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POWER AND PRIVILEGE:
THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION

by

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ABSTRACT

The paper focuses on the Philippine Amusement and Gaming Corporation as an example of the dispensation of economic privileges and position to private entities.

It traces the evolution of the powers and privileges of this corporation thru a series of presidential decrees, letters of instruction, and executive orders.

It then examines the consequences to the economy of the establishment of PAGCOR, in terms of the costs and benefits that have resulted from its operations. The reader is left to draw his own conclusion.

The paper ends with a series of questions the answer to which would throw more light on the private entities who have benefitted from this situation.

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INTRODUCTION

"... the most damaging economic consequence of political monopoly is the potential abuse of the state machinery and its functions to dispense economic privileges and position to certain private entities." This is one of the main themes of a workshop report of some faculty members of the U.P. School of Economics entitled "An Analysis of the Philippine Economic Crisis." ^{1/}

This paper focuses on this theme, and is the first in a series which tries to examine specific instances of such abuse, as well as their concomitant effects on the economy.

The choice of the Philippine Amusement and Gaming Corporation (PAGCOR) as the subject of the first case study is arbitrary. It came about simply because of a chance visit to the recently inaugurated "Manila Bay Casino," which is beside the International Airport. The largeness of the building, the opulence of its interiors, the generous use of foreign-made equipment, furnitures and fixtures, and the large number of people, almost wholly Filipino, who frequent the place, even during a weekday afternoon, aroused curiosity to find out who or what was behind this casino. When information on this corporation proved

to be unusually difficult to obtain, it not only highlighted once again the need for improved access to relevant information, but also added to the determination to get at the facts.

The Securities and Exchange Commission (SEC) does not have a file on PAGCOR. According to Mr. Edison C. Alba of the SEC Office of Public Assistance, corporations created by special law, such as PAGCOR, or with special charters, are not required to register with SEC, and are not within its jurisdiction. We were referred to the Office of the Government Corporate Counsel for more information.

The Office of the Government Corporate Counsel referred us in turn to Atty. Melencio Santamaria. According to Atty. Santamaria, however, the Office of the Government Corporate Counsel is involved with PAGCOR only to the extent that PAGCOR refers legal matters to it; and since PAGCOR has not referred any so far, he knows nothing about it. He referred us to PAGCOR management, which he could not identify. Neither could he name the members of the Board of Directors.

Turning to the Commission on Audit, which publishes yearly a summary audit report for government corporations^{2/}, we found not a single published audit on PAGCOR since it was first created in 1977. In fact, even COA's alphabetical list of persons holding corporate directorships^{3/}, makes no reference at all to the corporation. The same summary audit report, however, does make mention of PAGCOR as one of nine government corporations whose audited report was not included

either because of late submission or erroneous submission. It mentions the name of the PAGCOR Auditor, a Ms. Marianne Diez. It turns out that the latter holds office not in PAGCOR but in the Office of COA Chairman Francisco Tantuico. A personal interview with her yielded little by way of results, as she needed "authorization".* Further inquiries with the Corporate Audit Section of the COA elicited the information that the audit reports of PAGCOR are not submitted to them but go directly to the Chairman's Office.

A very recent staff paper of the PIDS^{4/} which lists all government corporations and their subsidiaries fails to mention PAGCOR at all. PAGCOR is not listed in the telephone directory under the Philippine government, although it is in the main listings. Telephone calls to the head office yielded the information that it has sixteen personnel, but only one of them, a Ms. Sally Cantero, knows who the five-man board of directors are - and she was not willing to reveal it without "authorization". Calls to the Office of the Minister of Budget for information on the amount of expenditures from the "Casino Fund" resulted in a referral to Mr. Art Sayao, who referred us back to the Office of the Minister. Unfortunately, we have been unable to make contact with him, although we are still trying.

Quite by accident, we learned that BIR Commissioner Ruben Ancheta is currently the Chairman of the Board. We have written to him for information or authority to get information on PAGCOR. As of this

*A letter to PAGCOR dated December 26, 1984, and signed by Chairman Tantuico, reveals that Ms. Diez apparently issued a disclaimer of opinion (i.e., the auditor cannot render an opinion because there is no base or no date). The chairman has asked for a briefing from PAGCOR to resolve certain questions. The letter is contained in APPENDIX B.

writing, he has not replied. We have also written to Chairman Francisco Tantuico of the COA with a similar request, and with similar results, at least so far.

Our only other sources of official information were the Presidential Decrees, the Executive Orders, and Letters of Instruction which refer to PAGCOR. These are a revelation in themselves, providing a graphic illustration of power and privilege, and are the basis, in the absence of other data, of the discussion which follows.

The first part of the succeeding discussion traces the history of PAGCOR through the various PDs, EOs and LOIs, highlighting the ever-increasing privileges granted to the corporation and the simultaneously decreasing power of government to control, monitor, or tax the corporation. The second part is an attempt to enumerate and analyze the costs and benefits arising from the establishment of PAGCOR. The last section underlines the necessity of securing financial and other records if these costs and benefits are to be more adequately measured, thus providing a better basis for decision-making as to continued existence of the corporation.

