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GUIDES 2024**

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Macau

BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Macau.

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MACAU BANKING & FINANCE



1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The Monetary Authority of Macao ("AMCM") is the authority that assists and advises the Chief Executive of Macao in the formulation and implementation of monetary, financial, foreign exchange and insurance policies as well as to direct, coordinate and monitor the said markets in the purpose to ensure their proper functioning and to supervise those operating within the markets in accordance with the laws and regulations governing the respective area. Furthermore, in order to ensure the full convertibility of the local currency, the AMCM monitors the internal monetary stability and external solvency of the local currency. The AMCM has the function of quasi-central bank and maintaining the financial system stability as well.

The Deposit Guarantee Fund, established under Law No. 9/2012 (Deposit Guarantee Regime), is the entity that compensates the guaranteed deposits up to MOP 500,000 per bank when a bank is, or appears to be unable to fulfil its obligations to depositors or when it is declared bankrupt by a court decision.

2. Which type of activities trigger the requirement of a banking licence?

According to Article 21, paragraph 1 of Law no. 13/2023, Financial System Act ("FSA"), a bank may carry out the following operations:

a) accepting deposits and other repayable funds from the public; b) lending, including the provision of guarantees and other commitments, financial leasing and factoring; c) payment services; d) issuing and managing means of payment such as bank cards, negotiable instruments, letters of credit and digital stored value facilities; e) carry out, for own account or on behalf of customers, transactions on tradable securities in financial market, forward and options, and transactions on foreign exchange, interest rates and

other financial instruments; f) participating in the issue, underwriting and placement of securities or other financial instruments, as well as the provision of other related services; g) Money broking; h) asset management, including management, custody and trust services for portfolios of securities, other financial instruments or assets; i) risk investment; j) participating in mergers and acquisitions and provision of related services; k) financial consultancy; l) investment in holdings in company capital; m) provision of commercial information and research services; n) safe custody services; o) insurance intermediation; p) other activities authorized by the AMCM.

The aforementioned activities are authorized operations of a bank. However, certain operations may be temporarily suspended with a specific institution or be subject to prior authorization by AMCM which shall take into account the existence of sufficient own funds and proof of adequate experience and technical ability of the relevant institution. In addition, in the case of developing new activities or launching new financial services within the scope of authorized activities, including financial innovation, the credit institution is required to obtain a non-opposing opinion from the AMCM.

3. Does your regulatory regime know different licenses for different banking services?

Some, but not all, of the banking services as indicated in our response to question 2 may be provided by other entities in the financial system, for instance, finance companies, wealth management companies, investment fund management companies, payment services institutions and money remittance companies. Different licenses, that are provided in the form of prior authorizations, may be granted varying in accordance with the nature of the intended business of an application.

In addition, it is worth noting that Law no. 13/2023, which became effective on 1 November 2023, introduces

a new category of banks, called “restricted license bank”, that is, banks dedicated to undertaking deposit-taking and other specific areas of business that are mentioned in the question 2.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

In principle, the unrestricted licensed banks in Macau may carry out the activities set out in Article 21 of FSA. The restricted license may only authorized to undertake the deposit-taking business and part of the banking services, being defined by the Order of the Chief Executive that grants the authorisation.

However, when developing any new activities or launching new financial services within the existing scope of their activities, including financial innovation, non-opposing opinion from the AMCM is required.

5. Is there a “sandbox” or “license light” for specific activities?

There is a temporary licensing system dedicated to financial innovation under the FSA. A temporary license is required when the entities employ technological innovation or innovative operating models to carry out financial activities exclusively reserved for financial institutions. The eligible entities for the temporary license include academic or scientific research and development institutions, technology companies, as well as financial institutions that develop financial innovation projects outside their existing scope of authorized activities.

