happy to address any requests for additional opinion on the different topics of the paper.

GAMING

1. Term of gaming concessions
2. Increase of supervisory legal requirements
3. Government representative (also known as “Government delegate”)

Contacts

Alameda Dr. Carlos D'Assumpção,
n.ºs 411-417, Edifício Dynasty
Plaza, 15.º andar D-H, Macau,
China

T:
+853 28 591 592 / 128

F:
+853 28 345 678
info@mantonio.net
www.mantonio.net