HISTORY

The "Philippine Amusement and Gaming Corporation" is one of many government owned/controlled corporations, estimates of which range from 174 to 202, depending on how these corporations are defined.^{5/}

In its present form, this corporation is the product of the combined efforts of six Presidential Decrees, four Executive Orders, and one Letter of Instruction. To help the reader, a table showing different provisions and how they have evolved through time is shown in the Appendix. This chronology of events leading to its present circumstances speaks for itself.

1. Presidential Decrees 1067 A, B, and C (January 1, 1977)

The first three Presidential Decrees, PD 1067-A, 1067-B, and 1067-C were all issued on the same day. The first created the Philippine Amusement and Gaming Corporation (PAGCOR), defining the powers and functions, providing funds therefor, and other purposes. The second gave the Corporation a franchise to establish, operate, and maintain gambling casinos, clubs, and other recreation or amusement places, sports gaming pools, i.e., basketball, football, etc., whether on land or sea, within the Philippines. And the third, which amends the second, decrees that the franchise of the Corporation (PAGCOR) would become "exclusive in character, upon the generation of PAGCOR of \$1.2 billion of gross revenues and its contribution therefrom of the amount of \$720 million as the government's share."

The declared objectives of the state in creating PAGCOR, as stated in PD 1067-A, were to (a) centralize and integrate the operations of games of chance into one corporate entity to be controlled, administered and supervised by the government, (b) to generate additional funds for

infrastructure and socio-civic projects which would promote welfare, (c) to create additional tourist attractions and (d) to minimize, if not totally eradicate the evils, malpractices and corruptions that normally are found prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement.^{6/}

PD 1067-A provides that PAGCOR be owned 60% publicly, with the voting power vested in the President of the Philippines, and 40% privately. It also sets the value of the government's six hundred thousand shares of stock at ₱5.00 a share. The value of the remaining 400,000 shares set aside for the private sector is not specified, but to these are to be valued at the discretion of a Board of Directors, and issued to persons or entities "acceptable" to them. Who are in this Board of Directors? They are the Chairman of the National Development Corporation, the Secretary of Public Works, Secretary of Social Welfare, and two others appointed by the President of the Philippines. In effect, the private sector portion of the corporation is to be allocated on the sole and absolute discretion of the President.^{7/}

What are these privileges? Let us enumerate what privileges (other than the possibility of getting the shares at bargain price) are attached to PAGCOR by these three decrees.

(a) The corporation is given the privilege of importing facilities, equipment or paraphernalia^{8/}; these imports are exempt from the payment of duties, taxes and other imposts.^{9/}

(b) The corporation is exempt from paying income or any other form of taxes except a franchise tax of 5% on its gross revenue or earnings.^{10/}

(c) The income of the corporation from sources other than gambling is not included as part of the gross income of the operation for purposes of applying the franchise tax --- and also for the purpose of the division of gross income between government and the private sector.^{11/}

(d) Government gets 60% of the gross income, while PAGCOR^{12/} gets 40%.

(e) Employees of the corporation are not allowed to form unions, and are exempted from the provisions of the labor code.^{13/}

(f) The corporation is also exempt from Civil Service regulations and the rules and regulations of the Wage and Position Classification Office.^{14/}

(g) The Corporation's Board can designate the private/commercial bank that shall act as the Depository Bank of the Corporation.^{14a/} This goes against Circular 75-75 issued by the then Government Auditing Office which requires all government agencies to deposit their funds with government financial institutions like PNB, DBP, and LBP.

(h) The Corporation's Board is given the power to allocate and distribute with the approval of the President, the earnings of the Corporation earmarked to finance infrastructure and socio-civic projects.^{14b/} Thus it can dispose of the government's share directly, without remitting the same to the Bureau of the Treasury, even bypassing budgetary/appropriation procedures.

2. Presidential Decree 1399 (June 2, 1976)

In this decree, promulgated one and a half years after the first three, the initial privileges granted PAGCOR and the initial powers granted to the President by himself were expanded.

First, the composition of the Board of Directors was changed, removing the Secretary of Public Works and Secretary of Social Services, and putting in their places the Government Corporate Counsel and the Office of the Executive Assistant of the President. Also, the other two members of the Board to be appointed by the President were now specifically required to be from the private sector.^{15/}

Second, the 60% share of the government in aggregate gross earnings could now be used not only for infrastructure and socio-civic projects within Metro Manila, but all over the Philippines as directed by the Office of the President.^{16/}

Third, the list of imported items subject to exemptions from duties, taxes, fees, etc., was considerably lengthened.^{17/}

Fourth, the exemption from all other taxes granted to PAGCOR was also granted to corporations, associations, agencies, or individuals, with whom PAGCOR had any contractual relations, or any other business relations, for that matter, with respect to such contract, transaction or services.^{18/}

Fifth, the dividend income declared by PAGCOR corresponding to the private sector dividend income, would not be subjected to the ordinary income tax rates, but a special tax rate of 10%. Furthermore, if this dividend income were invested within six months, it would be completely income tax exempt.^{19/}

Sixth, PAGCOR was given explicit right to purchase, receive, exchange and disburse foreign exchange.^{20/}

The net effect of this new decree was to increase the discretion of the President, to increase the privileges of the private sector portion of PAGCOR and to make more difficult the monitoring of the funds.

3. Presidential Decree 1632 (August 13, 1979)

This decree essentially reiterated the exemption of the PAGCOR from paying any tax except the franchise tax, enumerating the taxes it would be exempt from. It also clarified the sharing of municipalities and provinces if casinos would be set up in areas other than Metro Manila.

