

## Chapter 32

# The Commercial Laws of Macao

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## **I. GENERAL SYSTEM OF LAW**

### **§ 32:1 Legal status of Macao**

Macao, is a Special Administrative Region (SAR) of the People's Republic of China (PRC). It retains its own laws (except in the areas of defense and foreign policy), border controls, and currency. Gaming and gaming-related tourism dominate Macao's economy. As of 2006, Macao has remained the largest casino market in the world. Other industries, such as textiles and toy factories, have mostly either vanished or moved to the mainland, where costs are significantly

lower. A recent decline in casino revenues, which is believed to be a consequence of a recent crackdown by the PRC government on corruption, has reinforced the need for Macao to diversify its economy. In recent years, Macao has attempted to reinvent itself as a global, family-friendly destination and many efforts have been made to develop resorts, high-end shopping malls, and attract high-profile entertainers and sporting events. Along with changes in its economy, Macao's political landscape is also changing. 2014 saw many protests in Macao demanding universal suffrage and greater autonomy from PRC authorities in Beijing. With so much change, rapidly occurring, it will be interesting to see how Macao transforms itself in the coming years.

Macao, including the Macao Peninsula, Taipa Island, and Coloane Island, has long been part of the territory of China; although it was gradually occupied by Portugal after the mid 16th century. On April 13, 1987, the Chinese and Portuguese Governments signed a Joint Declaration of Government of the People's Republic of China and the Government of Republic of Portugal on Questions of Macao, affirming that China would resume exercise of sovereignty over Macao with effect from December 20, 1999. China adopted a "one country, two systems" formula to remain unchanged for 50 years, whereby Macao retained its capitalist system. Macao SAR was established by the provision of Art. 31, 62(13) of 1982 Constitution of China, and by the decision of National People's Congress (NPC) on 31 Mar. 1993.

The Macao Special Administrative Region (SAR) is directly under the authority of the Central Government of China, but enjoys a degree of autonomy (except in foreign and defense affairs), and is vested with executive, legislative and judicial power, including that of final adjudication.<sup>1</sup>

The Chief Executive is appointed by the Central Government on basis of elections and consultations held in Macao. Officials holding principal posts will be nominated by the Chief Executive of Macao SAR for appointment by the Central Government of China. Public servants (including police) of Chinese nationality and foreign nationalities may be appointed and employed to hold certain public posts in Macao SAR.<sup>2</sup>

### § 32:2 Legal status of Macao—The social economic system

The current social and economic system in Macao is to remain unchanged, and, as such, laws currently in force remain unchanged. Rights and freedoms of the inhabitants and other persons in Macao,

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[Section 32:1]

<sup>1</sup>Art. 2.2.

<sup>2</sup>Art. 2.3.

including those of person, speech, press, assembly, association, travel, movement, strike, choice of occupation, academic research, religion, belief and ownership of property will be ensured by the law in Macao.<sup>1</sup>

Macao SAR will decide policies in these fields of culture, education, science, technology, and protection of cultural relics. Chinese and Portuguese languages are used in the bodies of government, legislature and the courts in Macao.<sup>2</sup>

### § 32:3 Legal status of Macao—Free port

Macao SAR will remain a free port and separate customs territory in order to develop its economic activities. There will be a free flow of capital.

The above-stated basic policies are elaborated in Annex I to the Joint Declaration and will be stipulated in the Basic Law of Macao SAR of China by the National People's Congress of China, and they will remain unchanged for 50 years.<sup>1</sup>

### § 32:4 Legal status of Macao—Executive legislation

The executive power of Macao is vested in the Government of Macao, composed of local inhabitants. The Chief Executive of Macao SAR is appointed by the Central Government on the basis of results of elections and consultations to be held in Macao. Officials holding principal posts (equivalent to assistant-secretaries, procurator-general, principal officer of police service) are nominated by the Chief Executive of Macao SAR for appointment by the Central Government. Executive authorities abide by law, and are accountable to the legislature.<sup>1</sup>

China's National People's Congress (NPC) is authorized to create the special administration regions, and basic law provides a degree of autonomy, separate political system and market economy, under the principle of "one country, two systems."

The Basic Law provides that Macao has a degree of autonomy in exercising executive, legislative and independent judicial power including that of final adjudication, except for foreign affairs and defense.<sup>2</sup> Notwithstanding its non-sovereign status, Macao can conduct autonomously relevant external affairs in accordance with its

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#### [Section 32:2]

<sup>1</sup>Art. 2.4.

<sup>2</sup>Art. 2.5.

#### [Section 32:3]

<sup>1</sup>Art. 2.12.

#### [Section 32:4]

<sup>1</sup>Annex I.II.

<sup>2</sup>Art. 5.

provisions. It may maintain, develop relations, and conclude international agreements with foreign states and international organizations with respect to a wide-range of fields, including economics, trade, finance, monetary, shipping, communication, tourism, and sports.

### § 32:5 Legal status of Macao—Preliminary note

The Basic law provides institutional balance between the Legislative Assembly and Chief Executive. Although legislative power belongs exclusively to Legislative Assembly, laws relating to government policies require written consent of the Chief Executive to be introduced.

All laws passed by Legislative Assembly take effect only after being signed and promulgated by Chief Executive. The Chief Executive has ultimate power to dissolve the Legislative Assembly in case of continuing disagreement on budget issues or other important laws. This power of dissolution, which may only be exercised in each term of office, is balanced by resignation of the Chief Executive when a new Legislative Assembly has again passed the original law in dispute, or still refuses to pass a new budget or any other laws previously refused by the Legislative Assembly.<sup>1</sup>

### § 32:6 The Chief Executive

The Chief Executive is appointed by China's central government after being selected by the Election Committee, whose members are nominated by the corporate bodies.<sup>1</sup> The Chief Executive is designated the head of government.<sup>2</sup> The specific method for selecting the Chief Executive is prescribed in Annex I: "Method for Selection of Chief Executive of Macao SAR."<sup>3</sup>

The term of office is five years; no individual may serve for more than two consecutive terms.<sup>4</sup> Qualifications for Chief Executive include that the candidate must be:

- (1) A Chinese citizen of not less than 40 years;
- (2) A permanent resident of Macao; and
- (3) Ordinarily resident in Macao for a continuous period of not less than 20 years.<sup>5</sup>

During the Chief Executive's term of office, he has no right of abode

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#### [Section 32:5]

<sup>1</sup>Art. 54.

#### [Section 32:6]

<sup>1</sup>Art. 15.

<sup>2</sup>Art. 61.

<sup>3</sup>Art. 47.

<sup>4</sup>Art. 48.

<sup>5</sup>Art. 46.



in any foreign country, and may not engage in activities for personal gain.<sup>6</sup> On assuming office, the Chief Executive must declare his assets to President of Court of Final Appeal of Macao for record purposes.<sup>7</sup>

### § 32:7 The Chief Executive—Powers and function

The Chief Executive has the power to lead government, implement laws, sign bills, to promulgate laws, submit reports to the Central Government, decide on government policies, issue executive orders, and formulate administrative regulations.<sup>1</sup> In addition, he may appoint or remove a member of the Executive Council and judges, nominate and pardon persons convicted of criminal offenses, and/or commute penalties in accordance with law.<sup>2</sup>

Under the Chief Executive, five secretaries are responsible for several facets of Macao including administration, justice, the economy, finance, security, social affairs, culture, public works and transport. The Commission Against Corruption and the Commission of Audit are independent bodies which are accountable to the Chief Executive. The Central Government of China has the power to appoint and remove the Chief Executive and principal officials of Macao Government.

### § 32:8 The Chief Executive—Executive Council

The Executive Council is an exclusive organ for assisting the Chief Executive in policy making.<sup>1</sup> It is composed of members appointed by the Chief Executive among principal officials from executive authorities, the Legislative Council, and public figures.<sup>2</sup> The term of office for members may not extend beyond the expiry of the Chief Executive's term who appoints them.<sup>3</sup> The Executive Council is composed of 7 to 11 members (currently composed of 10 members).

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<sup>6</sup>Art. 49.

<sup>7</sup>Art. 49.

#### [Section 32:7]

<sup>1</sup>Art. 50.

<sup>2</sup>Art. 50.

#### [Section 32:8]

<sup>1</sup>Art. 56.

<sup>2</sup>Art. 57.

<sup>3</sup>Art. 57.

**§ 32:9 The Chief Executive—Electoral Affairs Committee**

Law No. 3/2004 provides for elections of members of government, and this law regulates election of the Chief Executive of Macao SAR, amongst other related subjects.<sup>1</sup>

An Electoral Affairs Committee for election of Chief Executive (EACCE), must be established. The chairperson and members are approved of and appointed by the Chief Executive, upon proposal of the Independent Committee for Recommendation of Judges.

The chairperson must be a local judge with position not lower than a judge of the Court of Second Instance. At least four other members should be permanent residents of Macao SAR, (MSAR) with recognized appropriate capability, except those principal officials, members of Executive Council, and the Legislative Assembly.<sup>2</sup> EACCE shall manage and promote the electoral process for members of the Election Committee for Chief Executive, specifically acting as the entity with functions of directing and presiding over polls at the election of the Chief Executive; assess eligibility of candidates proposed for election to Chief Executive; as well as to monitor regularity, legality of nomination process, and confirm admitting candidates to office of Chief Executive.<sup>3</sup>

Members of EACCE are independent in the exercise of their functions, and must not be removed from office.<sup>4</sup> Members of EACCE are not voters, nor candidates of election for members of the Election Committee.<sup>5</sup>

**§ 32:10 Elections Committee—Composition**

The Election Committee is composed of 300 members drawn from four sectors.<sup>1</sup> The respective allocation of seats on the Election Committee by Sector are listed in Annex I to the present law.<sup>2</sup>

Annex I provides the number of seats of the Election Committee related to different sectors:

- (1) First Sector (industrial, commercial, financial) is allocated 120 seats;
- (2) Second Sector is allocated 115 seats distributed as follows:

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**[Section 32:9]**

<sup>1</sup>Art. 1.

<sup>2</sup>Art. 2.1.

<sup>3</sup>Art. 3.

<sup>4</sup>Art. 6.1.

<sup>5</sup>Art. 6.2.

**[Section 32:10]**

<sup>1</sup>Art. 8.1.

<sup>2</sup>Art. 8.2.

- a. 26 members of culture;
  - b. 29 members of education;
  - c. 43 members of specialty;
  - d. 17 members of sports.
- (3) Third Sector is allocated 115 seats distributed as follows:
- a. 59 members of labor;
  - b. 50 members of social services;
  - c. 6 members of religion: 2 representatives of Catholicism, 2 representatives of Buddhism, 1 representative of Christianity, 1 representative of Taoism.
- (4) Fourth Sector is allocated 50 seats distributed as follows:
- a. 22 members of the Legislative Assembly;
  - b. 12 deputies to National People's Congress;
  - c. 16 members of the National Committee of Chinese People's Political Consultative Conference.<sup>3</sup>

The term of office of the Election Committee is 5 years, commencing on the date of first publication of all members of the Election Committee in the *Official Gazette* of Macau SAR.<sup>4</sup>

#### § 32:11 Elections Committee—Mode of constitution

The Election Committee members related to the first sector, the second sector and labor and social welfare groups of the third sector listed in Annex I, must be elected by associations and organization eligible to vote in their respective sector.<sup>1</sup> Representatives of members of the Legislative Assembly and representatives of Macao members of the National Committee of Chinese People's Political Consultative Conference in process of the Election Committee are elected by their peers of the legislature or the conference, by internal vote.<sup>2</sup> Internal votes are conducted and concluded on the same day as the polls on the election of the Election Committee. The list of elected candidates and their complete identification is presented to EACCE for record.<sup>3</sup>

#### § 32:12 Elections Committee—Electoral capacity, eligibility and mode of election

Those associations and organizations registered in accordance with Law No. 12/2000 have the capability to vote at the election of their re-

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<sup>3</sup>Annex I.

<sup>4</sup>Art. 11.

#### [Section 32:11]

<sup>1</sup>Art. 12.

<sup>2</sup>Art. 14.1.

<sup>3</sup>Art. 14.2.

spective sectors or subsectors.<sup>1</sup> Sectors and subsectors correspond to delimitation of social interests prescribed in Art. 29 of Law No. 12/2000:

- entrepreneurial interests correspond to the industrial, commercial and financial sector;
- cultural interests correspond to the culture sector;
- educational interests correspond to the education sector;
- specialized and professional interests correspond to the specialty sector;
- sports interests correspond to the sports sector;
- worker and labor interests correspond to the labor sector;
- charity interests correspond to the social services sector.<sup>2</sup>

Collective persons created by public entities, who depend on public entities for more than half of their income, will not have eligibility to vote, except for specialty public associations.<sup>3</sup> The following persons are disqualified from voting, as being candidates during their terms of office: the Chief Executive; principal government officials; the magistrates of both courts, and Public Prosecutors.<sup>4</sup> Each association or organization having capability to vote is entitled to a maximum of 11 votes, cast by an equal number of electors enrolled in the electoral register.<sup>5</sup> Said electors are selected amongst current members having directive and administrative functions in their respective associations or organizations.<sup>6</sup>

### § 32:13 Elections Committee—Submission of candidates

Participants in elections must submit their candidature by obtaining and lodging the appropriate form with SAFP.<sup>1</sup> Participants must lodge notice, completed form for submission of candidature and required documents with SAFP, no later than 40 days before the date of the polls on election for the Election Committee.<sup>2</sup>

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#### [Section 32:12]

<sup>1</sup>Art. 16.1.

<sup>2</sup>Art. 16.2.

<sup>3</sup>Art. 16.3.

<sup>4</sup>Art. 18.

<sup>5</sup>Art. 19.1.

<sup>6</sup>Art. 19.2.

#### [Section 32:13]

<sup>1</sup>Art. 21.1.

<sup>2</sup>Art. 21.3.

**§ 32:14 Elections Committee—Term of office and elections of officials**

The term of office of the Chief Executive is five years. The office cannot be held by the same person for more than two consecutive terms.<sup>1</sup> The term of office commences on the date of taking charge of office specified by the Central Government in the official document of appointment.<sup>2</sup> In case of vacancy of the office of the Chief Executive, the interim Chief Executive shall, within 10 days after assuming office, order publication in the *Official Gazette* of Macau SAR of date the office of Chief Executive became vacant.<sup>3</sup>

Election of Chief Executive takes place in case of the expiration of the term or vacancy of office of the Chief Executive.<sup>4</sup> The Chief Executive must be elected by the Election Committee, according to provisions of the Basic Law, its Annex I. The Government of Macau SAR communicates the result of the election to the Central Government.<sup>5</sup>

**§ 32:15 Elections Committee—Right to nominate candidates**

Only registered members of the Election Committee have the right to nominate candidates.<sup>1</sup> Each member may nominate only one candidate.<sup>2</sup> Members are not permitted to withdraw a nomination presented by them.<sup>3</sup>

Exercise of the right to vote is subject to the following conditions:

- in election of members of the Election Committee, enrollment in appropriate book of register and verification of the identity of the elector by the board of polling station;
- in election of the Chief Executive, enrollment in the book of register of members of the Election Committee and verification of the identity of the voter by EACCE.<sup>4</sup>

Exercise of the right to vote must be in accordance with the following rules:

- in each round of voting each elector (a member of the Election Committee) only votes once;

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**[Section 32:14]**

<sup>1</sup>Art. 32.1.