Under the FSA, the AMCM is the competent authority to grant temporary authorization to eligible entities and establish special supervisory rules that regulate financial innovation, including procedures for applying for temporary authorization, required documents, applicant qualification, application requirements, risk management, and evaluation criteria. In addition, the AMCM has the authority to impose or waive specific supervisory requirements on a case-by-case basis.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

The AMCM has alerted residents to be cautious about the

possible risks that may arise due to the fact that virtual currency is neither a legal tender nor a financial instrument and, on the other hand, it does not fall within the scope of supervision of the financial supervisory authorities. The AMCM has explicitly stated that local banks and payment institutions cannot participate, directly or indirectly, in these activities, nor can they provide any financial services related to the transactions of this “virtual commodity”.

7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

No. Crypto currencies/ crypto assets are not legal tender in Macau and see our response to question 6. In this sense, they are not qualified deposits and are not covered under the Deposit Guarantee Regime.

8. If crypto assets are held by the licensed entity, what are the related capital requirements (risk weights, etc.)?

Please refer to our response in questions 6 and 7.

9. What is the general application process for bank licenses and what is the average timing?

For reference purposes, following with Article 22 of the FSA, entities that are interested to incorporate a bank in Macau shall file an application through AMCM, accompanied by the relevant documents and information, inter alia:

a) a memorandum demonstrating the economic and financial reasons for wishing to in-corporate the institution, indicating its feasibility and the same shall fit into the economic and financial policies pursued by the competent authorities of Macau; b) a description of the mechanism related to corporate governance, risk management, in-ternal control, emergency recovery plan, as well as prevention and suppression of money laundering and terrorist financing; c) a draft of the memorandum and articles of association; d) personal and professional identification of the founding shareholders, indicating the percentage of their respective holdings in the share capital and a statement confirming the adequacy of the shareholding structure with regard to the stability of the institution; e) information on the members of the management and supervisory bodies of the institu-tion; f) a description of the institution, giving its location and details of the

technical and human resources at its disposal.

If there are shareholders who are corporate bodies with a holding equal to or greater than 5% of the share capital of the institution to be incorporated, the following information must also be included:

a) memorandum and articles of association; b) annual report and accounts in respect of the preceding three years; c) identification of the members of the board of directors, accompanied by curriculum vitae; d) distribution of the share capital and a list containing the names of shareholders who hold over 5% of the respective share capital; e) relation of other companies in whose capital they detain qualifying holdings and the structure of the respective group.

In addition to the information referred by the preceding points, any other information which AMCM deems necessary to allow a full analysis of the application should be submitted. AMCM may exempt entities from submitting the documents and information which have already been kept in file.

The decision on the application for authorisation shall, inter alia, take into account:

a) the suitability of the qualifying shareholders; b) the suitability and feasibility of the business plan; c) the soundness and effectiveness of the incorporated governance structure and the risk management system; d) the adequacy of the human, technical and financial resources required for the intended business; e) the adequacy of the objectives of the applicants with regard to the economic and financial policies pursued by the official bodies in Macau; f) if the holders of qualifying holdings are foreign entities, consideration should be given to the economic and situation of their home state, the supervisory capabilities of the competent authority, and the effectiveness of their cooperation with the AMCM. g) other prudential factors to safeguard the overall stability and effective functioning of the financial system of Macau.

The procedure for opening a branch of credit institutions incorporated overseas, although different, is in many ways similar to the above. Further, there is no explicit timing for handling the application, in practice, it may vary from several months to years or so.

10. Is mere cross-border activity permissible? If yes, what are the requirements?

In Macau, any local or foreign entities that carry out financial business on a habitual basis and with a view to

profit must be authorized. Also, any institutions incorporated in Macau that intend to establish a subsidiary, a branch or a representative office overseas shall file a formal application through the AMCM.

11. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

According to the FSA, a bank is an undertaking that must be incorporated in the form of sociedade anónima (joint stock company).