4. Executive Order 566 (October 23, 1979)^{21/}

Here, the Chairman of the National Development Corporation was removed as Chairman of PAGCOR. The President was given the power to appoint anyone as Chairman of the Board.

5. Executive Order 604 (July 18, 1980)

According to this order, the Board Chairman must now be from the government sector. However, the other members no longer had to include the Government Corporate Counsel and the Office of the Executive

Assistant. Rather, the members would be appointed at the discretion of the President, and without a fixed term (previously, the term was two years).

6. Executive Order 708 (July 17, 1981)

PAGCOR was placed under the supervision of the Ministry of Finance.

7. Executive Order 740 (October 2, 1981)

This order amends EO 708 by "retaining the Philippine Amusement and Gaming Corporation under the Office of the President." The Finance Ministry supervised PAGCOR for exactly 2 months and one week.

8. Presidential Decree 1869 (July 11, 1983)*

After five presidential decrees and four executive orders, it became "imperative to consolidate them into one statute." (The date, 7-11, of the decree, one cannot resist commenting on.) But at the same time, the privileges of the corporation were expanded, as were the privileges of the private sector portion of the corporation.

The decree reduces the government's equity from 60% to 55% of total.^{22/} At the same time, its share in gross revenue is reduced from 60% to 50%.^{23/} In effect, the government would now own 55% of the corporation, but would get only 50% of the gross earnings.

*Although the decree is dated July 11, 1983, it was not published until a year later.

This PD further specifies that the 50% of gross earnings applies only after the 5% franchise tax is deducted.^{24/} Thus, the real share of government is 47.5% of annual gross earnings rather than 50%.

The PD provides that if annual gross earnings were less than ₦150 million, government's share would be 60%.^{25/} But since average annual gross earnings for the years from 1977 to 1982 were more than ₦250 million, it is hard to understand the usefulness of such a provision.

The rationale given for the move to reduce government's share is to "make it (PAGCOR) more dynamic and effective in its tasks."^{26/} This is inconsistent with a prior statement in the Decree, which avers that PAGCOR's operation has enabled the government to identify the potential sources of additional revenues, "provided games of chance are... subject to ... close scrutiny, regulation, supervision and control by government."^{27/}

More disturbing is the provision of the decree that limits governmental audit of the corporation's operations only to the determination of the 5% franchise tax and the government's share of 50% of the gross earnings.^{28/} No longer (if ever they were able to do so in practice) could government auditors look into the operational expenses of PAGCOR. Even more irregular if not unconstitutional, is that the auditing no longer has to be done by the Commission on Audit, but may be done by "any government agency that the Office of the President may designate".

This is a classic example of the government doing the opposite of its pronouncements. At the same time that it talks about the need for scrutiny and control, it removes the scrutiny and decreases the control.

Furthermore, the Corporation is now given the power to maintain a Registry of affiliated entities (those with contracts or franchises from the Corporation) and is to exercise the powers, authority and responsibilities over them which would normally be vested in the Securities and Exchange Commission.^{29/} In effect, it has become a self-regulating and self-policing corporation.

The Board of Directors, whose composition has been changed three times already, is once again reorganized. Three of the members will come from government, and appointed by the President; and two are from the private sector, elected by the stockholders of the corporation.^{30/} Although at first glance this seems to curtail the Presidential power to appoint all the members, a closer look shows that indeed, the President can still determine who will be the private stockholders.

The situation, wherein the government's shares of stock are given an original issue value of \$5.00 (now \$200), while the remaining shares will have a value to be determined by the Board of Directors, still obtains. Except now, the government owns only 550,000 shares, whereas the private sector is allowed 450,000 shares.

9. Letter of Instruction 1430 (September 28, 1984)

This exempts PAGCOR, from the coverage of Sec. 1 of PD No. 1931 (June 11, 1984). The latter decree had removed all tax privileges granted to government-owned and controlled corporations. PAGCOR was one of the only two corporations that got exempted from the fiscal tightening measures of the government following the debt crisis.

COST AND BENEFITS OF PAGCOR

Here we have PAGCOR, a government corporation, the result of six Presidential Decrees, four Executive Orders, and one Letter of Instruction. Here is a corporation that is exempt from income taxes, import taxes, in fact, all kinds of taxes, except a 5% franchise tax. Here is a corporation that is exempt from depositing its funds in a government bank as do all government agencies, but can choose a private bank of its own.* Here is a corporation that is exempt from Civil Service Regulations and the Labor Code. Here is a corporation that can import anything it wants, and can deal in foreign exchange. Here is a corporation for which government audit is limited to the revenue side, forgetting the expenditures. Here is a corporation that is vested with the regulation powers of the Securities and Exchange Commission vis-a-vis affiliated corporations and entities engaged in related activities. Here is a corporation that has the exclusive franchise to operate any and all gambling casinos and other games of chance in the Philippines. The scope of its franchise is so wide that it could cover such operation as the Jai Alai, horseracing, lotteries, even the "jueteng" that is so

*The Traders Royal Bank is the corporation's choice.

popular in the country. Here is a corporation so clothed with privilege that anyone who has contractual relations with it is also touched by such privilege (i.e., exempt from income tax). Here is a corporation whose dividends are exempt from income tax so long as they are reinvested in any productive activity.