<sup>2</sup>Art. 32.2.

<sup>3</sup>Art. 33.

<sup>4</sup>Art. 34.1.

<sup>5</sup>Art. 34.2.

**[Section 32:15]**

<sup>1</sup>Art. 37.1.

<sup>2</sup>Art. 37.2.

<sup>3</sup>Art. 37.3.

<sup>4</sup>Art. 59.1.

- votes at the poll are cast as anonymous ballots;
- the right to vote is exercised personally by an enrolled elector or a member of the Election Committee, except when otherwise provided by law;
- in election of members of the Election Committee electors may only vote in their respective polling stations, for candidates of the sector or subsector for which they are registered;
- in election of the Chief Executive, members of the Election Committee may only vote for one of the finally-admitted candidates in his or her individual capacity.<sup>5</sup>

Electors or members of the Election Committee must not, within polling station or within 100 meters of a building where a polling station is functioning, reveal the candidate he/she voted for or is going to vote for. Additionally, nobody shall oblige anybody else to reveal his/her vote.<sup>6</sup>

### § 32:16 Elections Committee—Ballots

In the election of members of the Election Committee, ballots are produced in correspondence with the sector or subsectors described in paragraphs 1, 2, in items (1) and (2) of paragraph 3 of Annex I.<sup>1</sup> The name of all candidates must be printed on each ballot.<sup>2</sup> Candidates appearing on ballots must be sorted by their Chinese surnames, or, if they do not have such, the translation of their name in such language, according to the increasing number of strokes of traditional Chinese characters in order of least stroke appearing first. In cases of candidates with identical surnames, their respective electoral registration number also appears below their names.<sup>3</sup> In the same space where each name is provided on the ballot there will be blank square box, to be marked by the elector with a symbol to indicate his/her preference of candidate.<sup>4</sup> EACCE determines the production and quantity of ballots.<sup>5</sup>

### § 32:17 Religious freedom

Religious organizations and their believers in Macao SAR may carry out activities as before (under Portuguese rule) for religious purposes, within limits as prescribed by law, and may maintain relations with

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<sup>5</sup>Art. 59.2.

<sup>6</sup>Art. 59.3.

#### [Section 32:16]

<sup>1</sup>Art. 70.1.

<sup>2</sup>Art. 70.2.

<sup>3</sup>Art. 70.3.

<sup>4</sup>Art. 70.4.

<sup>5</sup>Art. 70.5.

religious organizations and believers outside Macao. Schools, hospitals and charitable institutions attached to the religious organizations may continue to operate as before.

The relationship between the religious organizations in Macao SAR and those in other parts of China is based on the principles of non-subordination, non-interference and mutual respect.<sup>1</sup>

### § 32:18 Constitutional import of the Basic Law

The NPC adopted the Macao *Basic Law* whereby constitutional value is given to take precedence over all other laws, and no law enacted by Macao may contravene it.

Chinese laws are not to be applied in Macao except for those listed in Annex III of Macao's Basic Law.<sup>1</sup> In the event that the NPC decides to declare a state of war, by reason of turmoil within Macao that endangers national security or unity, the National People's Congress may issue an order applying relevant national laws.<sup>2</sup> Furthermore, Macao may enjoy powers granted to it by the National People's Congress or China's Central Government.<sup>3</sup>

Formal political parties do not exist, however, there are civic associations that, for purposes of legislative voting, join together to form political blocs. Several political groups and leaders influence government regulations, including the Catholic Church (Domingo Lam, Bishop), the Macao Society of Tourism, Entertainment (Stanley Ho, managing director), and the Union for Democracy Development (Antonio Ng Kuok-Cheong, leader).

## II. FOREIGN TRADE

### § 32:19 Customs valuation

Macao accepted the Customs Valuation Agreement; published in *Official Gazette* No. 9, 26 Feb. 1996. Since no customs duties or fees are levied on imports, there are no general laws, regulations or administrative procedures for valuing goods for customs purposes. In 1996, the authorities notified the World Trade Organization (WTO) that Law No. 7/86/M, which assessed value of imports subject to domestic taxes, was under review. This legislation was subsequently superseded by Law No. 4/99/M, which stipulates that the cost insurance and freight (c.i.f.) value will be used as basis for levying the consumption tax on imported goods.

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[Section 32:17]

<sup>1</sup>Annex I.V.

[Section 32:18]

<sup>1</sup>Art. 18.

<sup>2</sup>Art. 18.

<sup>3</sup>Art. 20.



No tariffs are applied to imports into Macao, since China implemented HS96 on 1 January 1996. Imports of alcoholic beverages, tobacco, fuel, lubricant, automobiles and motorcycles are, with some exceptions, subject to consumption taxes, which are levied on the basis of c.i.f. value.

**§ 32:20 Agreement for Trade and Co-Operation Between the European Economic Community and Macao**

The European Economic Community (EEC) and Macao undertake to strengthen their relations and resolve to promote co-operation between them, taking account of Macao's special situation and of its level of development. Cooperation between the Community and Macao and implementation of this Agreement are based on respect for democratic principles and human rights which inspire policies of both the Community and Macao.<sup>1</sup>

The contracting parties reaffirm their reciprocal commitment under the terms of the General Agreement on Tariffs and Trade (GATT), and accord each other most-favoured-nation treatment in all trade matters.<sup>2</sup>

According to the terms of the Agreement, the contracting parties further undertake to promote trade between them to the greatest possible degree, taking into account their respective economic situations, granting each other the widest possible opportunities.<sup>3</sup> They agree to promote increases in mutually beneficial investment, within the limits of their responsibilities, rules, policies.<sup>4</sup>

To which end, Macao and the EEC established under this Agreement a Joint Committee consisting of representatives of the Community, on the one hand, and representatives of Macao, on the other.<sup>5</sup>

This agreement, which became effective January 1, 1993, covers future co-operation with respect to trade and industry, science, and technology. The EC-Macao Joint Committee will meet annually to review the implementation of this Agreement and establish trade development and co-operation programs. The Committee will review the implementation of different cooperation projects and hold consultations to promote and strengthen bilateral trade, investment, and cooperation. With the assistance of the Joint Committee, Macao can strengthen its ties with Europe.

Such programs include the Asia-Invest Program (2001–2002) which

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**[Section 32:20]**

<sup>1</sup>Art. 1.

<sup>2</sup>Art. 2.

<sup>3</sup>Art. 3.

<sup>4</sup>Art. 7.

<sup>5</sup>Art. 16.



provides co-funding for projects that bring together Asian and European companies in partnership, and the EU-Macao Legal Cooperation Program (2001–2005) which assists in training and seminars for Macao’s law practitioners.

### § 32:21 World Trade Organization

Macao remains a separate customs territory; it may use the name “Macao, China,” and participate in international organizations and international trade agreements, such as WTO agreements. The region may maintain and develop relations to conclude and implement agreements with foreign states and relevant international organizations in appropriate fields, including in economics, trade, finance, money, and shipping. The Basic Law stipulates that Macao maintain the status of a free port, pursue a policy of free trade, and safeguard the free movement of goods, intangible assets and capital.<sup>1</sup> In addition, Macao may issue its own certificates of origin for products in accordance with the prevailing rules of origin.<sup>2</sup>

Macao signed the Marrakesh Declaration to become a founding member of WTO; it had been a GATT contracting party in its own right since January 1991. WTO Agreements published in the *Official Gazette* on 27 December 1994, entered into force on the same date. At the WTO Singapore Ministerial Conference in 1996, Macao became a party to the Ministerial Declaration on Trade Information Technology Products (Information Technology Agreement).

Macao does not participate in any regional trade arrangements involving preferences. All trading partner are treated on a most-favored-nation (MFN) basis.

Currently, Macao has been granted ‘guest economy’ status in several Asia Pacific Economic Cooperation (APEC) Working Groups since 2001. As a guest economy, Macao may be invited by the Chair to respond to questions and discussions in meetings but cannot take part in the decision-making process. The four Working Groups in which Macao participates are:

- Industrial Science and Technology Working Group (ISTWG)
- Small and Medium Enterprises Working Group (SMEWG)
- Tourism Working Group (TWG)
- Transportation Working Group (TPTWG)

As of October 2000, principal notifications by Macao under WTO Agreements include:

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);

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#### [Section 32:21]

<sup>1</sup>Arts. 110, 111.

<sup>2</sup>Art. 113.

- Agreement on Agriculture;
- Agreement on Textiles, Clothing;
- Agreement on Implementation of Article IV of the General Agreement on Tariffs, Trade 1994 (Agreement on Anti-Dumping Practices);
- Agreement on Customs Valuation;
- Agreement on Subsidies, Countervailing Measures;
- Agreement on Safeguards;
- Agreement on Import Licensing Procedures;
- Agreement on Technical Barriers to Trade;
- Agreement on Application of Sanitary, Phytosanitary Measures;
- Understanding on Interpretation of Article XVII of GATT 1994.

**§ 32:22 United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)**

UNESCAP is the regional agency of the United Nations Secretariat for the Asian and Pacific region focused on solving problems with human rights. Currently, it is represented by 53 members and 9 associate members. Macao became an associate member in 1981.

### **III. FOREIGN DIRECT INVESTMENT**

**§ 32:23 Measures relating to foreign direct investment**

Macao does not maintain any restrictions or controls on inward and outward foreign direct investment or the use of foreign capital in the existing and newly established companies. Nor are there any restrictions on repatriation of profits and exchange controls. Moreover, the same procedures apply to the establishment of local and foreign companies; each company doing business in Macao must have a registered office there.

Macao has a number of fiscal incentives (both tax and financial incentives) for foreign investors. The revised property tax law became effective on 8 March 2011, and is retrospectively applicable to benefits derived from properties for tax year 2010.

The standard MOP 3,500 reduction in Macau Property Tax liabilities is available for the 2011 tax year for both personal and rental property. The Legislative Assembly approved a revision in the property tax rate reduction for leased properties from 16% to 10% on actual rental income. For personal property, the property tax rate has been reduced from 10% to 6%. The surcharge of 5% that was previously levied on the property tax payable on such properties has been abolished.

With regard to financial incentives, the Macao Trade and Investment Promotion Institute (IPIM) established the Macao Business Support Centre (MBSC) in 2002, in order to reduce start-up costs for

foreign investors, and to entice them to become acquainted with the business environment and administrative procedures in Macao. The MBSC handles applications for business start-up service, overseas trade fairs and business visits, as well as provides business information services and Mainland Chinese market advisory services.

#### IV. CONTRACTS

##### § 32:24 Advertising contracts

An advertising entrepreneur is obliged to undertake all acts necessary for the preparation and execution of advertising, and must follow the instructions of his or her client relating to the preparation and execution of advertising. An advertising entrepreneur must submit for prior approval of the advertiser all acts mentioned herein; must control diffusion of advertising in advertising media; and must not undertake advertising of products or services in direct competition with those which are the object of a contract concluded with a client, except if there is agreement to the contrary. Finally, and advertising entrepreneur must render accounts as agreed, whenever justified.<sup>1</sup>

An advertising creation contract is one by which the advertiser undertakes to conceive and prepare for the other party a project for an advertising campaign, a part of it, or any other element of advertising, in exchange for certain remuneration.<sup>2</sup> The advertising creator conceives his work in conformity with what has been agreed to, without defects that impair its ability to achieve the client's goals mentioned in contract.<sup>3</sup>

##### § 32:25 Agency contracts

A termination contract is an agreement by which parties decide to put an end to their contractual relationship, which must be made in writing.<sup>1</sup> Agency contracts lapse especially by expiry of an agreed time limit. Likewise, if it becomes certain that a necessary condition to which the parties have subordinated the agreement cannot take place (depending on whether the condition is resolutive and suspensive), the agency contract lapses. Similarly, the agency contract will end by

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**[Section 32:24]**

<sup>1</sup>Commercial Code, Art. 724.

<sup>2</sup>Commercial Code, Art. 741.

<sup>3</sup>Commercial Code, Art. 742.

**[Section 32:25]**

<sup>1</sup>Commercial Code, Art. 645.

death of agent or, if the agent is a collective person, by its extinction; and by bankruptcy of the agent or of the principal.<sup>2</sup>

If the parties did not specify a time limit, the contract is presumed to be agreed for an undetermined period of time.<sup>3</sup> A contract that continues to be executed by the parties after expiry of its time limit is deemed to have been renewed for an undetermined period of time.<sup>4</sup>

### § 32:26 Banking contracts—Opening of bank credit

An opening of bank credit is a contract by which the bank undertakes to keep a sum of money at the disposal of the other party for a certain period of time; with the latter having an obligation to pay agreed commissions and, in accordance with actual use of credit, to reimburse the bank and to pay respective interest.<sup>1</sup>

### § 32:27 Factoring contract

A factoring contract is a contract by which one of the parties in exchange for compensation, undertakes the obligation to manage and collect credits, present and future, arising from exercise of the enterprise of the other party, and, additionally, to anticipate payments and to undertake the risk, total and partial, of nonpayment by debtors.<sup>1</sup> Provisions of the Civil Code on assignment of credits apply to factoring contracts, to the extent that they do not contradict this chapter.<sup>2</sup> Factoring contracts must always be agreed to in writing, and must cover the whole relationship between the factor and respective supplier.<sup>3</sup> Without prejudice to the following article, assignment of credits under factoring contracts must always be accompanied by corresponding invoices or equivalent supporting documents, in electronic form, or negotiable instruments.<sup>4</sup>

### § 32:28 Leasing contract

A leasing contract is one by which one of parties undertakes, in exchange for compensation, to provide to the other party the temporary enjoyment of a good, acquired either from the lessee

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<sup>2</sup>Commercial Code, Art. 646.

<sup>3</sup>Commercial Code, Art. 647.1.

<sup>4</sup>Commercial Code, Art. 647.2.

#### [Section 32:26]

<sup>1</sup>Commercial Code, Art. 850.

#### [Section 32:27]

<sup>1</sup>Commercial Code, Art. 869.

<sup>2</sup>Commercial Code, Art. 870.

<sup>3</sup>Commercial Code, Art. 871.1.

