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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 fulfill 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 17, paragraph 1 of Decree-Law no. 32/93/M, of 5 July, Financial System Act ("FSA"), a bank may carry out the following operations:

a) accepting deposits and other repayable funds from the public; b) lending, guarantees and other commitments, financial leasing and factoring; c) money transmission services; d) issuing and administering means of payment such as credit cards, travellers' cheques and letters of credit; e) trading for own account or for account of customers in money, financial and foreign exchange market instruments, financial futures and options, and transactions involving foreign exchange or interest rates and transferable securities; f)

participating in issues and placements of securities and provision of other services related to such issues; g) operating in interbank market; h) portfolio safekeeping, administration and management; i) management of other assets; j) financial consultancy; k) investment in holdings in company capital; l) credit reference services; m) safe custody services; n) sale of insurance contracts; o) other similar transactions not forbidden by law.

The aforementioned activities are authorized operations of a bank. However, certain operations may be temporarily suspended in relation to 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. Further, this Article 17 shall be read in conjunction with the Guideline under Circular no: 014/B/2020-DSB/AMCM regarding Interpretation of Article 17 of the "Macao Financial System Act".

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.

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

In principle, the licensed banks in Macau may carry out the activities set out in Article 17 of FSA. However, it

depends on the initial application made to the authorities and the content of the prior authorization from the Chief Executive on advice from the AMCM. When launching any new activities or expanding the existing scope of their activities under paragraphs 1(a) to (n) of Article 17 of the FSA, prior communication with the AMCM is required.

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

There is no specific legislation in this regard so far, but there have been certain instances that the authorities made mentions on exploring this possibility in the upcoming amendment of FSA in the view to cope with the development of financial technology (Fintech).

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 not covered under the Deposit Guarantee Regime.

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

For reference purposes, in accordance 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 incorporate the institution, indicating its feasibility and the manner in which the same shall fit into the economic and financial policies pursued by the competent authorities of Macau;
- b. a description of the institution, giving its location and details of the technical and human resources at its disposal;
- 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.

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.

- a. The decision on the application for authorisation shall, inter alia, take into account:
- b. the suitability of the qualifying shareholders, including the ability of the institution to guarantee the safety of the funds deposited with it;
- c. the adequacy of the technical and financial resources required for the type and volume of transactions that the applicant proposes to conduct; and
- d. the adequacy of the objectives of the applicants with regard to the economic and

financial policies pursued by the official bodies in Macau.

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 on handling the application, in practice, it may vary from several months to years or so.

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

Any local or foreign entities that carry out financial business on a habitual basis and with a view to profit in Macau must be authorized. Also, any institutions incorporated in Macau that intend to establish a subsidiary, a branch or representative office overseas shall file a formal application through the AMCM.

10. 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).

11. 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, Asset and Liability Management Committee, a Risk Management Committee, a Compensation Committee, a Nomination Committee.

12. 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.

13. 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?

AMCM determines that all credit institutions in Macau shall observe a capital adequacy ratio of not less than 8%, in accordance with Notice No. 011/2015-AMCM.

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

No requirements regarding the leverage ratio have been determined in Macau.

15. 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.

16. 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 75 and other relevant articles of the FSA. In addition, the AMCM has issued the Guideline on Disclosure of Financial Information (Circular No. 026/B/2012-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.

17. 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 enter into agreements with the oversea authorities to permit and facilitate the supervision, on a consolidated basis, of oversea institutions, which have branches and subsidiaries in Macao.

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

Pursuant to article 40 of FSA, without the prior approval of AMCM, no individual or corporate may 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. 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 that the mentioned incidents occurred.

* 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.

19. 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 41 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 if they hinder adequate supervision;
5. the person does not demonstrate his 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.

20. 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.

21. 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.

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

In accordance with Article 131 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. Also, in accordance with Article 130 of FSA, AMCM may issue a simple warning to the offender when the offence committed is remediable and had not caused significant damage to Macau's economy, or its financial and monetary system for him to rectify the offence within a certain period of time.

23. What is the resolution regime for banks?

FSA has established the mechanism of intervention whenever a credit institution encounters difficulties to fulfill 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, issue conditions for orderly reimbursement of deposits to customers. This mechanism has been triggered before.

24. 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.

25. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?

In accordance with Article 102 of the FSA, all the burdens arising from the implementation of measures determined by the Chief Executive 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.

26. Is there a requirement for banks to hold gone concern capital ("TLAC")?

According to Notice No. 011/2015-AMCM, credit institutions incorporated in Macau shall observe a capital adequacy ratio with the minimum of 8% and the upper value that a credit institution to hold supplementary capital (i.e. Tier 2 capital) is the same of core capital, which is defined by Notice no. 012/93-AMCM.

27. In your view, what are the recent trends in bank regulation in your jurisdiction?

With the publication of the general plan for the Guangdong-Macao In-Depth Cooperation Zone (GMICZ), along with the goal of economic diversification, the Macau has dedicated to modernizing the financial system and developing the local bond market, the Government had demonstrated their intentions to enhance the current regulatory framework to cater to the development of, in particular, financial technology (fintech), cross-border financial business within the Greater Bay Area. Also, the authority is planning to amend the Guidelines that regulate bond market activities with the focus on enhancing the conditions for bond issuance and the information disclosure requirements, and clarifying the role and responsibilities of custodians. Furthermore, Cross-border regulatory cooperation with overseas regulators will be intensified to against money laundering and illegal financial activities.

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

The COVID-19 pandemic continues to have a severe impact on the global economic, which is the main uncertainty to the financial stability of Macau. Increasing cyber-attack on financial industry constitutes a threat to the financial system as well.

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