All by decree/order/instruction of the President, who is empowered to make such decree/order/instruction. And having bestowed such privileges on this corporation, 45% of its ownership is gifted to the "private sector", again at the discretion of the President.

All in the name of "infrastructure and socio-civic projects" welfare, tourism, and the eradication of the evils of gambling. Let us now examine the consequences of the establishment of this corporation, i.e., the costs and benefits that have resulted from its operations.

Records of the Corporation, financial and otherwise, would enable us to quantify these costs and benefits. Unfortunately, the research effort has so far drawn a blank in the area, as already described in the introduction. The unavailability of what should be public record is itself an indication of the lack of an information system that is so necessary in decision-making.

The only official financial information comes from PD 1369 itself, which states that "as of December 1982, PAGCOR has generated gross revenues of ₱1.677 billion, contributing ₱956 million as 60% share of the government plus ₱83 million in the form of 5% franchise

tax."^{31/} Unofficial but highly reliable information shows that gross revenues of the corporation for 1983 were ₦430 million, of which ₦21.5 million went as franchise tax, and ₦204 million was the share of government.

From this, it can be seen that the benefits so far derived from the establishment of PAGOOR are:

1) ₦1.264 billion from the government shares in the annual revenues, and the franchise tax payments of the corporation. Whether or not the ₦1.16 billion government "share" earmarked for "infrastructure and socio-civic projects" actually went to these is another matter. The Budget Office and/or the Office of the President should be able to provide a list of uses of these funds;

2) the additional employment generated by the operations of PAGOOR, both direct and indirect;

3) the additional foreign exchange from foreigners and balik-bayans who visit the place. It is not known whether these are reported to the Central Bank.

On the other hand, several costs can be enumerated, some of which are not quantifiable, but are extremely important nevertheless:

Foregone Government Revenues and Other Costs

1) Given the government's decision to engage in this kind of operation, one cost would be the foregone additional funds for

government's infrastructure and socio-civic projects as a result of the share given the "private sector" in the ownership, and thus the earnings of the corporation. If government's aim was to control and supervise, there certainly would be no need to bring in the private sector on an equity basis. A rough estimate of the foregone earnings would be \$211 million as of the end of 1983, assuming that 30% of gross revenues went towards operating expenditures, and of course also assuming that the financial statements made in PD 1869 are accurate. These foregone earnings will be larger from 1983 on, because the government reduced its share to 50% from the original 60% of gross revenues, as decreed in PD 1869.

2) Given its decision to include the private sector in its operation, another cost would be the loss that may have been incurred due to making the choice of "partner" through a personal decision rather than through competitive or more open processes. Everything else remaining the same, the government may have been better off, financially speaking, if it had entertained bid from firms or entities desirous of going into joint venture with government in this activity.

3) Still another cost would be the share that the government voluntarily gave up of the income of the corporation from sources other than gambling. For example, the income from restaurant activities, entertainment, and other concessions, would be considerable, judging from the number of gambling patrons involved.

4) Account must also be taken of the foregone revenues from taxes, duties, and other imposts, that the government lost, because it granted exemptions not only to PAMCOR itself, but to all other corporations, agencies, and entities affiliated with it; this is still another cost that must be attributed to the enterprise.

5) There are also financial losses which are due to laxness in government monitoring and auditing of the accounts of the corporation (these are closely connected with the costs of bringing in personally chosen private sector partner/s). Evidence of this is found in PD 1869 itself.

a) It talks about the ₱1.677 gross revenues of the corporation as of December 1982. Government's share of this is 60%, amounting to ₱1.006 billion. But government received, according to PD 1869, not ₱1.006 billion, but ₱956 million. What PAMCOR did was to apply the 60% to the gross revenues after the franchise tax was removed. Thus government's share was effectively 57% instead of 60%. The government apparently not only condoned this, but made it legal six years later by stipulating such a procedure in PD 1869. The loss due to the inability or reluctance of government to follow the letter and spirit of its own decrees is thus ₱40 million.

b) Running a gambling operation is certainly very profitable, and yet PD 1869 states that the government made

"advances" to the corporation of over ₱70 million.^{32/} It is almost impossible to conceive of a situation where this could happen. Even more difficult to understand is government's generosity, since no statement is made about interest charges.

c) A third example of costs arising due to laxity of government's auditing or supervision is in the interest income that has been foregone from the government's "float" to the corporation. If information given unofficially is accurate, the government is given its share once a year, and that long after the corporation's fiscal year is up. The government's share of the 1983 "gross revenues" had not yet been remitted to the National Treasury as of December 1984, or as of one year later. At an average of 30% or more interest rate, this would represent a loss of at least ₱60 million, just for 1983. When you are talking of funds in the billions, the interest foregone can reach up to hundreds of millions.

6) There are non-quantifiable costs, which are nevertheless extremely important and must be identified. First is the disregard of the right of labor to employ legitimate means to improve their welfare through bargaining power due to the prohibition against the formation of unions or any association by employees of the casino and other entities providing related services.

7) There is also a cost in terms of demoralization or loss of credibility, or increased cynicism vis-a-vis the government, when the public sees a corporation that operates above the law -- exempt from provision of the Civil Service Law, the Labor Code, income taxes, import duties, supervision from the Commission on Audit, etc. In a certification dated July 11, 1984, the PAGCOR states that previous years' share of the government were released to, or used in certain projects without first remitting the same to the Bureau of Treasury, nor with the necessary appropriation measures.