<sup>4</sup>Commercial Code, Art. 871.2.

himself, or from a third party in accordance with his instructions, or built upon indication of the same lessee. A lessee can buy such good, after an agreed-upon period of time, for a price determined in the contract, determinable by means of simple application of criteria stated therein.<sup>1</sup> Leasing can have as its object any goods that can be rented.<sup>2</sup> If the lessor builds upon the leasehold owned by the lessee, in accordance with his surface rights, such right can be deemed perpetual, without prejudice to the possibility of acquisition by the owner of the land, under general rules.<sup>3</sup>

### § 32:29 Carriage contract

A carriage contract is one by which a person binds himself to conduct persons or goods from one place to another, in exchange for compensation.<sup>1</sup> A carriage contract is regulated by legal rules directly applicable to it as a result of the means of transport used, by provisions of this Title compatible therewith.<sup>2</sup> Carriage includes the whole period during which a passenger is in the vehicle, including the operations of embarking, disembarking at the place of origin, at the destination, and at intermediate stops.<sup>3</sup> The shipper shall, upon request of the carrier, issue a bill of lading signed by him containing information mentioned in paragraph 1 of the previous article, as well as any additional agreed-upon conditions.<sup>4</sup> The carrier, upon request of the shipper, must issue a duplicate of the bill of lading signed by him or, if no bill of lading was delivered to him, a shipping receipt with the same information.<sup>5</sup> Except where there is a legal provision to the contrary, a duplicate of bill of lading or shipping receipt can be issued to order, or to the bearer.<sup>6</sup> If a carrier has handed to the shipper a duplicate of bill of lading, or a shipping receipt to order, or to the bearer, rights arising from carriage must be transferred by endorsement or delivery of instrument.<sup>7</sup>

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#### [Section 32:28]

<sup>1</sup>Commercial Code, Art. 889.

<sup>2</sup>Commercial Code, Art. 890.1.

<sup>3</sup>Commercial Code, Art. 890.2.

#### [Section 32:29]

<sup>1</sup>Art. 749.

<sup>2</sup>Art. 750.

<sup>3</sup>Art. 757.1.

<sup>4</sup>Art. 762.1.

<sup>5</sup>Art. 762.2.

<sup>6</sup>Art. 762.3.

<sup>7</sup>Art. 768.1.

**§ 32:30 Commercial concession contracts**

With a commercial concession contract, the principal is obliged to act in accordance with good faith, in order to fully achieve a contractual aim.<sup>1</sup>

**§ 32:31 Consortium contract**

A consortium contract is a contract by which two or more individuals, or collective persons who exercise economic activity, bind among themselves to undertake a certain activity, or to make a certain contribution in an organized manner, with the purpose of achieving any of the objects mentioned in the following article.<sup>1</sup> Consortia must have one of the following objects:

- (1) the performance of legal or material acts, preparatory to certain work or to continuous activity;
- (2) execution of a certain project;
- (3) supply of similar or complementary goods produced by each of the members of a consortium to third parties;
- (4) research into, or exploitation of, natural resources; or
- (5) production of goods that can be shared, in kind, among members of a consortium.<sup>2</sup>

**§ 32:32 Franchising contract**

A franchising contract is one by which one of the parties, for direct or indirect payment, grants to the other, in certain zones and in a stable manner, the right to produce and/or to sell certain goods or services under his entrepreneurial image, according to his know-how, with his technical assistance, and/or subject to his control.<sup>1</sup> The franchiser is obliged to provide, in writing, with adequate advance notice, a complete and truthful statement to the interested party, so that the latter can form a balanced and informed assessment of the advantages and disadvantages of a contract, the identity of the franchiser; the franchiser's annual accounts of the last two accounting periods; any judicial proceedings in which the franchiser, holders of his trademarks, patents, other industrial or intellectual property rights related to the franchise are, or have been involved; the identity of their sub-franchisers, which may directly or indirectly come to af-

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**[Section 32:30]**

<sup>1</sup>Art. 666.

**[Section 32:31]**

<sup>1</sup>Art. 528.

<sup>2</sup>Art. 529.

**[Section 32:32]**

<sup>1</sup>Art. 679.

fect or render impossible the functioning of the franchise; a detailed description of franchise; a profile of an ideal franchisee regarding previous experience, level of education, and other characteristics that he should (or must) have.<sup>2</sup> A franchiser must also provide to the interested party, with adequate advance notice, a model / standard contract and, if such is the case, also a standard pre-contract of franchise, with the complete text including respective annexes.<sup>3</sup>

### § 32:33 Guarantee contract

For a pledge to have a commercial nature, it is necessary that the debt secured arises from the exercise of a commercial enterprise.<sup>1</sup> A commercial pledge can be created with or without dispossession.<sup>2</sup> Creation of commercial pledge can only be done without dispossession if it covers goods which are put to use by the enterprise.<sup>3</sup> Creation of a commercial pledge must always be without dispossession if it concerns goods essential to the functioning of the enterprise.<sup>4</sup> Only one commercial pledge can be created over all machinery, movable goods and tools installed, for use in the exercise of an enterprise.<sup>5</sup>

For the purpose of the previous paragraph, boilers and furnaces not an integral part of the immovable and chemical installations or other fixed materials put to use of by the enterprise, must be considered as machinery.<sup>6</sup>

An independent guarantee is a contract by which one of the parties undertakes to pay to the other a determined or determinable amount of money, upon demand, accompanied by certain documents relating to the obligation, in case of the occurrence of a certain risk or event.<sup>7</sup> The guarantor and the beneficiary have rights and obligations arising from law, as well as from the contract of independent guarantee.<sup>8</sup>

### § 32:34 Insurance contract

An insurance contract is one in which an insurer undertakes to compensate, within agreed limits, damage caused to the insured in case of the occurrence of a covered event, or to pay an amount of

<sup>2</sup>Art. 680.1[a]–[e].

<sup>3</sup>Art. 680. 2.

#### [Section 32:33]

<sup>1</sup>Art. 911.

<sup>2</sup>Art. 912.1.

<sup>3</sup>Art. 912.2.

<sup>4</sup>Art. 912.3.

<sup>5</sup>Art. 913.1.

<sup>6</sup>Art. 913.2.

<sup>7</sup>Art. 942.

<sup>8</sup>Art. 955.



money, or annuity, or to perform other obligations mentioned in such a contract, in exchange for payment of premiums.<sup>1</sup> Various types of insurance contracts are regulated by legal provisions that, according to their nature, are especially applicable to them, as well as by provisions of this Title compatible with them.<sup>2</sup> An insurance contract is agreed to between the insurer and the insurance holder.<sup>3</sup> The insured is an individual, or collective person in whose an interest contract is entered, and the person whose life, health, or physical integrity is insured.<sup>4</sup> The beneficiary of insurance is the addressee of insurer's performance.<sup>5</sup> An insurance contract has effect from the date of its conclusion.<sup>6</sup> However, parties can condition the beginning of its effects upon the payment of the premium, subscription of the policy, or upon any other facts.<sup>7</sup>

An insurance contract against damages must be void if, at the moment of its creation, there is no interest of the insured in compensation of damage.<sup>8</sup> Any direct or indirect economic interest that a person may have in the non-occurrence of an act can be the object of insurance.<sup>9</sup> If such interest is limited to only part of a good that is insured in its totality, or to a right related thereto, its insurance must be considered as made on account of all interested parties.<sup>10</sup>

Insurance of persons comprises all risks likely to affect the life, physical integrity, or health of the insured.<sup>11</sup> Contracts can be agreed to with reference to the risks relating to either one person or to a group of persons.<sup>12</sup> With respect to life or personal accident insurance, the insured capital is that stated in the contract.<sup>13</sup> Performance due by the insurer in the cases mentioned in the previous paragraph is autonomous from any other duties arising from other insurance contracts.<sup>14</sup>

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[Section 32:34]

<sup>1</sup>Art. 962.

<sup>2</sup>Art. 963.

<sup>3</sup>Art. 965.1.

<sup>4</sup>Art. 965.2.

<sup>5</sup>Art. 965.3.

<sup>6</sup>Art. 966.1.

<sup>7</sup>Art. 966.2.

<sup>8</sup>Art. 995.1.

<sup>9</sup>Art. 995.2.

<sup>10</sup>Art. 995.3.

<sup>11</sup>Art. 1028.1.

<sup>12</sup>Art. 1028.2.

<sup>13</sup>Art. 1029.1.

<sup>14</sup>Art. 1029.2.



**§ 32:35 Lodging contract**

A lodging contract is a contract by which one of parties undertakes to provide lodging (and other inherent services) to the other party, with or without supply of meals, but with adequate amenities and comfort, in exchange for payment.<sup>1</sup> Whoever manages a hostel is obliged to accept any and all lodging proposals presented by third parties, within availability existing at the moment, except if there is just cause to refuse. However, a guest is obliged to respect the demands of the host, provided they are in accordance with law.<sup>2</sup> The host is obliged to accept lodging reservations presented to him, unless he has no available accommodation on the proposed dates.<sup>3</sup> Acceptance and maintenance of reservation can be conditional on posting bail of an amount no higher than that due for the stay.<sup>4</sup>

**§ 32:36 Negotiable instruments—Order instruments**

Order instruments can be subscribed to by more than one debtor.<sup>1</sup> In the absence of a clause to the contrary in the instrument, various debtors are jointly and severally liable towards the creditor, who can initiate proceedings against them individually or collectively, without an obligation to observe the order in which they became liable.<sup>2</sup> The fact that the creditor exercises his right against one of liable parties does not prevent him from exercising his right against others, even if it is subsequent to a former.<sup>3</sup> The creditor may be identified by his name or, if it provides sufficient identification, by reference to his capacity.<sup>4</sup> In cases where the beneficiary is identified by reference to capacity, his signature as an endorser must be accompanied by indication of his capacity.<sup>5</sup> Transfer of order instruments is done by means of endorsement, and depends on delivery of the instrument to the endorsee. Delivery must be made in the terms prescribed for bearer instruments.<sup>6</sup> An order instrument can also be transferred by ordinary assignment of credits, in which case they produce effects specific to

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**[Section 32:35]**<sup>1</sup>Art. 798.<sup>2</sup>Art. 799.1.<sup>3</sup>Art. 801.1.<sup>4</sup>Art. 801.2.**[Section 32:36]**<sup>1</sup>Art. 1101.1.<sup>2</sup>Art. 1101.2.<sup>3</sup>Art. 1101.3.<sup>4</sup>Art. 1102.1.<sup>5</sup>Art. 1102.2.<sup>6</sup>Art. 1103.1.

such assignment.<sup>7</sup> If he is not himself the payee of the instrument, the bearer of an order instrument has legitimacy to exercise the rights indicated therein, provided that he justifies his rights by an uninterrupted series of endorsements, even if the last is blank.<sup>8</sup>

### § 32:37 Securities lending contract

A securities lending contract is a contract by which the lender transfers to the borrower ownership of negotiable instruments of a certain kind for a specified price, while the borrower undertakes an obligation to transfer to the lender, at the end of the agreed time limit, the ownership of an equal quantity of instruments of the same type, in exchange for reimbursement of the price, which can be increased or decreased by an agreed amount.<sup>1</sup> The contract for lending of securities is created by the delivery of instruments.<sup>2</sup>

### § 32:38 Supply contract

A supply contract is one by which the party binds himself to supply goods to another, continuously or periodically, in exchange for payment of the agreed-upon price.<sup>1</sup> If the quantity to be supplied is not determined, it is deemed to correspond to normal needs of the client, taking into account the moment of creation of the contract.<sup>2</sup> If the parties have established only maximum and/or minimum limits for the entire supply or for each individual delivery, quantity due must be established, within those limits, by the client.<sup>3</sup> If the quantity of supply is to be determined in accordance with the needs of the client, and if the minimum quantity was stipulated, the client is bound to the quantity corresponding to his needs that exceeds said minimum limit.<sup>4</sup>

## V. AGENCY AND COMMERCIAL REPRESENTATION

### § 32:39 Commission contracts

A commission contract is a mandate by which a commercial entrepreneur undertakes to buy and sell goods in his own name, but for the

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<sup>7</sup>Art. 1103.2.

<sup>8</sup>Art. 1110.1.

#### [Section 32:37]

<sup>1</sup>Art. 831.

<sup>2</sup>Art. 832.

#### [Section 32:38]

<sup>1</sup>Art. 581.

<sup>2</sup>Art. 582.1.

<sup>3</sup>Art. 582.2.

<sup>4</sup>Art. 582.3.

account of another person, in exchange for payment.<sup>1</sup> Before a contract is created, the principal can, at any time, revoke the order for its conclusion. In such case, the commission agent is entitled to reimbursement of expenses incurred and to remuneration proportional to the service already rendered.<sup>2</sup> A commissioned agent is obliged to take adequate measures to protect the interests of the principal, to follow his instructions, to provide relevant information to the principal (in particular, to promptly communicate execution of the commission), to render accounts to the principal on transactions effected, and to deliver to him the results of the operation.<sup>3</sup>

The commissioned agent is not responsible for performance of obligations undertaken by the persons with whom he contracts, except if, at the moment of creation of said contract, he knew or should have known of their insolvency.<sup>4</sup> A commissioned agent is only liable for performance of the obligations of persons with whom he contracts if such liability is expressly agreed to or arises from usage.<sup>5</sup> A commissioned agent who is held liable to a principal for performance of obligations undertaken by the persons with whom he contracts is entitled to receive, besides the normal remuneration, a *del credere* (belief or trust) commission, which, in the absence of agreement, is determined by usage; in the absence of usage, according to equity.<sup>6</sup>

#### § 32:40 Representation in exercise of enterprise

A manager is a person who, under any designation, depending on commercial usage, is engaged by a commercial entrepreneur for exercise of an enterprise.<sup>1</sup> The manager can practice all acts related to the exercise of the enterprise for which he is engaged, with the exception of limitations contained in the management engagement. However, a manager cannot charge or transfer immovable goods used in the exercise of the enterprise if he is not expressly authorized to do so.<sup>2</sup> In relation to the enterprise or part of it for which he is engaged, the manager is obliged, jointly with the entrepreneur, to comply with the provisions relating to the entry in the commercial register of acts

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##### [Section 32:39]

<sup>1</sup>Art. 593.

<sup>2</sup>Art. 594.

<sup>3</sup>Art. 595.

<sup>4</sup>Art. 601.1.

<sup>5</sup>Art.601.2.

<sup>6</sup>Art.601.3.

##### [Section 32:40]

<sup>1</sup>Art. 64.1.

