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# Aviation: Finance & Leasing 2023

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## **Macau SAR, China: Trends & Developments**

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Manuela António – Lawyers and Notaries



# MACAU SAR, CHINA

## Trends and Developments

### Contributed by:

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**Manuela António – Lawyers and Notaries**

**Manuela António – Lawyers and Notaries** is traditionally strong in a wide range of sectors, with aviation being one of the firm's strengths. The firm has been established in Macau for almost four decades, and has three lawyers specifically addressing the aviation sector. The firm's experience spreads across all matters regarding the regulation of the aviation industry in Macau, including aircraft finance, aircraft acquisition and leasing, charter operations, acting

for lessors and lessees, regulatory compliance and dealing with regulatory agencies. The firm has been engaged in various cases relating to aviation leasing and the renegotiation of existing leases, and has assisted in the transfer of property/beneficial interest of aircraft together with the associated financing and security packages, as well as the cancellation of liens on aircraft and deregistration of aircraft.

## Authors



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## Gradual Liberalisation of the Aviation Market in Macau – How Big and Fruitful Will This Step Be?

The opening of the aviation market in the Macau Special Administrative Region of the People's Republic of China (the “Macau SAR” or “Macau”) has been expected for a long time, and it is considered by some to have the potential to be a turning point and a game-changing development for the region's transportation industry.

The market opening was announced in January 2019 but had to be postponed, with the government of the Macau SAR announcing in May 2020 the extension of the concession contract for Air Macau (which was initially granted for a 25-year period until 2020) for an additional three years, mainly as a consequence of the impact of the COVID-19 pandemic on the industry globally, and in Macau in particular, with strong travelling restrictions.

The restrictions imposed to address the COVID-19 pandemic have gradually been lifted since the start of 2023, and the Macau SAR has been progressing towards recovery in all sectors of its economy.

In early June 2023, the government of the Macau SAR announced and presented to the Legislative Assembly of Macau a draft bill aiming to gradually liberalise the aviation market in Macau. Finally, the opening time has arrived. The bill is expected to be discussed and approved in the next couple of months, and to be passed as law by the end of the year.

### Introduction

Macau is a small city-region located in the South China Sea coast of mainland China; it consists of a peninsula and two islands, and is connected to the mainland by five border crossings. Macau

is one of the two Special Administrative Regions of the People's Republic of China, with the other being Hong Kong. Macau is a major tourist destination both regionally and globally, and its economy is heavily reliant on tourism (which is an industry undoubtedly closely connected to gaming, Macau's major industry).

The aviation sector is important to the growth of the tourism industry in the Macau SAR, and the liberalisation of the aviation market has been a major focus of the government in the last four or five years (albeit postponed due to the pandemic).

Despite its heavy reliance on gaming, the Macau SAR is slowly attracting a different range of visitors. Its capacity to attract large numbers of tourists was significantly boosted by the casino-integrated resorts developed over the last 20 years, which attempt to target their offering to family-oriented tourists and to the meetings, incentives, conferences and exhibitions (MICE) sector, as well as gamblers.

The Macau SAR only has an international airport, which experienced tremendous growth in until 2019 and the onset of the COVID-19 pandemic. In fact, several airlines have typically flown directly to the Macau International Airport, with direct routes operating from China and countries such as South Korea, Japan, Thailand, Malaysia, Singapore and the Philippines.

Moreover, an upgrade of the capacity of the Macau International Airport was already undergoing, with the aim of increasing the volume of passengers. The north extension of the passenger terminal building of the Macau International Airport was opened in February 2018, with a total area of 14,000 sq m. This extension is expected to enable the airport to receive up to

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11 million passengers per year, in line with the volume of traffic expected in 2025. The south extension project is currently under construction and is expected to increase the airport's receiving capacity to 15 million passengers per year when completed, in line with the volume of traffic expected for the period between 2031 and 2037.

In terms of passenger volume, figures grew 171.7% from the first quarter of 2022 to 0.8 million in the first quarter of 2023, but remain at 32.4% of the volume in the first quarter 2019 (although already showing good signs of recovery).

It is also worth mentioning that the Macau SAR held a monopoly in the air transportation industry until now, with its flag carrier Air Macau dominating both mainland China and international routes. However, in early June 2023 the government of the Macau SAR introduced a new draft bill for discussion and approval in the Legislative Assembly of Macau that seeks to gradually liberalise the aviation market in Macau in order to foster more competition among the airlines that operate and serve passengers in the region.

### *The proposed draft bill*

The draft bill for the proposed gradual liberalisation of the Macau aviation sector is aimed at creating a competitive market for airline companies, which is expected, in turn, to improve the quality of air transport for passenger services in Macau. As mentioned above, the draft bill is expected to be discussed, approved and published during 2023.

The most relevant points included in the draft bill are as follows:

- licensing system;
- limited number of licences;

- licence term;
- qualification requirements;
- limitations on the transfer of licences; and
- prohibition of restrictive competition practices.

A deeper understanding of the draft bill requires a detailed view of each of the relevant points.

### *Licensing system*

In accordance with the terms of the draft bill, the government of the Macau SAR will put an end to the concession regime and put a new licensing system in place. This shift is expected to have a major impact on the industry, with the introduction of new regulations and requirements, and the eventual emergence of new players in the market.

Under the licensing system, interested companies shall have to apply for a licence from the Chief of Executive of the Macau SAR. However, the draft bill establishes that the granting of licences shall have to be preceded by a public tender, with the terms to be published at a later stage in a specific regulation for said tender.