8) Finally, account must be taken of the social costs attached to the encouragement, if not explicit legalization of gambling as a result of PAGCOR. The presidential decrees on PAGCOR limit entrance to the casino of citizens and residents to those 21 years and over, with annual incomes of at least ₱50,000 and who are neither government employees nor members of the armed forces. But the decrees also contain an escape provision that gives management discretion to make exceptions.^{33/} In actual practice, no serious effort is made to enforce the restrictions.

While there may be no quarrel with the objective of promoting domestic welfare and attracting tourists, the use of gambling to achieve these raises several questions: Are the infrastructure and socio-civic projects sufficient justification for raising the funds in this manner? Is gambling the only way to raise such funds? And is not gambling, with its effects, net welfare-decreasing? Is government in a position to measure and make a judgment on the net welfare? Are the "evils" attendant to gambling eradicated by the simple expedient of having the government "supervise" and "control" it? Are the "evils" attendant to trafficking in drugs eradicated if the government does the trafficking itself? Or is gambling an activity that would happen anyway and is PAGCOR a second-best solution to derive some welfare benefits from the activity? If this is the case, why reserve 45% of the benefits for a chosen few? Is the use of presidential legislative powers in this instance appropriate?

The social costs and benefits are difficult to quantify, as they would require interpersonal welfare comparisons. However, the financial costs and benefits can be calculated if the financial records are made available to the public. Specifically, the following questions can and should be answered:

- 1) Who are the members of the Board?
- 2) Who are the private shareholders?
- 3) What is the issue value and acquisition value of these shares of stock?
- 4) How much dividends have been declared?
- 5) Where are the audited financial statements of PAGCOR, showing PAGCOR's gross revenues, from gambling as well as non-gambling activities, as well as its expenditures?
- 6) How much has PAGCOR imported to date?
- 7) What is the value of the foreign exchange receipts of PAGCOR to date?
- 8) What are the names of the firms with which PAGCOR has contractual relations and what amounts are involved in these transactions?

These and other as yet unanswered questions underline the need for openness in government to discern public consensus and conscience on important issues. In the absence of that opportunity through the initiative of government, we invite public opinion and action on the issues and questions raised by this paper.

One final note: the operations of PAGCOR so far include only the Manila Bay Casino. But as mentioned earlier, its franchise allows it to operate all other games of chance in the Philippines. The potential gains to the private owners of the corporation, as well as the potential losses to the economy must therefore be adjusted accordingly.

FOOTNOTES

- 1/ de Dios, Emmanuel, ed., "An Analysis of the Philippine Economic Crisis," U.P. Press, Quezon City, Philippines, 1984.
- 2/ COA, Summary Audit Report on Government Owned/Controlled Corporations, yearly from 1977-83.
- 3/ COA, 1983, p. 11.
- 4/ Rosario Manasan, "Public Enterprise in the Philippines in 1982: A Definitional and Taxonomical Exercise," PIDS Staff Series No. 82-02.
- 5/ Manasan, op cit, p. 21. This is as of 1982. According to the author the number may not be exhaustive since enterprises where government equity is between 20 and 50 percent (implying that government control of said enterprises is probable using the PICPA rule) are excluded unless actual government control is determined. In numerous instances, the author has not been able to confirm the actual controlling interests in these enterprises due to resource constraints.
- 6/ Sec. 1
- 7/ Sec. 4 and 5
- 8/ Sec. 3, PD 1067-A
- 9/ Sec. 4-1, PD 1067-B
- 10/ Sec. 4-2, PD 1067-B
- 11/ Sec. 5-5, PD 1067-B
- 12/ Sec. 3, PD 1067-B
- 13/ Sec. 5-6, PD 1067-B
- 14/ Sec. 8, PD 1067-A
- 14a/ Sec. 6-2, PD 1067-A
- 14b/ Sec. 6-1, PD 1067-A
- 15/ Sec. 1, PD 1399

Footnotes (cont'd)

16/ Sec. 2, PD 1399

17/ Sec. 3, PD 1399

18/ Sec. 4-2-b, PD 1399

19/ Sec. 4-3, PD 1399

20/ Sec. 4-4, PD 1399

21/ This and the succeeding Executive Orders are half-a-page to one-and-a-half pages in length, and can be read in toto.

22/ Sec. 4

23/ Fifth "Whereas", PD 1869

24/ Sec. 12

25/ Fifth "Whereas", PD 1869

26/ Fifth "Whereas", PD 1869

27/ Fourth "Whereas", PD 1869

28/ Title II, Sec. 15

29/ Title III, Sec. 9

30/ Title II, Sec. 5

31/ Third "Whereas", PD 1869

32/ Sec. 5, PD 1869

33/ Title IV, Sec. 14-b, PD 1869, and Sec. 5-3, PD 1067-B

APPENDIX: PAGCOR'S PRIVILEGES: GROWTH AND EXPANSION

Note: The following are provisions of the different Presidential Decrees which grant various privileges to the Corporation, showing how these have been increased from 1977 to 1983.