<sup>2</sup>Art. 65.1.

subject to it, and to conduct commercial bookkeeping.<sup>3</sup> In the documents relating to acts practiced in the exercise of the enterprise for which he is engaged, the manager is obliged to use the firm of the principal and to write his signature with an express mention of the capacity in which he intervenes.<sup>4</sup>

## VI. ASSIGNMENTS

### § 32:41 In general

Provisions of the Civil Code on assignment of credits apply to the factoring contract, to the extent that they do not contradict this chapter.<sup>1</sup> A factoring contract must always be agreed to in writing and cover the whole of the relationship between factor and respective supplier.<sup>2</sup> Without prejudice to the following article, assignment of credits under a factoring contract must always be accompanied by corresponding invoices or equivalent supporting documents, in electronic form, or negotiable instruments.<sup>3</sup>

Block assignment of future credits is only allowed regarding credits on contracts to be agreed to in a time framework not exceeding 24 months.<sup>4</sup> The block assignment of credits is fully valid and enforceable, even regarding future credits, provided that the contract indicates the elements necessary and sufficient to their automatic determination, without prejudice to the previous paragraph.<sup>5</sup> Assignment of future credits operates at the moment at which they emerge, without the need for a new act of transfer.<sup>6</sup>

## VII. BILLS OF EXCHANGE, PROMISSORY NOTES AND CHECKS

### § 32:42 Bills of exchange

A bill of exchange contains:

- (1) the term “bill of exchange” inserted in the text of the instrument, expressed in the language employed in drawing up the instrument;
- (2) an unconditional order to pay an exact sum of money;
- (3) the name of the person who is to pay (drawee);

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<sup>3</sup>Art. 66.

<sup>4</sup>Art. 69.

#### [Section 32:41]

<sup>1</sup>Commercial Code, Art. 870.

<sup>2</sup>Commercial Code, Art. 871.1.

<sup>3</sup>Commercial Code, Art. 871.2.

<sup>4</sup>Commercial Code, Art. 872.2.

<sup>5</sup>Art. 872.3.

<sup>6</sup>Art. 872.4.

- (4) an indication of the time of payment;
- (5) an indication of the place where payment is to be made;
- (6) the name of person to whom or to whose order payment is to be made;
- (7) an indication of the date on which and place where bill is issued; and
- (8) the signature of the person who issues bill (drawer).<sup>1</sup>

If any of the elements mentioned above is lacking, an instrument is invalid as a bill of exchange,<sup>2</sup> except that a bill of exchange in which the time of payment is not specified shall be deemed to be payable on sight.<sup>3</sup> In the absence of a special indication, the place specified beside the name of the drawee is deemed to be the place of payment, and at the same time the place of domicile of the drawee.<sup>4</sup> A bill of exchange which does not mention the place of its issue is deemed to have been drawn in the place mentioned beside the name of the drawer.<sup>5</sup>

A bill of exchange can be drawn payable to the drawer's order; on the drawer himself; or by the order and for the account of third party.<sup>6</sup> If a bill of exchange is payable on sight or at a fixed period after sight, the drawer can stipulate that the sum payable must bear interest. In any other type of bill of exchange this stipulation must be deemed not to be written.<sup>7</sup> Every bill of exchange, even if not expressly drawn to order, can be transferred by means of endorsement.<sup>8</sup> Until maturity, a bill of exchange can be presented to the drawee for acceptance at his domicile, or by the holder, even by mere detainer.<sup>9</sup>

### § 32:43 Checks

A check contains:

- (1) the term "Check" inserted in the text of the instrument, expressed in the language employed in drawing up the instrument;
- (2) an unconditional order to pay an exact sum of money;
- (3) the name of the person who is to pay (drawee);
- (4) an indication of the place where payment is to be made;

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#### [Section 32:42]

<sup>1</sup>Art. 1134.

<sup>2</sup>Art. 1135.1.

<sup>3</sup>Art. 1135.2.

<sup>4</sup>Art. 1135.3.

<sup>5</sup>Art. 1135.4.

<sup>6</sup>Art. 1136.

<sup>7</sup>Art. 1138.1.

<sup>8</sup>Art. 1144.1.

<sup>9</sup>Art. 1154.

- (5) an indication of the date when and place where check is drawn;
- (6) the signature of person who draws check (drawer).<sup>1</sup>

An instrument in which any of requirements above-mentioned is lacking does not produce the effect of a check, except in cases specified in the following paragraphs.<sup>2</sup> In the absence of a special indication, the place specified beside the name of the drawee must be deemed to be the place of payment. If several places are named beside the name of the drawee, the check is payable at the first place named.<sup>3</sup> In the absence of such indications to the contrary, the check is payable at the place where the drawee has his principal establishment.<sup>4</sup> A check which does not specify a place at which it was drawn will be deemed to have been drawn in the place specified beside the name of drawer.<sup>5</sup> The endorsement must be written on the check or on the slip attached thereto. It must be signed by the endorser.<sup>6</sup>

## VIII. REAL ESTATE

### § 32:44 In general

Possession means the power to manage, manifested by a person when exercising ownership or other property rights.<sup>1</sup> Possession is classified as evidenced, non-evidenced, friendly, hostile, peaceful, forced, open, or hidden possession.<sup>2</sup> Possession continues during the period when acts to exercise rights continue or may continue. Once started, one's possession is presumed to continue.<sup>3</sup> Possession must be exercised by the possessor in opposition to others. Where some question of possession exists, the person who actually exercises power to manage is the presumed possessor.<sup>4</sup>

The following persons will be regarded as possessors:

- (1) those actually exercising the power to manage;
- (2) those who benefit via tolerance of the right holder;
- (3) agents or successors of the possessor;

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#### [Section 32:43]

<sup>1</sup>Art. 1212.

<sup>2</sup>Art. 1213.1.

<sup>3</sup>Art. 1213.2.

<sup>4</sup>Art. 1213.3.

<sup>5</sup>Art. 1213.4.

<sup>6</sup>Art. 1227.1.

#### [Section 32:44]

<sup>1</sup>Civil Code, Art. 1175.

<sup>2</sup>Civil Code, Art. 1182.

<sup>3</sup>Civil Code, Art. 1181.

<sup>4</sup>Civil Code, Art. 1176.

(4) those possessing in other's names.<sup>5</sup>

The presumed current possessor, if he also previously possessed, will be considered to have continued in possession. Previous possession cannot be determined from current possession, except those having evidence of current possession. Such possession starts from the date when said evidence exists.<sup>6</sup>

In case the possessor dies, possession will continue by his heirs.<sup>7</sup> A person taking over other's possession by ways other than inheritance, shall combine it with his own possession.<sup>8</sup>

Only objects which can be the subject of ownership, are provided for in this Code.<sup>9</sup> The owner of an object has the complete, exclusive right to use, benefit from, and dispose of his objects within the scope of the law (under limitation of applicable laws and regulations).<sup>10</sup> Commercial enterprise, copyright, industrial property rights are provided in special laws and regulations. Provisions of this Code may be additionally applicable to commercial enterprises, copyright and industrial property rights, if compliant with said laws and not against any special regulations therein.<sup>11</sup>

Except as provided for by law, it is not permitted to limit rights to ownership of property or other rights involved in property rights. All limitations not in line with the above requirement arising from legal acts are the creditor's rights in nature.<sup>12</sup>

Ownership must be set with conditions. Term-ownership is set only under circumstances specially provided for by law.<sup>13</sup> All or part of anyone's ownership cannot be deprived, except as provided for by law.<sup>14</sup> Private property can be expropriated only under circumstances provided for by law.<sup>15</sup>

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<sup>5</sup>Civil Code, Art. 1177.

<sup>6</sup>Civil Code, Art. 1178.

<sup>7</sup>Civil Code, Art. 1179.

<sup>8</sup>Civil Code, Art. 1180.

<sup>9</sup>Civil Code, Art. 1226.

<sup>10</sup>Civil Code, Art. 1229.

<sup>11</sup>Civil Code, Art. 1227.

<sup>12</sup>Civil Code, Art. 1230.

<sup>13</sup>Civil Code, Art. 1231.

<sup>14</sup>Civil Code, Art. 1232.

<sup>15</sup>Civil Code, Art. 1233.

**§ 32:45 Rights to use**

The right to use, means the power of the rights holder and relatives to use, for their own needs, specified objects, and related accrued interests. The right to use houses is called the right to residence.<sup>1</sup>

The right to benefit from use (formerly called a “real right for usufruct”) is the right to enjoy the full benefits of property without changing the form or essence of an object, or the rights of others.<sup>2</sup> The right to benefit from use shall have temporal effectiveness by contract, or will be set by legal provisions.<sup>3</sup> One or more persons may enjoy the right to benefit from use, establishing said right at the same time, provided that all other persons already exist when the first person obtains such right.<sup>4</sup> The right to benefit from use is set for many persons based on contract or Will, combined with ownership only after death of all right holders, except as otherwise provided.<sup>5</sup>

The right to benefit from use established for individuals or legal persons, shall not continue after death, or the elimination of rights holder or legal person, except if expressly shown by contrary evidence that establishes the right, providing term for renewing the right to benefit from use. The right to benefit from use shall not exceed 30 years for legal person nor for natural persons, whether or not a term for renewal is specified. A compensated right to benefit from use involving real property must not set a renewal period of less than 2 years, except when provided temporarily for special purposes.<sup>6</sup>

Setting or elimination of rights to use or right to residence, are the same as the right to benefit from use. Rights to use or to residence shall not continue after the death of the beneficiary. Rights to use or to residence are subject to the standards upon which they are based.<sup>7</sup>

Relatives of a holder of a right to use or a right to residence, may include spouse, children, and other blood relatives supported by the rights holder. Persons with an actual marital relationship with the rights holder, persons living together with the rights holder, persons serving the rights holder or persons specified in this provision, are equivalent to relatives of the rights holder.<sup>8</sup> The holder of a right to

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**[Section 32:45]**

<sup>1</sup>Civil Code, Art. 1411.

<sup>2</sup>Civil Code, Art. 1373.

<sup>3</sup>Civil Code, Art. 1374.

<sup>4</sup>Civil Code, Art. 1375.

<sup>5</sup>Civil Code, Art. 1376.

<sup>6</sup>Civil Code, Art. 1377.

<sup>7</sup>Civil Code, Art. 1412.

<sup>8</sup>Civil Code, Art. 1413.



use or a right to residence must not transfer or lend the right to others, nor add any burden upon the right.<sup>9</sup>

The holder of a right to use, if receiving all the accrued interest, or the whole building of real property, shall be responsible for daily repair, undertake management expenses, and pay annual taxes as the holder of the right to benefit from use. If he is receiving only part of the accrued interest or building, he shall bear such expenses according to his proportion of benefit.<sup>10</sup> Provisions for the right to benefit from use, if compliant in nature, are applicable to the right to use or right to residence.<sup>11</sup>

### § 32:46 Surface rights

Surface rights mean the rights to build and maintain a building on another person's land.<sup>1</sup> Scope of the surface rights shall include a part of the land occupied beyond merely the establishment of the building, provided said part of land is for the beneficial use of said building. The subject of surface rights must be establishment or maintenance of a building on the surface or underground.<sup>2</sup> Additionally, the subject of surface rights must be a building under multi-story ownership system, setting up of such buildings, and complying with conditions for said ownership. Surface right must be permanent, not limited, as specified.<sup>3</sup> Upon completion of the building, the multi-story ownership system is applicable to the relationship between owners on different floors, and as between those owners and third parties. The surface rights system is applicable to relationships between owners of a multi-story building and land owners. An annuity for land owners shall be paid by a management body after collecting said amount from each owner of a multi-story building according to the proportion of the separate units.<sup>4</sup> Provisions herein are applicable to rights to build additions on another building.<sup>5</sup>

Surface right must be set via a contract or a will, with time limits, arising from transfer of the current building instead of land.<sup>6</sup> Establishing surface rights leads to setting of an easement necessary for use or benefit of the building. The location and conditions of an

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<sup>9</sup>Civil Code, Art. 1414.

<sup>10</sup>Civil Code, Art. 1415.

<sup>11</sup>Civil Code, Art. 1416.

#### [Section 32:46]

<sup>1</sup>Civil Code, Art. 1417.

<sup>2</sup>Civil Code, Art. 1418.

<sup>3</sup>Art.1427.2.

<sup>4</sup>Civil Code, Art. 1419.

<sup>5</sup>Civil Code, Art. 1420.

<sup>6</sup>Civil Code, Art. 1421.

easement not specified in relevant evidence for establishing the surface rights, shall be set by agreement; if there is no agreement, such will be set by court.

An easement of passageway may be set on a third party's real property forcibly, only in cases where the subject real property is surrounded when the surface right is established.<sup>7</sup>

When establishing a surface right, the owner and surface right holder must agree whether the surface right holder makes a one-time payment or an annuity to be paid forever—or for a specified period—as compensation for all parties involved. Even if the surface right is permanently established, an annuity must be paid for a specified period. Payment must be made in money.<sup>8</sup>

Before building, the entire right to use and benefit from land is vested in the land owner, who must neither hinder progress of said building nor add a burden to it. Even after completion of the building, the land owner has the right to use and benefit from the underground or surface, subject to the purpose of the surface right holder. A land owner must undertake liability for damage to the surface right holder for use of the land, if damaged is caused by the land owner.<sup>9</sup> Surface right land ownership may be transferred before death or by death.<sup>10</sup>

### § 32:47 Easements

Easements mean burdens on real property for providing exclusive benefit to another real property, even if both belong to the same owner. The burdened real property is called the servient tenement, while the benefitted property is called the dominant tenement.<sup>1</sup>

All benefits for the dominant tenement may be subjects of an easement, even said interests existing in future contingencies, not adding value to the dominant tenement.<sup>2</sup>

Except as provided by law, an easement must not be separated from the involved dominant tenement, or servient land. Benefits of an easement given to other real property will lead to setting of a new easement and elimination of the old easement.<sup>3</sup> An easement is non-separable: each part of a separate servient tenement is vested with the easement of said part before separation. In case of separation of the dominant tenement, each right holder has the right to exercise

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<sup>7</sup>Civil Code, Art. 1422.

<sup>8</sup>Civil Code, Art. 1423.

<sup>9</sup>Civil Code, Art. 1425.

<sup>10</sup>Civil Code, Art. 1426.

#### [Section 32:47]

<sup>1</sup>Civil Code, Art. 1434.

<sup>2</sup>Civil Code, Art. 1435.

<sup>3</sup>Civil Code, Art. 1436.

easement without any change.<sup>4</sup> Easements can be established by contract or by will, with time limits specified by the prior owner. Legal easements, not set voluntarily as provided in this Code, shall be set by judicial judgment.<sup>5</sup>

## IX. LIENS ON REAL PROPERTY

### § 32:48 Mortgages

Subjects which can be mortgaged include: rural and urban real properties; surface right; rights arising from the granting of properties that are in the Macau Region (but the creation of this mortgage shall be subject to the provisions of the special laws and comply with the provisions of law related to the transfer of concessions); the usufruct of the above-mentioned objects and rights; and movable properties that are deemed by law as equivalent to real properties for the effectiveness of mortgage.<sup>1</sup> Mortgage rights shall be respectively created for those parts that may constitute independent ownership in a real estate without becoming disqualified as real properties.<sup>2</sup>

Mortgage rights shall be registered; otherwise they will not become effective. The same is true even with respect to the party/parties concerned.<sup>3</sup> No mortgage rights shall be created on half of the community property or shares of an undivided legacy.<sup>4</sup>

Except as otherwise provided for, mortgage rights may not be divided so that the entirety of the mortgage right on each collateral and on each component of said collateral will be maintained. The same is true even if the relevant object or bond has been divided or the bond has been partially satisfied.<sup>5</sup> However, if the real estate is governed by the horizontal property system, then the mortgage rights on said real property may be divided into the same amount of mortgage rights as said real estate is divided into independent units.<sup>6</sup>

As for liens on real properties, the lien holder, before surrendering the retained thing, is entitled to enforce the retained thing pursuant to the requirements on which a mortgagee enforces a collateral by itself; and is entitled to the priority of compensation over other credi-

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<sup>4</sup>Civil Code, Art. 1437.