In any case, the draft bill contains two other possible approaches for new licences:

- the Chief Executive of the Macau SAR can decide, based on public interest reasons, that no licence shall be granted following a public tender; and
- the Chief Executive of the Macau SAR can also decide to grant licences by direct award, waiving the public tender procedure in this scenario.

In fact, the public tender component of the licensing system would definitively put transparency front and centre. It would also ensure

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that companies would be awarded through a competitive process, ensuring that only the most competent and financially stable companies would be in position to be awarded a licence.

However, based on the terms of the proposed draft bill, it is still quite unclear which route the government of the Macau SAR will take.

It is worth mentioning that, under the terms of the proposed draft bill, Air Macau shall be granted a licence without the need to participate in the eventual public tender. This segment of the draft bill is not expected to be changed. As such, Air Macau will, in principle, be granted a licence for a term of 25 years.

In brief, this decision is justified by the legislator by the need to guarantee that the air transport services provided by the current solo concessionaire (ie, Air Macau) are not interrupted and services continue to be offered to the residents of Macau.

### *Limited number of licences*

Another important aspect of the new licensing system is that a limited number of licences are expected to be awarded to companies interested in providing air transport for passenger services in the Macau SAR. The number of licences available shall be determined by the Chief Executive of the Macau SAR.

This limitation of the number of licences awarded will help to prevent the market from becoming overcrowded, thereby creating a balance in the market and ensuring fair competition, pricing, service quality and passenger comfort, as much as possible.

### *Licence term*

Under the proposed draft bill, the licence term shall be 25 years, which is not the standard fixed term length for aviation licensing systems. The purpose of enforcing a licence term of 25 years is to facilitate a secure market environment for companies interested in investing in Macau and to provide a long-term period for shareholders to seek the return of investment. In turn, this shall permit effective long-term capital decision-making that would not otherwise be feasible with shorter permits and shorter times for returns of investment.

Compared to many other countries, this licence term is unique and supports the Macau aviation market's expansion and stability.

In accordance with the proposed draft bill, licences can be renewed, although it is not clear whether the renewal will be for a new term of 25 years. In any case, the renewal of the licence shall have to be requested two years in advance from its term, and the requirements met when the licence was awarded shall have to be satisfied again.

### *Qualification requirements*

In accordance with the proposed draft bill, only those entities that meet the following cumulative requirements are qualified to be awarded a licence:

- companies limited by shares that are incorporated in Macau (the minimum share capital shall be determined by dispatch of the Chief Executive of the Macau SAR at a later stage) and whose principal place of business is in Macau;
- the principal activity of its scope of business has to be conducting the activity of air transport, which may include conducting other



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- commercial activities related to the operation and maintenance of aircraft;
- to provide a performance bond (amount to be determined) to guarantee compliance with legal obligations;
- to be considered suitable (after a probity check), including its shareholders and directors;
- to demonstrate technical capacity; and
- to demonstrate financial capacity.

### *Limitations to the transfer of licences*

Still related to the qualification requirements, it is worth mentioning that all the shares of the share capital of a licensed entity shall have to be nominative, in accordance with the proposed draft bill. There is an exception for shares of listed entities that are shareholders of the licensed Macau company. Furthermore, until the end of the third year of activity it will be strictly forbidden to sell, transfer and/or encumber the shares of a licensed entity, partially or totally; after this period, prior authorisation of the Chief Executive of Macau shall be required.

Finally, the proposed draft bill prescribes that any transfer of licences is strictly forbidden.

### *Prohibition of restrictive competition practices*

The draft bill also proposes to forbid any kind of agreement or concerted practice, in any kind or form, that might be likely to prevent, restrict or distort competition or that might lead to the abuse of a dominant position in the market, or in a substantial part of it, by the licensed entities.

### *Expectations*

The gradual liberalisation of the aviation market is expected to bring several benefits to Macau, such as more tourist traffic, increased connectivity, cheaper airfares, more economic development and job creation opportunities.

The new licensing system regime to be introduced to manage the entry of new companies is expected to promote and protect market competition. The limited number of licences to be awarded helps to ensure that the number of companies entering the market is proportional to the market size and demand, and the licence term of 25 years provides stability and security to new airline operators.

The eventual public tender process is expected to emphasise transparency and accountability in the licensing system, as it is expected that entities will be chosen based on merit through a competitive process. As mentioned above, this approach would eventually ensure that only competent and financially stable entities enter the market.

### *Conclusions*

In recent years, the aviation industry in the Macau SAR has seen a significant increase in demand for air travel (only halted during the COVID-19 pandemic). This has been driven by the growth of tourism and business activities in the region.

To meet this demand, which is expected to continue to increase, the government of the Macau SAR has planned a gradual liberalisation of the aviation market in the region.

In general terms, the proposal to gradually liberalise the aviation industry in the Macau SAR has tremendous potential for growth, innovation and job creation, with the assured promotion of the tourism sector in the area. It can also lead to increased competition and greater consumer choice, ultimately improving conditions for air travellers.

However, successful implementation of the reform will require plenty of preparatory work

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and comprehensive oversight. Nonetheless, the draft bill is a sound policy initiative that could set the tone for a more diverse and competitive aviation sector in the Macau SAR.

In conclusion, the gradual liberalisation of the aviation market planned for the Macau SAR has the potential to bring significant benefits to the region. Overall, it is likely to contribute to the continued growth of the aviation industry in the Macau SAR and to the expansion of the wider economy.



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