I. AUTHORIZED CAPITAL STOCK

January 1, 1977: PD 1067-A (Section 4)

The Corporation shall have a capital stock divided into one million voting and no par value shares, to be subscribed, paid for and voted as follows:

- a) 600,000 shares of stock to be subscribed and paid for by the government of the Republic of the Philippines at an original issue value of ₱5.00 per share.
- b) 400,000 shares remaining may be subscribed by persons or entities acceptable to the Board of Directors at issue value to be determined by such Board of Directors.

The voting power pertaining to shares of stock subscribed by the Government of the Republic of the Philippines shall be vested in the President of the Philippines or in such person or persons as he may designate.

The voting power pertaining to shares of stock subscribed by private persons or entities shall be vested in them.

July 11, 1983: PD 1869 (Section 4)

The Corporation shall have an authorized capital stock divided into one million voting and no par value shares, to be subscribed, paid for and voted as follows:

- a) 550,000 shares of stock to be subscribed to and paid for by the Government of the Republic of the Philippines at an original issue value of ₱200.00 per share; and
- b) 450,000 shares remaining may be subscribed to by persons or entities acceptable to the Board of Directors at issue value to be determined by such Board of Directors.

The voting power pertaining to shares of stock subscribed to by the Government of the Republic of the Philippines shall be vested in the President of the Philippines or in such person or persons as he may designate.

The voting power pertaining to shares of stock subscribed by private persons or entities shall be vested in them.

II. BOARD OF DIRECTORS

January 1, 1977: PD 1067-A (Section 5)

The Corporation shall be governed and its activities be directed, controlled and managed by a Board of Directors that shall be composed of five (5) ex-officio members, namely: (1) The Chairman of the National Development Corporation, who shall act as Chairman; (2) The Secretary of Public Works; (3) The Secretary of the Department of Social Welfare; and two other members to be appointed by the President of the Philippines.

The two appointive directors shall each serve for a term of two (2) years or until their successors shall have been appointed and qualified.

June 2, 1978: PD 1399 (Section 1)

Section 5 of Presidential Decree No. 1067-A dated January 1, 1977, is hereby amended to read as follows:

"Section 5. Board of Directors. The Corporation shall be governed and its activities be directed, controlled and managed by a Board of Directors that shall be composed of five (5) members, namely: (1) The Chairman of the National Development Corporation, who shall act as Chairman; (2) Government Corporate Counsel; (3) Office of the Executive Assistant, Office of the President, or their respective representatives; and two other members to be appointed by the President of the Philippines from the private sector."

October 23, 1979: EO 566 (Section 1)

The Philippine Amusement and Gaming Corporation shall be governed and its activities be directed, controlled and managed by a Board of Directors that shall be composed of five (5) members, namely: (1) The Chairman who shall be appointed by the President of the Philippines; (2) The Government Corporate Counsel; (3) The Office of the Executive Assistant, Office of the President, or their respective representatives; and (4) Two (2) other members to be appointed by the President of the Philippines from the private sector.

Leon - e - 2

July 18, 1980: EO 604 (Section 1)

The Board of Directors of PAGCOR shall be composed of five (5) members, the Chairman of which shall come from the government section. Any provision of the charter of PAGCOR, or of any other decree, statute or order to the contrary notwithstanding, the Chairman and the other members of the Board shall be such persons as the President may, in his discretion, appoint from time to time.

July 11, 1983: PD 1869 (Title II, Section 6)

The Corporation shall be governed and its activities be directed, controlled and managed by a Board of Directors, hereinafter referred to as the Board, composed of five (5) members, three (3) of whom shall come from the Government sector and shall be appointed by the President, while the other two (2) shall be from the private sector who own at least 1 share of stock in the Corporation and who shall be elected by the stockholders of the corporation in the annual general meeting or in a special meeting called for such purpose.

Each Director shall serve for a term of one (1) year and until his successor shall have been duly appointed and qualified.

III. NATURE AND TERM OF FRANCHISE

January 1, 1977: PD 1067-B (Section 1)

Subject to the terms and conditions established in this Decree, the Philippine Amusement and Gaming Corporation is hereby granted for a period of twenty-five (25) years, renewable for another 25 years, the right, privilege, and authority to operate and maintain gambling casinos, clubs and other recreation of amusement places, sports gaming pools, i.e., basketball, football, etc., whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

January 1, 1977: PD 1067-C (Section 1)

Section 1 of the PD 1067-B is hereby amended to read as follows:

Subject to the terms and conditions established in this Decree, the Philippine Amusement and Gaming Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, the right, privilege and authority to operate and maintain gambling casinos, clubs and other recreation or amusement places, sports gaming pools, i.e., basketball, football,

etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines. This franchise shall become exclusive in character, subject only to the exception of existing franchises and games of chance heretofore permitted by law, upon the generation by the Franchise Holder of gross revenues amounting to \$1.2 billion and its contribution therefrom of the amount of \$720 million as the government's share.