<sup>5</sup>Civil Code, Art. 1438.

**[Section 32:48]**

<sup>1</sup>Civil Code, Art. 684.1.

<sup>2</sup>Civil Code, Art. 684.2.

<sup>3</sup>Civil Code, Art. 683.

<sup>4</sup>Civil Code, Art. 686.

<sup>5</sup>Civil Code, Art. 692.1.

<sup>6</sup>Civil Code, Art. 692.3.

tors of the debtor.<sup>7</sup> Liens on real properties are in priority to mortgage rights on real properties; and same is true even if the registration of the mortgage rights precedes the lien.<sup>8</sup>

## X. PLEDGES AND CHATTEL MORTGAGES

### § 32:49 In general

A pledge is created in two ways: (1) after the pledge or the documents required to be held for disposal of the pledge has been delivered to the creditor(s) or a third party, the creation of the pledge will come into force; or (2) if the creditor(s)' joint possession of the pledge will make it impossible for the pledgor to dispose of the pledge, then the delivery of the pledge may be accomplished through the creditor(s)' joint possession of the pledge.<sup>1</sup>

The pledgee must keep and manage the pledge as its owner does, and is responsible for the existence and preservation of the pledge, and shall not use the pledge without consent of the pledgor, except for the necessary use of the pledge for the purpose of its preservation; and shall return the pledge if the debt secured by the pledge is paid.<sup>2</sup>

If a party reasonably fears that the pledge will be lost or damaged, the pledgee or the pledgor shall obtain prior approval from the court before they can sell the pledge ahead of schedule.<sup>3</sup> The pledgor is entitled to prevent the pledge from being sold ahead of schedule by providing another appropriate object as a guaranty.<sup>4</sup>

## XI. INTELLECTUAL PROPERTY

### A. COPYRIGHT LAW

#### § 32:50 In general

Copyrights in Macao are covered by Decree-Law No. 43/99/M of August 16, 1999, as amended pursuant to Legislation No. 5/2012 of the Macao Special Administrative Region, latest edition announced and promulgated by the Macao Special Administrative Region Government on April 10, 2012. The amended Copyright Law is effective from June 1, 2012.

#### § 32:51 Protected works

Intellectual creations in literary, scientific, and artistic fields, what-

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<sup>7</sup>Civil Code, Art. 749.1.

<sup>8</sup>Civil Code, Art. 749.2.

#### [Section 32:49]

<sup>1</sup>Civil Code, Art. 665.

<sup>2</sup>Civil Code, Art. 667.

<sup>3</sup>Civil Code, Art. 670.1.

<sup>4</sup>Civil Code Art. 670.3.

ever may be their type, form of expression, merit, form of communication, or purpose, may be protected by copyright.<sup>1</sup> Ideas, processes, systems, operational methods, concepts, principles, and discoveries, alone, as such, are not be protected by copyright.<sup>2</sup> Prerequisite for copyright protection is the outward manifestation of a work, independently of its disclosure, publication, use, or economic exploitation.<sup>3</sup> A work is original where it is the result of the author's own creative effort, and not merely appropriation of another person's creation.<sup>4</sup>

The following, in particular, are protected works insofar as they are original:

- (1) literary, journalistic, scientific, or other writings, including computer programs;
- (2) lectures, speeches, addresses, sermons;
- (3) dramatic, dramatic-musical works, and direction thereof;
- (4) works of choreography, mime expressed in written, or any other form;
- (5) musical compositions, with or without words;
- (6) cinematographic, television, video, and other audiovisual works;
- (7) works of drawing, tapestry, painting, sculpture, ceramics, glazing, engraving, lithography, or architecture;
- (8) photographic works and works produced by processes analogous to photography;
- (9) works of applied art, industrial designs, models, and designer works that constitute artistic creations;
- (10) illustrations and maps;
- (11) plans, sketches, three-dimensional works relating to architecture, geography, or other sciences;
- (12) slogans and mottoes, even if of an advertising nature;
- (13) parodies and other literary or musical compositions, even if inspired by the theme/subject of another work;
- (14) databases, and other compilations original in the arrangement of their subject matter or selection of their contents.<sup>5</sup>

Successive editions of a work, even if corrected, expanded, revised, given a new title or format, do not constitute works distinct from the original work, nor do reproductions of artistic works, even where their

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**[Section 32:51]**

<sup>1</sup>Art. 1.1.

<sup>2</sup>Art. 1.2.

<sup>3</sup>Art. 1.3.

<sup>4</sup>Art. 1.4.

<sup>5</sup>Art. 2.1.

dimensions have been changed.<sup>6</sup> Protection granted to computer databases or other compilations of information, does not include actual data or material compiled, without prejudice to any rights that may subsist in them.<sup>7</sup> Protection of a disclosed, published work extends to the title thereof, provided that it is distinctive and cannot be confused with the title of any other work of the same genre by another author.<sup>8</sup>

### § 32:52 Personal rights and economic rights

An author enjoy personal rights and economic rights in a protected work.<sup>1</sup> The author's economic rights include exclusive right to use and economically exploit a work, to authorize its economic exploitation, in whole or in part, by third party; to receive remuneration for use that a third party makes of the work, where the author's permission for that use is dispensed with by law.<sup>2</sup> The author's personal rights include the power to keep the work unpublished; to claim authorship of the work, to be identified as the author on the original and on each copy, in any publication thereof; to withdraw his works from circulation as provided for in Article 48; to ensure authenticity and integrity of his work, to object to any mutilation or distortion thereof, or to object generally to any and all acts that detract from it, or might adversely affect his honor and reputation as author.<sup>3</sup>

### § 32:53 Physical embodiments of works

Copyright in a work, being incorporeal, is independent of ownership rights in the physical material used for its fixation and/or communication.<sup>1</sup>

### § 32:54 Lapse of copyright

Where various parts, volumes, or installments of a work are not published simultaneously, the terms of copyright are calculated separately.<sup>1</sup> This also applies to issues, and installments of a collec-

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<sup>6</sup>Art. 2.2.

<sup>7</sup>Art. 2.3.

<sup>8</sup>Art. 4.1.

#### [Section 32:52]

<sup>1</sup>Art. 7.1.

<sup>2</sup>Art. 7.2.

<sup>3</sup>Art. 7.3.

#### [Section 32:53]

<sup>1</sup>Art. 8.1.

#### [Section 32:54]

<sup>1</sup>Art. 24.1.

tive work published periodically, such as a newspaper or magazine.<sup>2</sup> Works fall into the public domain on expiration of the term of copyright.<sup>3</sup>

### § 32:55 International scope of protection

The law of Macao is exclusively applicable when protection is granted to a work in the SAR.<sup>1</sup> Authors resident in the SAR enjoy protection granted by the law of Macao.<sup>2</sup> Authors who are not resident in the SAR enjoy protection accorded to residents subject to material reciprocity.<sup>3</sup> Where the work originates in another legal system, and its author is not a resident of the SAR, the term of protection thereof is that specified by the Decree-Law, provided that it does not exceed that which may be specified by the legal system in which work the originated.<sup>4</sup> The legal system of the published work is that of the place of its first publication.<sup>5</sup> Where the work has been published simultaneously in different places subject to legal systems that specify different terms of copyright protection, the legal system that grants the shortest term of protection is considered the legal system of origin.<sup>6</sup> A work is considered published under several legal systems where, within a period of 30 days from date of first publication, it is again published in another place subject to a legal system different from that of the place of first publication.<sup>7</sup>

### § 32:56 Use of protected works

Unless otherwise provided, the author has the exclusive right to use his work, in whole or in part, including notably the right to disclose, publish, and economically exploit it in any form, either directly or indirectly, within the limits of the law.<sup>1</sup> A guarantee of pecuniary benefits deriving from exploitation of the work constitutes a basic objective, in economic terms, of the legal protection.<sup>2</sup>

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<sup>2</sup>Art. 24.2.

<sup>3</sup>Art. 25.

#### [Section 32:55]

<sup>1</sup>Art. 49.

<sup>2</sup>Art. 50.1.

<sup>3</sup>Art. 50.2.

<sup>4</sup>Art. 51.

<sup>5</sup>Art. 52.1.

<sup>6</sup>Art. 52.2.

<sup>7</sup>Art. 52.3.

#### [Section 32:56]

<sup>1</sup>Art. 55.1.

<sup>2</sup>Art. 55.2.



**§ 32:57 Freedom of private use**

Private use of protected works is free unless otherwise provided.<sup>1</sup> The following, in particular, are considered private use: reproduction of works exclusively for private purposes of the person who does it; performance of dramatic or a dramatic-musical work, showing of a cinematographic work, recitation of a literary work, performance of a musical work, or any other form of communication of work already disclosed or published, when done without gainful intent, in a place open to the public.<sup>2</sup>

**§ 32:58 Fair use**

The following uses are lawful even without the consent of the author:

- (1) reproduction in media (for information purposes) of speeches, addresses, or lectures given in public that do not fall into categories provided for in Article 5(1), as excerpts, in the form of summaries;
- (2) regular selection of articles from printed periodicals in the form of press reviews;
- (3) partial reproduction by educational establishments that is exclusively for teaching purposes in those establishments, without gainful intent;
- (4) inclusion in one's own work of summary quotations from another's work, whatever their nature, in support of one's own opinions, for purposes of criticism, discussion, or teaching;
- (5) reproduction of news articles, articles on economic, political, or religious topics, provided that such reproduction has not been expressly reserved;
- (6) fixing, reproducing and transmitting to the public some portions of a certain work in any way, as long as it is reasonable to insert the relevant portions into the reporting of current events for the purpose of reporting current events;
- (7) entirely or partially reproducing a certain published or issued work, as long as such reproduction is done by a library, museum, documentation center or an academic institution, and said reproduction is not for the public, but solely for the needs of the relevant institution's own activities;
- (8) a library, museum, documentation center, scientific structure or teaching premises supplying their collected works to the public through a computer terminal installed in the relevant facility or

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**[Section 32:57]**<sup>1</sup>Art. 60.1.<sup>2</sup>Art. 60.2.



by accessing a restricted computer network, for no profitable purposes.<sup>1</sup>

### § 32:59 Fair use—Limits, requirements

The private, free use of a protected work does not prevent its normal economic exploitation, nor unjustifiably prejudice legitimate interests of author.<sup>1</sup> The use of a work as is above provided for shall, as far as possible, indicate the identity of the author and name of the work.<sup>2</sup> The right to collect the works specified under the Free Use clause into volumes is solely with the author.<sup>3</sup>

### § 32:60 Lectures by professors

Lectures by professors may only be published with the consent of the author concerned, even if the lecture is presented in a form of report on the direct responsibility of person publishing it.<sup>1</sup>

### § 32:61 Publication contract

A publication contract is one by which an author authorizes another to produce, distribute, or sell a specified number of copies of his work or set of works, on his own account.<sup>1</sup> Contracts which are not considered publishing contracts are: (a) those under which an author entrusts another with producing on his own account a specified number of copies of his work, ensuring that they are stocked, distributed, and sold, where the parties having agreed to share between themselves the results of corresponding economic exploitation; (b) producing a specified number of copies of his work, ensuring that they are stocked, distributed, and sold on the author's account and at his risk, in exchange for remuneration; (c) ensuring that copies produced by the author are stocked, distributed, and sold in exchange for remuneration.<sup>2</sup>

Contracts referred to in the preceding paragraph are subsidiarily regulated by legal provisions governing special partnerships in case of

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#### [Section 32:58]

<sup>1</sup>Art. 61.

#### [Section 32:59]

<sup>1</sup>Art. 62.1.

<sup>2</sup>Art. 62.2.

<sup>3</sup>Art. 62.3.

#### [Section 32:60]

<sup>1</sup>Art. 64.1.

#### [Section 32:61]

<sup>1</sup>Art. 67.

<sup>2</sup>Art. 68.1.

subparagraph (a), and by those governing contracts for rendering of services in case of subparagraphs (b), (c), in addition by usage.<sup>3</sup> Publishing contracts may have as their subject matter one or more existing or future works, whether published or not.<sup>4</sup> Publishing contracts are drawn up in writing.<sup>5</sup> Nullity for failure to draw up a contract in writing may not be invoked by the party who has been the cause of it, and is presumed attributable to the publisher until the opposite is proved.<sup>6</sup>

### § 32:62 Publication contract—Effects

A publishing contract does not transfer any copyright to the publisher, but authorizes him to translate the work, to transform or adapt it to other genres, or forms of use.<sup>1</sup> Subject to provisions of Article 83, any provisions to the contrary, a publishing contract prevents the author from making or authorizing a new edition of the same work in the same language inside or outside the SAR until the previous edition is out of print, until expiration of the prescribed period, unless circumstances arise that prejudice the interest in the edition, making revision and updating of the work necessary.<sup>2</sup>

### § 32:63 Publication contract—Content

A publishing contract must mention the number of editions concerned, the number of copies in each edition, and the unitary public selling price, even approximately.<sup>1</sup> Where the number of editions is not specified in the contract, the publisher may only produce one edition.<sup>2</sup>

### § 32:64 Publication contract—Remuneration

A publishing contract is presumed to be for consideration.<sup>1</sup> An author's remuneration may consist of a lump sum payable for the edition as whole, a percentage of the cover price of each copy, an alloca-

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<sup>3</sup>Art. 68.2.

<sup>4</sup>Art. 69.

<sup>5</sup>Art. 70.1.

<sup>6</sup>Art. 70.2.

#### [Section 32:62]

<sup>1</sup>Art. 71.1.

<sup>2</sup>Art. 71.3.

#### [Section 32:63]

<sup>1</sup>Art. 72.1.

<sup>2</sup>Art. 72.2.