12. What are the organizational requirements for banks, including with respect to corporate governance?

According to the Circular No.169/B/2002-DSB/AMCM, the Internal Control Guideline for the Authorized Credit Institutions, the licensed bank should implement an effective internal control system, which consists of control environment, risk recognition and assessment, control activities, accounting, information, and communication systems and monitoring and correcting. Also, a bank should establish any or all the specialized committees or structures which perform similar functions, including: an Audit Committee, an Asset and Liability Management Committee, a Risk Management Committee, a Compensation Committee, and a Nomination Committee.

13. Do any restrictions on remuneration policies apply?

To date, no legal restrictions on remuneration policies are effective, but the article of association may set out such restrictions.

14. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

Under the FSA, all credit institutions in Macau shall observe a capital adequacy ratio of not less than 8%, without prejudice to the AMCM establishing stricter rules in line with supervisory needs. Also, the FSA establishes that the own funds of the credit institution in no case fall below its registered capital.

According to the Guideline on Composition of Own Funds

(Circular No. 010/B/2023-DSB/AMCM), own funds include Tier 1 Capital, which comprises Common Equity Tier 1 (CET1) capital and Additional Tier (AT1) capital and Tier 2 capital and A credit institution's Tier 2 capital should only be considered up to a value equal to its Tier 1 capital.

15. Are there any requirements with respect to the leverage ratio?

No requirements regarding the leverage ratio have been determined in Macau. However, there are some requirements set forth in the FSA to regulate the exposure of risk of banks.

16. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

Currently, no decisions have been made related to the implementation of LCR and NSFR, but the AMCM has issued the Guideline of Management of Liquidity Risk (Circular No. 003/B/2011-DSB/AMCM) and Rules for cash in hand and minimum solvency (Notice no. 002/2013-AMCM, "Notice"), where establish the minimum liquidity requirements. According to point 7 of the Notice, the daily amount of cash in hand of the banks in each week shall not be less than the sum of the following percentages of the average of the basic liabilities classified by term and calculated in the preceding week: a) 3% of liabilities at sight; b) 2% of liabilities up to three months excluding liabilities at sight. Furthermore, the daily amount of the balances of the current accounts in MOP with AMCM in the name of each bank in each week shall not be less than 70% of the minimum amount of cash in hand mentioned in point 7 of the Notice.

17. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Yes. The publication of the balance sheet and profit and loss account are made mandatory under Article 85 and other relevant articles of the FSA. In addition, the AMCM has issued the Guideline on Disclosure of Financial Information (Circular No. 006/B/2022-DSB/AMCM), where set out that such documents, as well as cash flow statements should be disclosed on an annual basis and first-half-yearly basis.

18. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

Yes. The institutions incorporated in Macau that are subject to consolidated supervision are imposed by a more demanding requirement of information disclosure, including the same of their holding companies, subsidiaries. Also, the Macau authority may adopt measures for supervisory cooperation and may enter into agreements or establish supervisory coordination mechanism with the overseas authorities for this purpose.

19. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

Pursuant to article 49 of FSA, any entity wishes to acquire directly or indirectly, a qualifying holding* of a credit institution incorporated in Macau or increase the same by over 5% of the share capital or voting rights, in one or more stages, prior approval of the AMCM is required.

In the case where the approval is not possible by its nature, AMCM should be informed within a maximum of 30 days to be counted from the date of the acquisition.

* A qualifying holding under the meaning of FSA is that, directly or indirectly, represents 10% or more of the share capital or voting rights, or in any other form which confers the possibility of exercising significant influence over the management of the institution.

20. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

Yes. The AMCM assesses the suitability of the shareholders and may oppose the acquisition of, or increase in the qualifying holding, if it is not convinced that the shareholders can ensure the sound and prudent management of the institution.

In accordance with Article 50 of the FSA, the followings may constitute grounds for opposition:

- (1) the way in which the person habitually conducts his business or the character of his professional activity if these demonstrate a tendency towards taking excessive risks;
- (2) the economic and financial situation of the person

being inadequate, as evaluated in view of the amount of the holding to be acquired;

(3) AMCM has grounds for suspecting the legitimacy of the source of the funds to be applied in acquiring the holding, or the true identity of the owner of these funds;

(4) the structure and characteristics of the group in which the credit institution would be included make the adequate supervision impracticable;

(5) the shareholder does not demonstrate the willingness to comply or to ensure the compliance with the necessary measures for the sound operation of the credit institution in accordance with the determination by AMCM.