IV. SPECIAL CONDITION OF FRANCHISE

January 1, 1977: PD 1067-B (Section 3)

Sixty (60%) percent of the aggregate gross earnings derived by the franchise holder from this Franchise shall be immediately set aside and allocated to fund the following infrastructure and socio-civic projects within the Metropolitan Manila Area:

- a) Flood Control
- b) Sewerage and Sewage
- c) Nutritional Programs
- d) Population Control
- e) "Tulungan ng Bayan" Centers
- f) Beautification

June 2, 1978: PD 1399 (Section 2)

Section 3 of Presidential Decree No. 1067-B is hereby amended to read as follows:

"Section 3. SPECIAL CONDITION OF FRANCHISE. -

Sixty (60%) percent of the aggregate gross earnings derived by the Franchise Holder from this Franchise shall be immediately set aside and allocated to fund the following infra-structure and socio-civic projects within the Metropolitan Manila Area:

- a) Flood Control
- b) Sewerage and Sewage
- c) Nutritional Programs
- d) Population Control
- e) "Tulungan ng Bayan" Centers
- f) Beautification

In addition to the priority infra-structure and socio-civic projects within the Metropolitan Manila Areas specifically enumerated above, the 60% share of the government in the aggregate gross earnings derived by the Franchise Holder from this Franchise may now be appropriated and allocated to fund and finance any infra-structure and/or socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President."

August 13, 1979: PD 1632 (Section 1)

Section 3 of Presidential Decree No. 1067-B as amended by Presidential Decree No. 1399, is hereby further amended to read as follows:

"If the host area is Metro Manila, sixty percent (60%) shall be set aside and allocated to fund the following infrastructure and socio-civic projects within the Metropolitan Manila Area:

- a) Flood Control
- b) Sewerage and Sewage
- c) Nutritional Programs
- d) Population Control
- e) 'Tulungan ng Bayan' Centers
- f) Beautification

Provided, however, That as may be directed and authorized by the President, all or part of the said 60% share of the government may be appropriated and allocated to fund and finance any infrastructure and/or socio-civic projects throughout the Philippines: Provided, further, That if the host area is a city or municipality other than Metro-Manila, said sixty percent (60%) share of the government shall be allotted to the host city or municipality (other than Metro Manila) and to the province, as follows: fifty per centum (50%) to the province, and fifty per centum (50%) to the host city or host municipality, as the case may be: Provided, furthermore, That in Regions 9 and 12 the sharing of the 60% appertaining to the government shall be as follows: thirty per centum (30%) to the province, forty-five per centum (45%) to municipalities and cities, as the case may be, and twenty-five per centum (25%) to the regional governments."

July 11, 1983: PD 1869 (Section 12)

After deducting five (5) percent as Franchise Tax, the Fifty (50) percent share of the Government in the aggregate gross earnings of the Corporation from this Franchise shall be immediately set aside and allocated to fund the following infrastructure and socio-civic projects within the Metropolitan Manila Area:

- a) Flood Control
- b) Sewerage and Sewage
- c) Nutritional Control
- d) Population Control
- e) Tulungan ng Bayan Centers
- f) Beautification

g) Kilusang Kabuhayan at Kaunlaran (KKK projects); provided, that should the aggregate gross earnings be less than ₱150,000.00, the amount to be allocated to fund the above-mentioned project shall be equivalent to sixty (60%) percent of the aggregate gross earnings.

In addition to the priority infrastructure and socio-civic projects within the Metropolitan Manila specifically enumerated above, the share of the Government in the aggregate gross earnings derived by the Corporation from this Franchise may also be appropriated and allocated to fund and finance infrastructure and/or socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines.

V. EXEMPTIONS

January 1, 1977: PD 1067-B (Section 4)

(1) Duties, taxes and other imposts on importations. - All importations of equipment, vehicles, boats, ships, barges, aircraft and other gambling paraphernalia or facilities for the sole and exclusive use of the casinos, clubs and other recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of duties, taxes and other imposts.

(2) Income and other taxes. - No income or any other form of taxes shall be assessed and collected under this Franchise from the franchise holder; nor shall any form of tax or charge attach in any way to the earnings of the franchise holder, EXCEPT a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the franchise holder from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all taxes of any kind, nature or description, levied, established, or collected by any municipal, provincial or National authority.

June 2, 1978: PD 1399 (Section 3)

Section 4 of Presidential Decree No. 1067-B is hereby amended to read as follows:

"Section 4. EXEMPTIONS. -

(1) Duties, taxes and other imposts on importations. - All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, for the sole and exclusive use

of the casinos, the proper and efficient management and administration thereof, and such other clubs, recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature.

Vessels and/or accessory ferry boats imported or to be imported by any corporation having existing contractual arrangements with the Franchisee, for the sole and exclusive use of the casino or to be used to service the operations and requirements of the casino, shall likewise be totally exempt from the payment of all taxes, duties and other imposts, including all kinds of fees, levies, assessments, or charges of any kind or nature, whether National or local.

(2) Income and other taxes. -

(a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges, or levies of whatever nature, shall be assessed and collected under this Franchise from the Franchise Holder; nor shall any form of tax or charge attach in any way to the earnings of the Franchise Holder, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Franchise Holder from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all taxes, levies, fees or assessments of any kind, nature or description, levied, established, or collected by any municipal, provincial or National authority.

(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation/s, association/s, agency/ies, or individual/s with whom the Franchisee has any contractual relationship in connection with the operations of the casino/s authorized to be conducted under the Franchise and to those receiving compensation or other remuneration from the Franchise Holder as a result of essential facilities furnished and/or technical services rendered to the Franchise Holder.