#### [Section 32:64]

<sup>1</sup>Art. 73.1.

tion of a certain number of copies, or consideration based on some other criterion, according to the nature of the work. Any combination of those forms of consideration may be adopted.<sup>2</sup> In the absence of any stipulation regarding the author's remuneration, he is entitled to 20% of the cover price of each copy sold.<sup>3</sup> Where remuneration consists of a percentage of the sale price, its calculation take price increases and reductions into account, but the publisher may not, except as provided in Article 85, reduce that price without the author's consent unless he pays the author remuneration corresponding to the original sale price.<sup>4</sup>

### § 32:65 Publication contract—Obligations of the author

The author provides the publisher with the means necessary for fulfillment of their contract, in particular by handing over within an agreed-upon time period, the original of the work to be published in a form that enables the publisher to reproduce it.<sup>1</sup> The publisher is obliged to devote to production of the edition such care as is necessary for reproduction of the work in accordance with the agreed conditions, to work assiduously and diligently on promotion and marketing of the copies produced.<sup>2</sup>

### § 32:66 Publication contract—Printing

Printing cannot be done without the author's consent, subject to paragraph (6) of Article 76 of the law.<sup>1</sup> Return of page proofs and a draft of the cover design, unless accompanied by a declaration to the contrary, constitute authorization to print.<sup>2</sup> Works cannot be brought on to the market without the author having inspected one copy thereof.<sup>3</sup>

### § 32:67 Stage performance, recitation, execution

A stage performance is a presentation before audience of a dramatic, dramatic-musical, choreographic, mimed, other similar work by means

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<sup>2</sup>Art. 73.2.

<sup>3</sup>Art. 73.3.

<sup>4</sup>Art. 73.5.

#### [Section 32:65]

<sup>1</sup>Art. 74.1.

<sup>2</sup>Art. 75.1.

#### [Section 32:66]

<sup>1</sup>Art. 77.1.

<sup>2</sup>Art. 77.2.

<sup>3</sup>Art. 77.3.

of a dramatic interpretation, singing, dancing, music, or other appropriate means, either separately or together.<sup>1</sup>

**§ 32:68 Stage performance, recitation, execution—  
Authorization**

The stage performance of a protected work, whether or not on premises to which access is restricted and without gainful intent, is subject to the author's consent, without prejudice to provisions of Article 60.<sup>1</sup> The right of performance is deemed to be granted for consideration, unless it is granted to amateurs.<sup>2</sup>

**§ 32:69 Stage performance, recitation, execution—Filming,  
transmission and reproduction**

Authorization from the author is necessary for all or part of the stage performance of a work to be transmitted by radio-broadcasting or to be filmed, or for the reproduction or display of the relevant fixed performance, without prejudice to any other authorization that might be required.<sup>1</sup>

**§ 32:70 Stage performance, recitation, execution—  
Contractual rights**

Unless otherwise stipulated, a stage performance contract gives the author the right to make such changes in the work as he deems necessary, independently of the other party's consent, provided that they do not prejudice its general structure, detract from its dramatic or theatrical interest, or prejudice programming of rehearsals or performances. A stage performance contract further grants the author the right to be consulted on casting; to attend rehearsals, to give necessary guidance regarding interpretation and direction; and to be consulted regarding choice of collaborators for artistic production of work.<sup>1</sup>

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**[Section 32:67]**

<sup>1</sup>Art. 90.

**[Section 32:68]**

<sup>1</sup>Art. 91.1.

<sup>2</sup>Art. 91.2.

**[Section 32:69]**

<sup>1</sup>Art. 92.

**[Section 32:70]**

<sup>1</sup>Art. 95.

**§ 32:71 Stage performance, recitation, execution—Obligations of impresario**

Under a performance contract, an *impresario* undertakes to have the work performed in public within an agreed period. In the absence of an explicitly agreed period, the performance must be within one year from the date of conclusion of the contract, except in case of dramatic-musical works, where the period is two years.<sup>1</sup>

**§ 32:72 Audiovisual works**

Audiovisual works are cinematographic works, those expressed by methods analogous to cinematography, including televised, videographic works.<sup>1</sup>

**§ 32:73 Audiovisual works—Authorship**

The following are deemed to be “authors” of audiovisual works:

- (1) director;
- (2) authors of plot, or music where created specifically for the audiovisual production;
- (3) authors of adaptations where a work not specifically created for the audiovisual production is adapted for that kind of use.<sup>1</sup>

**§ 32:74 Audiovisual works—Lapse of copyright**

Copyright in an audiovisual work lapses 50 years after its disclosure.<sup>1</sup>

**§ 32:75 Audiovisual works—Public performance**

Paragraph (4) of Article 96 and, subject to necessary adaptation, the regime for recitation and instrumental performance apply to public showing of audiovisual works.<sup>1</sup>

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**[Section 32:71]**

<sup>1</sup>Art. 96.1.

**[Section 32:72]**

<sup>1</sup>Art. 104.

**[Section 32:73]**

<sup>1</sup>Art. 105.

**[Section 32:74]**

<sup>1</sup>Art. 106.

**[Section 32:75]**

<sup>1</sup>Art. 107.

**§ 32:76 Audiovisual works—Cinematographic works**

Use of protected works in cinematographic productions are subject to authorization by the authors concerned.<sup>1</sup>

**§ 32:77 Audiovisual works—Cinematographic works—  
Authorization**

Authorizations granted by the authors of cinematographic works for productions concerned, specify the conditions governing not only production, but also distribution and showing of film.<sup>1</sup> Producers derive from authorization of cinematographic production, the rights to produce negatives, positives, copies, and magnetic recordings necessary for the showing of works.<sup>2</sup>

Unless expressly agreed to otherwise, the authorization referred to in the preceding paragraph also implies authorization to distribute and show film in cinemas open to the public, and to exploit it commercially by that means, without prejudice to payment of agreed-to remuneration.<sup>3</sup> Special authorization by authors of cinematographic works is required for their communication to the public in other forms by wire and wireless means, including radio, television broadcasting, cable distribution, satellite transmission, for their reproduction, exploitation, and presentation in the form of videograms.<sup>4</sup>

Broadcasting organizations have the right, without the author's consent, to communicate all or part of the cinematographic works produced by them through their own transmission channels.<sup>5</sup>

**§ 32:78 Audiovisual works—Cinematographic works—  
Exclusive rights**

Unless otherwise agreed, the authorization given by the author for cinematographic production of a work, whether specially created for that form of expression or otherwise adapted, implies the grant of exclusive rights.<sup>1</sup>

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**[Section 32:76]**

<sup>1</sup>Art. 109.

**[Section 32:77]**

<sup>1</sup>Art. 110.1.

<sup>2</sup>Art. 110.2.

<sup>3</sup>Art. 110.3.

<sup>4</sup>Art. 110.4.

<sup>5</sup>Art. 110.5.

**[Section 32:78]**

<sup>1</sup>Art. 111.1.

**§ 32:79 Audiovisual works—Cinematographic works—  
Economic exploitation of a work**

Where authors have expressly or implicitly authorized showing of a cinematographic work, the producer has the right to economic exploitation thereof, without prejudice to application of provisions in paragraph (4) of Article 110.<sup>1</sup>

**§ 32:80 Audiovisual works—Cinematographic works—  
Producer**

An impresario who organizes the creation of a cinematographic work, provides necessary resources, and assumes corresponding technical, financial responsibilities, is considered the producer.<sup>1</sup> A producer is identified as such in the film.<sup>2</sup> Throughout the period of economic exploitation, unless copyright owners have adopted other means of defending their rights in a cinematographic work, the producer is deemed to be their representative for that purpose, and he must report to them on the way in which he carries out his mandate.<sup>3</sup>

**§ 32:81 Audiovisual works—Cinematographic works—Time  
limit for fulfillment of contract**

Where a producer fails to complete production of a cinematographic work within the period of three years from the date of delivery of the literary and/or musical parts thereof, or fails to have shown the completed work within a period of three years from its completion, the author has a right to terminate the contract.<sup>1</sup>

**§ 32:82 Audiovisual works—Cinematographic works—  
Identification of authors of adapted work**

The names of authors of cinematographic works appear in film when it is shown, together with mention of the contribution to the work made by each.<sup>1</sup>

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**[Section 32:79]**

<sup>1</sup>Art. 112.1.

**[Section 32:80]**

<sup>1</sup>Art. 113.1.

<sup>2</sup>Art. 113.2.

<sup>3</sup>Art. 113.3.

**[Section 32:81]**

<sup>1</sup>Art. 114.1.

**[Section 32:82]**

<sup>1</sup>Art. 115.1.

**§ 32:83 Audiovisual works—Fixation and the publication of phonograms, videograms**

A fixation and publishing contract for phonograms or videograms is a contract by which the author permits another person to fix and reproduce the sound or image of a protected work, and to sell reproductions of such fixed work.<sup>1</sup>

**§ 32:84 Audiovisual works—Fixation and the publication of phonograms, videograms—Use of phonograms and videograms**

Acquisition of copies of phonograms and videograms do not confer on the acquirer a right to use them for any kind of public playing, transmission, reproduction, or commercial rental.<sup>1</sup>

**§ 32:85 Audiovisual works—Fixation and the publication of phonograms, videograms—Identification of the work and author**

Reproductions of a fixed work, which is distributed to the public, shall carry the identification information of the work and its author.<sup>1</sup>

**§ 32:86 Audiovisual works—Fixation and the publication of phonograms, videograms—Authorization for broadcasting**

Broadcasting of protected works is subject to authorization by the author.<sup>1</sup> Where a work has already been fixed for commercial purposes with the author's authorization, its broadcasting and communication is envisaged, and it is not necessary to obtain special authorization for each broadcast, without prejudice to the author's right to equitable remuneration.<sup>2</sup>

**§ 32:87 Audiovisual works—Fixation and the publication of phonograms, videograms—Identification of author of broadcast work**

Broadcasts must identify the author and title of the work broadcast,

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**[Section 32:83]**

<sup>1</sup>Art. 121.

**[Section 32:84]**

<sup>1</sup>Art. 123.

**[Section 32:85]**

<sup>1</sup>Art. 124.

**[Section 32:86]**

<sup>1</sup>Art. 129.

<sup>2</sup>Art. 130.



with the exception of cases recognized by standard practice in which the circumstances and requirements of transmission necessitate omission of identifying elements.<sup>1</sup>

### § 32:88 Photographic works

A photograph protected by copyright is one which, by choice of its subject and/or manner of its execution, may be considered a personal artistic creation of author.<sup>1</sup> Photographs that have mere documentary value, such as photographs of writings, documents, business papers, technical drawings, or similar material, are not be protected.<sup>2</sup> Stills from cinematographic films are considered photographs.<sup>3</sup>

### § 32:89 Photographic works—Rights of others

Copyright in photographic work is understood as being without prejudice to provisions regarding the exhibition, reproduction, or marketing of portraits.<sup>1</sup>

### § 32:90 Photographic works—Commissioned photographs

Unless otherwise agreed, a commissioned photograph may be reproduced, and its reproduction authorized by persons portrayed, or by their successors, independently of authorization by the photographer.<sup>1</sup> Remuneration is payable to the author where the reproduction of a portrait made by the person photographed, or his successors, has a commercial character.<sup>2</sup>

### § 32:91 Photographic works—Photographs published in periodicals

It is lawful, independently of authorization by the author but without prejudice to his right to remuneration, to reproduce photographs published in newspapers, magazines, or other periodicals, where they relate to persons and current events, are of a general

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[Section 32:87]

<sup>1</sup>Art. 134.

[Section 32:88]

<sup>1</sup>Art. 149.1.

<sup>2</sup>Art. 149.2.

<sup>3</sup>Art. 149.3.

[Section 32:89]

<sup>1</sup>Art. 150.

[Section 32:90]

<sup>1</sup>Art. 151.1.

<sup>2</sup>Art. 151.2.

interest in any way, and reproduction is intended for inclusion in another, similar, periodical.<sup>1</sup>

### § 32:92 Titles of periodicals

The title of a newspaper, or other periodical publication that meets conditions contained in Article 4, is protected insofar as the publication is issued regularly, and is registered with the Publication Information Department as required by corresponding legislation.<sup>1</sup> Use by another periodical of the protected title is not permitted until one year has elapsed since termination of the publication has been announced, in whatever manner, by person authorized to do so, or after three years have elapsed since publication actually ceased.<sup>2</sup>

### § 32:93 Related rights—Private use / fair use

The protection afforded by related rights does not cover: private use; use of excerpts from performances, phonograms, videograms, broadcasts, or shows for purpose of information, criticism, quotations; use for exclusively scientific, educational purposes without gainful intent; ephemeral fixation by broadcasting organizations; fixations, reproductions made by public bodies, or providers of services for reasons of special documentary / archival interest. Under equal conditions where a protected work can be used legally without permission of the author, a certain performance, phonogram, videogram or radio broadcast may be used without permission of the relevant rights holder.<sup>1</sup>

## B. PATENTS

### § 32:94 Inventions

Only inventions meeting patentability requirements set forth in the present sub-section can be protected under the present Statute, by granting of a patent certificate.<sup>1</sup> Any inventions, in any area of technology, pertaining to products, processes for obtaining products, substances, or compositions, even if they involve a product composed of biological matter or that contains biological matter, a process that

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#### [Section 32:91]

<sup>1</sup>Art. 152.

#### [Section 32:92]

<sup>1</sup>Art. 163.1.

<sup>2</sup>Art. 163.2.

#### [Section 32:93]

<sup>1</sup>Art. 173.

#### [Section 32:94]

<sup>1</sup>Art. 60.

permits production, processing, or use of biological matter, is patentable provided that such inventions is novel, involves an inventive step and is industrially applicable.<sup>2</sup>

The following are not patentable:

- (1) discoveries, scientific theories, and mathematical methods;
- (2) materials, substances already existing naturally, and nuclear matter;
- (3) aesthetic creations;
- (4) schemes, rules, methods for performing mental acts, playing games, doing business, and computer programs;
- (5) presentation of information;<sup>3</sup>
- (6) human cloning processes;
- (7) human germinal genetic identity modification processes;
- (8) processes for modification of genetic identity of animals that can cause them suffering without any substantial medical benefit to mankind, animal kind, or animals obtained by those processes;<sup>4</sup>
- (9) any isolated element of the human body, produced in some other way by technical processes, including full or partial gene sequencing, even if the structure of that element is identical to that of the natural element;
- (10) any invention whose object is a plant or animal matter if its technical feasibility is not limited to certain plant variety or animal species;
- (11) biological substances isolated from their natural environment, produced on the basis of technical processes, even if it pre-exists in a natural state;
- (12) inventions which are microbiological, other technical processes, or products obtained by such processes.<sup>5</sup>

For the purposes sub-paragraph 1(b) of the law, industrial application of full or partial gene sequencing must be concretely stipulated in the patent application.<sup>6</sup> For purposes of articles 62 and 63 of the law, essentially biological processes for obtaining plant and animal matter is understood as any process that consists entirely of natural phenomena such as crossing or selection. Microbiological processes are understood as any process that uses microbiological matter, that

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<sup>2</sup>Art. 61.

<sup>3</sup>Art. 62.1.

<sup>4</sup>Art. 62.3. However, provisions of previous article do not exclude patentability of a substance or composition included in a prior art which is used in working of one of methods mentioned in paragraph 2(b) of same article, provided that its use for any of methods mentioned therein is not included in the prior art.

<sup>5</sup>Art. 63.1.