21. Are there specific restrictions on foreign shareholdings in banks?

No specific restrictions on foreign shareholdings in banks have been set out in Macau, but if the shareholdings are beyond a certain percentage, the acquisition, or the increase of the same is subject to the prior approval from AMCM.

22. Is there a special regime for domestic and/or globally systemically important banks?

No special regimes for domestic or globally systematic banks have been made in Macau.

23. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

In accordance with Article 127 of FSA, AMCM shall be responsible for preparing and initiating proceedings arising from any of the offences provided for in this FSA and the Chief Executive of Macau will apply the sanction on advice from AMCM.

The sanctions arising from the encroachment of banking regulations include administrative penalties, publication of the sanctioning decision, suspension of voting rights, suspension on assuming positions of senior management within financial institutions and license revocation and suspension,

Also, whenever any misconduct is detected, the AMCM may issue a simple warning to the offender and order corrective action.

24. What is the resolution regime for banks?

FSA has established the mechanism of intervention whenever a credit institution encounters difficulties in fulfilling its obligations to depositors or other creditors, or it puts at risk the confidence in the financial system. That is to say, the Chief Executive may, on advice from the AMCM, order immediate intervention in the management of the institution, by appointing one or more delegates or an administrative committee. When a bank is in intervention status, the Chief Executive may issue an executive ruling to implement certain measures, for instance, temporary closure of service counters of the institution, provide adequate monetary or financial support to the institution and issue conditions for orderly reimbursement of deposits to customers. This mechanism has been triggered before.

25. How are client's assets and cash deposits protected?

In general, all bank deposits in cash are guaranteed up to MOP 500,000 per participating entity for each depositor under the Deposit Guarantee Regime (Law No. 9/2012). However, certain deposits are excluded in accordance with Article 4 of the same law, amongst others, deposits established by a bank, deposits established by a public entity, deposits whose return depends on the value of any stocks, bonds, investment fund units, precious metals or other financial products, movable or immovable property, and bearer certificates of deposit.

26. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered? Does it apply in situations of a mere liquidity crisis (breach of LCR etc.)?

In accordance with Article 107 of the FSA, all the burdens arising from the implementation of measures during the intervention status shall be borne by the institution, but in exceptional and duly justified circumstances, the Chief Executive may authorize the AMCM to pay in part or all of the said burdens.

The intervention status may be triggered whenever the unstable situation of a credit institution is significant or there is a foreseeable serious risk of non-fulfilment of its obligations to depositors and other creditors due to gross violations of the relevant legal or regulatory provisions, or a credit institution puts at risk the confidence in the financial system.

Therefore, the measures adopted in the intervention status vary on a case-by-case basis and at the decision of the Chief Executive.

27. Is there a requirement for banks to hold gone concern capital (“TLAC”)? Does the regime differentiate between different types of banks?

Under the FSA, credit institutions incorporated in Macau shall observe a capital adequacy ratio with a minimum of 8% and the upper value that a credit institution to hold Tier 2 capital is the same of Tier 1 capital, which is defined by Circular No. 010/B/2023-DSB/AMCM. This requirement applies to all credit institutions incorporated in Macao.

28. In your view, what are the recent

trends in bank regulation in your jurisdiction?

As the FSA has made an overhaul review on the previous regulatory framework and set for a temporary licensing regime to promote financial innovation in the region, we believe that the authorities will continue to provide guidelines and rules in accordance with the international best practice.

29. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

In our view, as the Macau government wishes to set Macau up as a regional financial hub, we believe that cyber security and the effective control over the use of technology in the provisions of financial products and services are the primary concerns.

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