(3) Dividend Income. - In the event the Franchisee should declare a cash dividend, that portion of the dividend income corresponding to the participation of the private sector shall, as an incentive to the beneficiaries, be subject only to a final flat income tax rate of ten (10%) percent in lieu of the regular income tax rates. The dividend income shall not in such case be considered as part of beneficiaries' taxable income. Provided, however, that such dividend income shall be totally exempted from income or other form of taxes if invested within six (6) months from the date the dividend income is received, in the following:

(a) Operation of the casino/s or investments in any affiliate activity that will ultimately redound to the benefit of the Franchisee-corporation/s or any other corporation with whom Franchisee has any existing arrangements in connection with or related to the operations of the casino/s;

(b) Government bonds, securities, treasury notes, or government debentures;

(c) BOI-registered or export-oriented corporation/s;

(d) Any productive enterprise, or

(e) In payment of government or other form of indebtedness guaranteed by the government through any of its financing or banking institutions.

(4) Utilization of foreign currencies. - The Franchisee shall have the right and authority, solely and exclusively in connection with the operations of the casino/s, to purchase, receive, exchange, and disburse foreign exchange, subject to the following terms and conditions:

(a) A specific area in the casino/s or gaming pit shall be put up solely and exclusively for players and patrons utilizing foreign currencies;

(b) Franchisee shall appoint and designate a duly and accredited commercial bank, agent of the Central Bank, to handle, administer and manage the use of foreign currencies in the casino/s;

(c) Franchisee shall provide an office at the casino/s exclusively for the employees of the designated bank, agent of the Central Bank, where the Franchisee shall maintain a dollar account which will be utilized exclusively for the above purpose and the casino dollar treasury employees;

(d) Only persons with foreign passports, or certificates of identity (for HongKong patrons only), duly issued by the government or country of their residence will be allowed to play in the foreign exchange gaming pit;

(e) Only foreign exchange prescribed to form part of the Philippine International Reserve and the following foreign exchange currencies: Australian Dollar, Singapore Dollar, HongKong Dollar, shall be used in this gaming pit;

(f) The disbursements, administration, management and recording of foreign exchange currencies used in the casino/s shall be carried out in accordance with existing foreign exchange regulations; and periodical reports of transactions in such foreign exchange currencies by the Franchisee, shall be duly recorded and reported to the Central Bank thru the designated Agent Bank;

(g) The Franchisee shall issue the necessary rules and regulations for the guidance and information of players qualified to participate in the foreign exchange gaming pit, in order to make certain that the terms and conditions as above set forth are strictly complied with.

August 13, 1979: PD 1632 (Section 2)

Paragraph (2) of Section 4 of Presidential Decree No. 1067-B as amended, is hereby further amended to read as follows:

"SEC. 4. EXEMPTIONS. -

"(2) Income and other taxes. -

"(a) Franchise Holder: In consideration of the franchise and rights hereby granted, the Franchise Holder shall pay to the National Government a franchise tax of five per centum (5%) of its gross revenue or earnings from the operation of its franchise, such tax to be paid in the same manner as provided in Section 267 of the National Internal Revenue Code, and shall be in lieu of any and all taxes of any kind and nature or description levied, established or collected by any authority whatsoever, whether Municipal, City, Province or National."

July 11, 1983: PD 1869 (Section 13)

Exemptions. Income and other taxes - (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino/s authorized to be conducted under

this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.

VI. GOVERNMENT AUDIT

January 1, 1977: PD 1067-A (Section 7)

Auditor. - The Commission on Audit shall appoint, subject to the approval of the Board, a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor and his staff shall be fixed by the Chairman of the Commission on Audit, with the advice of the Board, and said salaries and other expenses for the auditor's office shall be paid by the Corporation.

July 11, 1983: PD 1869 (Title V, Section 15)

Auditor. - The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share.

VII. EXEMPTING FROM CIVIL SERVICE LAW

January 1, 1977: PD 1067-A (Section 8)

Exemptions. All positions of the Corporation, whether technical, administrative, professional, or managerial, are exempt from the provision of the Civil Service Law and the rules and

regulations of the Wage and Position Classification Office and shall be governed only by the personnel management policies set by the Board of Directors.

July 11, 1983: PD 1869 (Title VI, Section 16)

Exemption. - All position in the Corporation, whether technical, administrative, professional or managerial are exempt from the provisions of the Civil Service Law, rules and regulations, and shall be governed only by the personnel management policies set by the Board of Directors. All employees of the casinos and related services shall be classified as "Confidential" appointee.

APPENDIX B

December 26, 1984

The Managing Head
Thru the COA Auditor
Philippine Amusement and
Gaming Corporation (PAGCOR)
Manila

S i r :

This refers to the unclear aspects in the PAGCOR operations which necessitated a disclaimer of opinion by our Auditor, in view of which may I request for a briefing by you or your ranking officer/s on January 8, 1985 starting at 9:30 A.M. at your main office relative to the following and other related matters:

1. Accumulated amount of the National Government share in the winnings and the franchise tax, and the manner of their remittance or disposition;
2. Capitalization of the corporation and their composition;
3. Terms of the contract between PAGCOR and the Philippine Casino Operators Corporation (PCOC); and
4. Recording procedures of the betting operations, and how the franchise tax and the Government share in the winnings are computed.

I have instructed COA Managers A. Flores, S. Ursal, R. Espiritu, and L. Andres to attend the briefing. Please notify us by your availability on the date, time and place indicated above.

Very truly yours,

(SGD.) FRANCISCO S. TANTUICO, JR.
Chairman
Commission on Audit

Enclosure:
AS stated

A True Copy
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gmt