<sup>6</sup>Art. 63.2.

involves manipulation of microbiological matter, or that produces microbiological matter. Biological matter is understood as any matter that contains genetic information, can reproduce itself, or be reproduced in biological system.<sup>7</sup>

An invention is considered novel when it is not known in prior art.<sup>8</sup> Prior art comprises everything that, inside or outside the SAR, has been made accessible to the public before the date of the patent application, by description, use, any other means.<sup>9</sup> Invention is considered to involve an inventive step if, for person skilled in the art, the result is not obvious from prior art.<sup>10</sup> An invention is considered industrially applicable if its subject matter can be manufactured and used in any type of industrial or commercial activity.<sup>11</sup>

The following do not prejudice novelty of an invention: disclosures to scientific societies or professional technical associations, for purpose of competitions, exhibitions, or trade fairs in Macao or abroad, which are official / officially recognized, if the application for granting of a respective patent is filed in the SAR within 12 months thereof.<sup>12</sup>

#### § 32:95 Patent entitlement

Anyone discovering an invention during fulfillment of their employment contract, must inform the company of that fact within the following deadlines: 2 months from completion of the invention; and 1 month from filing the patent application with DES, if this was done within the period referred to in the previous sub-paragraph.<sup>1</sup> Inventions for which a patent is filed within 1 year of the date on which the inventor leaves a company is presumed to have been discovered during fulfillment of his employment contract.<sup>2</sup>

Entitlement to an invention referred to in the law, lies with the company if the invention forms part of its area of activity, or if it was discovered in process of: an employment contract containing a clause that explicitly provides for performance of inventive activity, that effectively corresponds to functions attributed to the employee; studies or research that the worker was explicitly requested to conduct.<sup>3</sup> Entitlement to an invention also lies with a company, even though

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<sup>7</sup>Art. 64.

<sup>8</sup>Art. 65.1.

<sup>9</sup>Art. 65.2.

<sup>10</sup>Art. 66.

<sup>11</sup>Art. 67.

<sup>12</sup>Art. 68.

#### [Section 32:95]

<sup>1</sup>Art. 70.1.

<sup>2</sup>Art. 70.2.

<sup>3</sup>Art. 71.1.

the invention does not fall within its area of activity, if an employee has used knowledge, technical means, or data supplied by company.<sup>4</sup>

### § 32:96 Patent procedure

A patent request must be written in the official language of the SAR indicating the name, style of applicant, his/its nationality, domicile, place of residence, and be accompanied by the following items in triplicate:

- (1) Title: short title briefly synthesizing the subject matter of the invention;
- (2) description of the subject matter of the invention;
- (3) claims of what is considered novel, what characterizes the invention;
- (4) mention of priority right, if applicable, pursuant to article 17(3).<sup>1</sup>

Elements referred in article 77 and, if appropriate, in the preceding article, should be supplemented by the following documents: a summary of invention; drawings necessary for perfect understanding of the description; name, country, territory of inventor's place of residence; and proof of payment of request submission fee.<sup>2</sup>

If appropriate, the following should also be submitted:

- (1) documents proving claimed priority right;
- (2) declaration by which inventor opposes the disclosure of his identity;
- (3) summary declaration on the facts that justify title to patent, when applicant was not the only inventor;
- (4) any translations that may be necessary, specifically in light of regulations referred to in article 85(3).<sup>3</sup>

Once a request has been received, DES proceeds to its formal examination, within a period of 2 months, to verify that it contains all of the elements required in accordance with articles 77 to 79.<sup>4</sup> After 18 months have elapsed from the date of submission of the request or, if priority right was claimed, from the claimed date, DES publishes a disclosure notice in the Official Bulletin, wherein proceedings are available to the public from that date.<sup>5</sup> On pain of having the patent request refused, the applicant shall, within 7 years of the date of filing of main request, provide DES with a request that the examination

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<sup>4</sup>Art. 71.2.

**[Section 32:96]**

<sup>1</sup>Art. 77.1.

<sup>2</sup>Art. 79.1.

<sup>3</sup>Art. 79.2.

<sup>4</sup>Art. 82.1.

<sup>5</sup>Art. 83.1.

report be conducted by one of the designated entities.<sup>6</sup> Starting from the date of disclosure to the public of the patent application proceeding, anyone may request preparation of an examination report, if the applicant has not done so within 7 years from the date of the submission of his patent application.<sup>7</sup>

Access to deposited biological material is ensured by provision of a sample until first publication of the patent application, only to people who have access to the proceedings; between first publication of the application and granting of patent, to anybody who so requests it or, at the request of depositor, only to an independent expert; after granting of patent, even if patent lapses because it becomes invalid or is forfeited, to anybody who so requests.<sup>8</sup>

### § 32:97 Use of patent

Any patent can, on payment of compensation, be expropriated to be used for the public good if the need to disclose an invention or to make it available for use by public entities so demands.<sup>1</sup> By ruling of the Governor, mandatory non-exclusive licenses can be granted for certain patents in if there is no, or at least inadequate, exploitation of the patented invention.<sup>2</sup> Mandatory licenses can only be granted when the potential licensee has made efforts to obtain a contractual license from the patent-holder on acceptable commercial terms, but such efforts have not been successful within a reasonable period of time.<sup>3</sup>

### § 32:98 Utility models

Under the present Statute, only inventions that so alter a subject matter as to give it configuration, structure, mechanism, or disposition that increases its utility or improves an advantage that can be derived therefrom, can be protected as utility models.<sup>1</sup> Inventions whose protection is applied for as a utility model meet patentability requirements foreseen in the previous section, with the exception of those which are not compatible with their nature as referred to in the law.<sup>2</sup> Duration of a utility model is 6 years from date of submission of

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<sup>6</sup>Art. 86.1.

<sup>7</sup>Art. 87.1.

<sup>8</sup>Art. 94.1.

#### [Section 32:97]

<sup>1</sup>Art. 108.2.

<sup>2</sup>Art. 109.

<sup>3</sup>Art. 110.1.

#### [Section 32:98]

<sup>1</sup>Art. 120.1.

<sup>2</sup>Art. 120.2.

the application, and is renewable for two additional periods of 2 years each.<sup>3</sup>

During the term of a utility model patent, its holder may use expressions referred to in article 107, or “Utility model No.,” “Utility Mod. No.,” in Portuguese or the equivalent in Chinese, on its products.<sup>4</sup>

### § 32:99 Complementary certificate for protection of medicines and phyto-pharmaceutical products

An application for a complementary protection certificate for medicines or for phyto-pharmaceutical products, must be made in writing in the official language of the SAR indicating the name and corporate style of the applicant, his/its nationality, domicile, and location, and be accompanied by following items: (1) patent number, (2) title of invention protected by that patent; (3) number and date of first authorization to place product on the market in Macao.<sup>1</sup> Duration of the complementary certificate may not exceed by more than 7 years the term of the patent in respect of which it is granted.<sup>2</sup>

### § 32:100 European patents

An applicant for a European patent, or a holder of a European patent processed according to rules of European Patent Convention, signed in Munich on October 5, 1963, may request an extension of the patent application to Macao.<sup>1</sup> The DES publishes an extension application in the Official Bulletin as soon as it is received from the European Patent Office, but never until 18 months have elapsed from the date the patent request was filed or, if priority right is invoked, from the date of the first relevant application.<sup>2</sup>

Regularly formulated European patent applications in the SAR have the same legal effect as Macao patent applications, including with respect to priority rights.<sup>3</sup> European patents are guaranteed temporary protection foreseen in Article 7 from the date the DES makes accessible to the public a translation of the respective claims in one of the official languages of the SAR, accompanied by a copy of rel-

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<sup>3</sup>Art. 121.1.

<sup>4</sup>Art. 122.

#### [Section 32:99]

<sup>1</sup>Art. 125.1.

<sup>2</sup>Art. 127.

#### [Section 32:100]

<sup>1</sup>Art. 129.1.

<sup>2</sup>Art. 129.2.

<sup>3</sup>Art. 130.1.



evant drawings.<sup>4</sup> European patents extended to Macao have the same legal effect as patents granted in Macao starting from the date of granting by the European Patent Office, provided that all formalities foreseen in the law are observed.<sup>5</sup> Within 3 months following the publication of notice of granting of a patent in the European Patent Bulletin, a patent-holder provides the DES with a translation, in one of the official languages of the SAR, of the title (short title briefly describing the subject matter of the invention), a description of the subject matter of the invention and claims, as well as pay the related fee for publication in the Official Bulletin.<sup>6</sup> If an applicant who is a holder of a European patent has neither domicile nor registered office in Macao, the translations of texts must be done under the guidance / responsibility of an authorized, accredited, official agent, who is registered with the DES.<sup>7</sup>

A Macao patentable subject for which a European patent has already been granted to the same inventor, or with his consent, with the same date of filing or priority, ceases to have effect as from the date on which the time limit for filing oppositions against the European patent expires, provided no opposition has been filed.<sup>8</sup>

### § 32:101 Semiconductor topography products

Under present Statute only topographies of semiconductor products resulting from the intellectual effort of their creator, not otherwise known in the semiconductors industry can be protected by the granting of a topography registration certificate.<sup>1</sup> Likewise, topographies that comprise elements known in the semiconductor industry, or a combination of whose elements taken together meet conditions envisaged in a previous sub-paragraph of the law also enjoy legal protection.<sup>2</sup> Protection covers only configuration of electronic circuits, to the exclusion of any idea, process, system, technique, or codified information incorporated into the topography.<sup>3</sup>

For purposes of protection conferred by the present Statute, a semiconductor product is understood as being a final or intermediate form of any product that consists of a material body that includes a layer of semiconductor material; possesses one or more layers

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<sup>4</sup>Art. 130.2.

<sup>5</sup>Art. 131.1.

<sup>6</sup>Art. 131.2.

<sup>7</sup>Art. 132.1.

<sup>8</sup>Art. 133.1.

#### [Section 32:101]

<sup>1</sup>Art. 136.1.

<sup>2</sup>Art. 136.2.

<sup>3</sup>Art. 136.3.



composed of conductive, insulating, semiconducting material, layers being disposed in accordance with a predetermined three-dimensional model; and is designed to carry out electronic functions either alone or together with other functions.<sup>4</sup> Topography of semiconductor products is a group of related images, either fixed or codified, and represented by a three-dimensional layout of layers of which product is composed, in which each image has a layout or part of a layout of surface of the same product, in any phase of its manufacture.<sup>5</sup> The right to register a semiconductor product topography cannot be exercised if 2 years have already elapsed since the first commercial exploitation of the topography anywhere; or, if it was never exploited, 15 years have already elapsed since the topography was fixed or codified for first time.<sup>6</sup>

### C. TRADEMARKS

#### § 32:102 In general

The present Statute affords protection as a trademark only to signs or groups of signs which are capable of being represented graphically; namely words, including personal names, designs, letters, numerals, sounds, and shapes of a product or its packaging, which are capable of distinguishing such products or services of one company from those of other companies.<sup>1</sup> Wording contained in trademarks may be written in Portuguese, Chinese, or English, and may combine elements of these different languages.<sup>2</sup> Trademarks of products destined solely for export can be written in any language, but their use in Macao determines when they lapse.<sup>3</sup> The compulsory nature of the use of Portuguese, Chinese, and/or English does not apply to applications for registration of international marks, under the terms of respective regulation, nor to marks whose applicant is not domiciled, headquartered, or established in Macao SAR.<sup>4</sup>

Protection may not be afforded the following:

- (1) signs that consist exclusively in shape resulting from the nature of the product itself or the shape of product necessary for obtaining a technical result, or a shape that gives the product its own substantial value;
- (2) signs or indications that may be used commercially to designate kind, quality, quantity, purpose, value, geographical origin,

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<sup>4</sup>Art. 137.

<sup>5</sup>Art. 138.

<sup>6</sup>Art. 139.

#### [Section 32:102]

<sup>1</sup>Art. 197.

<sup>2</sup>Art. 198.1.

<sup>3</sup>Art. 198.2.

<sup>4</sup>Art. 198.3.

time of production of product, of rendering of service, or other characteristics thereof;

- (3) signs or indications that have become generic in the current language, in *bona fide*, established commercial practices;
- (4) colours, except where they are combined together, used with graphics, wording, or other elements in a particular, distinctive manner.<sup>5</sup>

Notwithstanding these provisions of the law, trademarks may be protected as a collective trademark, according to conditions pertaining to association marks and certification marks.<sup>6</sup> Registration of a collective trademark gives its holder the right to control marketing of respective products and services, on terms stipulated by law, in statutes.<sup>7</sup>

For purpose of the present Statute, the following definitions apply:

An “association mark” is a specific sign belonging to an association of individuals and/or bodies corporate, whose members use or have intention of using the sign for products or services. A “certification mark” is a specific sign belonging to a corporate entity that controls products or services, and establishes regulations with which they must comply, that is to be used on products or services subjected to that control, for which regulations were established.<sup>8</sup>

### § 32:103 Right to register a trademark

Anyone using a free, unregistered trademark for a period not exceeding 6 months shall, for that period, enjoy priority right to have it registered, and may lodge a complaint against an application filed by somebody else during said period.<sup>1</sup> Documents submitted to prove the veracity of the priority right are freely accepted, except if such documents are legally authenticated documents.<sup>2</sup> The right to register a collective mark lies with bodies corporate which have been legally allocated, recognized as possessing a certification mark, and which can apply it to products or services having certain specific qualities; as well as bodies corporate which protect, control, and/or certify economic activities, for identifying products of those activities, or which originate from certain regions, in accordance with their purposes and terms of their respective articles of association.<sup>3</sup>

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<sup>5</sup>Art. 199.1.

<sup>6</sup>Art. 200.1.

<sup>7</sup>Art. 200.2.

<sup>8</sup>Art. 200.3.

#### [Section 32:103]

<sup>1</sup>Art. 202.1.

<sup>2</sup>Art. 202.2.

<sup>3</sup>Art. 203.1.

**§ 32:104 Trademark registration procedure**

No more than one registration may be filed in the same application, and each trademark to be used on the same products or services can be registered only once.<sup>1</sup> A trademark registration application is filed in writing in one of the official languages of the SAR, indicating the name and commercial style of the applicant, his/its nationality, domicile, location, and identifying the trademark whose registration is required. An application is accompanied by the following items, in triplicate:

- (1) list of the products or services covered by the trademark, grouped in accordance with the classes of goods, designated in precise terms (preferably terms appearing in aforementioned alphabetical classification);
- (2) indication as to whether the application concerns a product, service, association, or certification mark; and
- (3) indication as to whether the application concerns a three-dimensional or sound mark (in the latter case, include a graphic representation in musical notation of the sounds that enter into composition of the trademark); and
- (4) an example of the trademark, appended in the area reserved for that purpose on applicant's own printed paper.<sup>2</sup>

Once DES has received an application, it shall, within 1 month, proceed to its formal examination to ensure that it contains all necessary elements pursuant to Articles 206 and 207, and the proper classification of products and services.<sup>3</sup> Once an application has been shown to be complete, or after it has been duly rectified pursuant to the law, DES publishes an appropriate notice in the Official Bulletin, indicating the elements necessary for complete identification of the applicant and the subject matter of the application.<sup>4</sup> Complaints are filed within 2 months of the date of publication of the application in Official Bulletin.<sup>5</sup>

Registration of a trademark may be refused if any of the general grounds for refusal are found pursuant to Article 9(1) of the law. These grounds for refusal include when an essential part of the trademark constitutes the reproduction, imitation, or translation of another that is well-known in Macao, if it is applied to identical or similar products or services with which it can be confused, if those products could establish a connection with the proprietor of the well-

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**[Section 32:104]**

<sup>1</sup>Art. 204.

<sup>2</sup>Art. 206.

<sup>3</sup>Art. 209.1.

<sup>4</sup>Art. 210.

<sup>5</sup>Art. 211.1.

known trademark. Additionally, registration will be refused if the trademark constitutes the reproduction, imitation, or translation of a previous trademark that enjoys prestige in Macao, although it may be meant for products or services with no connection thereto, whenever use of the subsequent trademark tries to derive an improper advantage from the prestige or distinctive character of the prior trademark, or could harm such character or prestige.<sup>6</sup> Signs that constitute a breach of copyrights or other industrial property rights also may not be registered as trademarks.<sup>7</sup>

### § 32:105 Effects of registration of trademark

Registration of a trademark implies mere legal presumption of innovation and of distinction from another previously registered.<sup>1</sup> Duration of a registration is 7 years counted from the date of the respective granting, and is indefinitely renewable for like periods.<sup>2</sup> A renewal application must be submitted within the last 6 months of the current validity period, accompanied by the original registration certificate.<sup>3</sup>

Registration of a trademark confers upon the registrant the right to prevent a third party, in his economic activity and without the consent of the registrant, from using any sign identical to, or likely to be confused with, that trademark for products services identical or similar to those for which that trademark was registered, which would risk confusion in the minds of consumers (including a risk of association between the sign and registrant's trademark).<sup>4</sup>

### § 32:106 Use of a trademark

When affixed to a product in any way, a certification mark is complemented, if necessary, by an indication that it does not apply to all phases of the manufacturing process.<sup>1</sup> Assignment of an establishment presupposes the assignment of the registration application and ownership of the trademark, unless otherwise stipulated.<sup>2</sup>

### § 32:107 Trade names / emblems of establishments

Protection under the present Statute, by means of title to a name

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<sup>6</sup>Art. 214.1.

<sup>7</sup>Art. 214.2.

#### [Section 32:105]

<sup>1</sup>Art. 217.

<sup>2</sup>Art. 218.1.

<sup>3</sup>Art. 218.2.

<sup>4</sup>Art. 219.1.

#### [Section 32:106]

<sup>1</sup>Art. 226.

<sup>2</sup>Art. 227.1.

and/or emblem of an establishment, can be conferred only on distinctive signs of an establishment wherein business is conducted in accordance with provisions of the law.<sup>1</sup> For purposes of the present law, an “establishment emblem” is deemed to be any external sign composed of illustrations or drawings, alone or combined with the name of establishment or other words and mottoes.<sup>2</sup>

A respective registration will not be hindered by the fact that a requested name or emblem contains any fanciful or specific designations, historical names (with the exception of those the use of which would be detrimental or offensive to the esteem in which such names are generally held), name of the property or premises of the establishment (when such is admissible and accompanied by a distinctive element), name and distinctive elements of the company name, pseudonym, or nicknames of the proprietor, or the branch of activity of the establishment (provided that it is accompanied by distinctive elements).<sup>3</sup>

The following may not form a part of the name or emblem of an establishment:

- (1) names, designations, illustrations, or drawings that are reproductions or imitations of names and emblems of establishments already registered by somebody else;
- (2) words or phrases in a foreign language other than simple geographical designations, unless the establishment belongs to nationals of the respective country.<sup>4</sup>

### § 32:108 Right to trade name / emblem

Anyone with a legitimate interest, including farmers, livestock-breeders, industrialists, merchants, and other entrepreneurs, domiciled and/or established in SAR, is entitled to adopt a trade name or emblem to designate their establishment and publicize it pursuant to terms of the law.<sup>1</sup>

### § 32:109 Registration of trade name / emblem of establishment

An application to register a trade name or emblem of establishment is submitted in writing in one of the official languages of the Macao

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#### [Section 32:107]

<sup>1</sup>Art. 233.

<sup>2</sup>Art. 234.1.

<sup>3</sup>Art. 236.

<sup>4</sup>Art. 237.1.

#### [Section 32:108]

<sup>1</sup>Art. 238.

SAR, indicating the name and corporate style of the applicant, his/its nationality, domicile and place of establishment, and identifying the trade name and/or emblem whose registration is requested.<sup>1</sup> The registration application should further include a document proving that the applicant actually owns the establishment, as well as the industrial or administrative license therefor or some identical type of document, a property registration certificate, or other documentary proof in case of Article 236(c), unless there is just reason preventing presentation of that document. The application should also include a declaration by the applicant that there does not exist any previous registration of a trade name or emblem for that same establishment.<sup>2</sup>

### § 32:110 Use of trade name / emblem

During the term of registration, the proprietor of a trade name or emblem is entitled to add thereto a designation “*Nome registado*” (Registered Name), “*Insignia registada*” (Registered Emblem), simply “NR” or “LR,” in Portuguese, or the equivalent expression in Chinese.<sup>1</sup>

### § 32:111 Designation of origin and geographical indications

Under current law, only the following can be protected by a designation of origin:

- (1) the name of a region, specific locality, country, or territory that is used to designate or identify a product originating therefrom, whose quality and characteristics are essentially or exclusively due to the geographical environment, including natural and human factors, whose production, transformation, and creation are conducted in the demarcated geographical area;
- (2) certain traditional designations, whether or not geographical, which designate a product originating from a region or specific locality, that satisfy certain conditions outlined in the law.<sup>1</sup>

Under current law, a geographical indication can be protected when such is used to designate and/or to identify a product originating from that region, specific locality, country, or territory, whose reputation, specific quality, or other characteristic(s) can be attributed to that

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#### [Section 32:109]

<sup>1</sup>Art. 239.1.

<sup>2</sup>Art. 240.1.

#### [Section 32:110]

<sup>1</sup>Art. 248.

#### [Section 32:111]

<sup>1</sup>Art. 254.1.

geographical origin or whose production and/or transformation and/or creation is conducted within the demarcated geographical area.<sup>2</sup>

Designations of origin and geographical indications, when registered, constitute the common property of residents and persons who are actually established in the region in question, and may be used indiscriminately by persons who, in that region, exploit any characteristic area of production when duly authorized by the holder of the registration to do so.<sup>3</sup> Exercise of this right does not depend on the extent of exploitation nor on the nature of the products. Designations of origin and geographical indications consequently apply to any products characteristic of, or originating from, a given locality, region, or territory, provided that demarcations, as well as other traditional and properly regulated conditions are observed.<sup>4</sup>

An application for registration of a designation of origin or geographical indication is filed, in writing, in one of the official languages of the Macao SAR, indicating the name of the individuals or bodies corporate, public or private, who are entitled to acquire registration, and should be accompanied by the following information:

- (1) name of product(s) on which it is intended to use the designation of origin or geographical indication;
- (2) the traditionally regulated conditions for use of the designation of origin or geographical indication;
- (3) any limits with respect to the locality or region.<sup>5</sup>

Registration of a designation of origin or a geographical indication confers the right to prevent use of the same by any third party, in designation or presentation of a product, and of any means that indicates or suggests that a product in question originates from a geographical area different from the true place of origin, as well as any use that constitutes an act of unfair competition, within the terms of article 10*bis* of the Paris Convention, in its Stockholm revision of July 14, 1967. Additionally, use by anyone who is not authorized by the holder of the registration is prohibited.<sup>6</sup>

### § 32:112 Further guidance

For further guidance on registration of marks in the Macao SAR, see the *Registration Guide of Trademarks in Macao*: [http://www.economia.gov.mo/servlet/ShowContent/cms/APG/IP\\_\\_AP/DSE4001A?locale=en\\_US](http://www.economia.gov.mo/servlet/ShowContent/cms/APG/IP__AP/DSE4001A?locale=en_US).

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<sup>2</sup>Art. 254.2.

<sup>3</sup>Art. 254.3.

<sup>4</sup>Art. 254.4.

<sup>5</sup>Art. 255.1.

<sup>6</sup>Art. 259.1.



## XII. ELECTRONIC COMMERCE

### § 32:113 Electronic documents and electronic signatures

An electronic document is the result of electronic processing of relevant data for the purpose of representing or showing people, things or facts. An electronic signature is a group of electronic data that is in combination with, or in logical relation to, an electronic document and used as a method for identifying an adult's identity.<sup>1</sup>

The legal effect of documents submitted via electronic media shall not be denied due to their form. The electronic document that can be represented as complete in its written form meets with the legal requirements for written form.<sup>2</sup>

If an electronic document is shown in its written meaning with an eligible electronic signature affixed, it indicates that it has the complete power of proof of meaning, but it will not influence a dispute on the falsification of the document. An electronic document that cannot be shown in its written meaning, but with an eligible electronic signature affixed, has the power of a mechanic copy.<sup>3</sup>

Affixing an eligible electronic signature is the equivalent of a handwritten signature and the following facts can be deduced:

- (1) the person who signs the eligible electronic signature is the signature holder and shall act pursuant to the qualification and power stated in the certificate;
- (2) an eligible electronic signature for signing the electronic document was affixed;
- (3) there is no visible signs of amendment to the contents of the electronic document; and
- (4) the eligible electronic signature affixed may replace the seal, stamp, indicia or other identifiable marks of the holder or the person it represents.<sup>4</sup>

An electronic document sent via information media shall be considered as still in the sender's hand prior to its receipt by the receiver. An electronic document transmitted via information media will be considered as received by the receiver once it enters into the email address confirmed by the interested parties or appointed by the receiver.

Unless otherwise provided or agreed upon, or unless appointed in the certificate, the electronic document transmitted via information media shall be viewed as: having been sent or received from the resi-

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[Section 32:113]

<sup>1</sup>Arts. 2.1 and 2.2.

<sup>2</sup>Art. 3.

<sup>3</sup>Art. 4.

<sup>4</sup>Art. 5.

dence of the sender or receiver respectively, or, if the sender or receiver is an enterprise owner, sent or received from the location where the enterprise is located.<sup>5</sup>

Receipt confirmation may be requested or negotiated by the sender with the receiver prior to, or when, the electronic document is sent. Receipt confirmation shall be subject to the terms and conditions requested or negotiated, or by the receiver by any means. Without the aforesaid confirmation, the file will be considered not sent.<sup>6</sup>

Certificates will be considered eligible certificates if issued by a recognized certification body and comprise the following items:

- (1) an indication of eligibility;
- (2) identity information, such as the senior electronic signature and address of the certification body that issues the certificate;
- (3) the name of the certificate holder and other information necessary for identifying his identity;
- (4) data necessary for verifying the signature;
- (5) starting and ending dates of the validity of the certificate;
- (6) certificate identification number;
- (7) an explanation of restriction of use of the certificate; and
- (8) limitation of the responsibilities of the certification body.<sup>7</sup>

The holder of an eligible electronic signature should be responsible for adopting proper measures to keep confidential the data needed for producing the signature so as to avoid injury to third parties, and request invalidating the certificate once he doubts (or confirms) that such data is unencrypted.<sup>8</sup>

The approved certification body should be equipped with an electronic document validity time recording system, which may offer services to the public and shall be approved by the proper authority, especially of its security, reliability and suitability. The parties concerned may use the time and date stated in the valid time recording statement issued by the approved certification body against each other or against a third party.<sup>9</sup>

The approved certification body may only request and collect information necessary for business use and shall obtain such information directly from the interested party or his approved representative. The personal information collected by the approved certification body must

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<sup>5</sup>Art. 6.

<sup>6</sup>Art. 8.

<sup>7</sup>Art. 9.

<sup>8</sup>Art. 11.

<sup>9</sup>Art. 23.

not be used for purposes that are not related to certification, except with the express consent by law of the interested parties.<sup>10</sup>

The approved certification body shall bear civil liability for all damages caused due to its default in performing its obligations during its operation of the certification business, unless proven to be due to unintentional act or negligence. The approved certification body will not be liable for damages caused due to abuse of a signature, provided that said body shall clearly state the restrictions for use of the signature in the certification for the third person to read easily.<sup>11</sup>

#### § 32:114 Internet service provider<sup>1</sup>

An internet service provider must obtain a license pursuant to law.<sup>2</sup> Only those bodies meeting the following requirements are eligible to be licensed internet service providers:

- (1) a company duly established in the Macao SAR, with its business scope including the provision of internet service;
- (2) having the technical ability and experience suitable for performing obligations relating to the license to be obtained, especially a professional team necessary for operation of said business;
- (3) having suitable economic and financial ability; and
- (4) having the latest and proper accounting information necessary for analyzing the development program.<sup>3</sup>

The license applicant shall submit its application to the executive officer. The application must be signed by a person who has the power to bind the applicant, and the identity of the signature person must be notarized. The application must be accompanied with the following documents:

- (1) certification that the applicant meets with the above requirements in Article 4;
- (2) a description of the technical program that provides detailed proposal for the service operation, including, in particular, configuration and connection method and required equipment of the technical system to be used, and the system and service development program;
- (3) a description of the economic and financial program, including the rate of charges to be employed;
- (4) the organizational structure of the applicant, including the

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<sup>10</sup>Art. 24.

<sup>11</sup>Art. 28.

#### [Section 32:114]

<sup>1</sup>In general, see Administrative Regulation No. 24/2002, available at [http://bo.io.gov.mo/bo/i/2002/44/regadm24\\_cn.asp](http://bo.io.gov.mo/bo/i/2002/44/regadm24_cn.asp).

<sup>2</sup>Art. 2.

<sup>3</sup>Art. 4.

identity information and a copy of the resume of the principally responsible person, and the audit reports on accounts of the recent three business years, if available; and

- (5) other information that the applicant deems as important for the review.

If the application is submitted in the name of a company yet to be established and the application is approved, the license will not be issued until the certification documents of the commercial registration of said company are submitted.<sup>4</sup>

The Telecommunication and Information Technology Development Office will conduct analysis and give opinions on the license application.<sup>5</sup> The Director of the Ministry of Transportation Industrial Affairs will decide whether to issue the license, which decision shall be made within 90 days of receipt of the application.<sup>6</sup> The validity of the license is 5 years at most, and must be renewed by no later 5 years. The internet service provider must file the application for renewal of its license within 90 days prior to the expiry date of its license.<sup>7</sup>

The license may be transferred, with or without compensation, to another body that meets with the requirements set forth in Article 4 of the law, with the prior approval of the Director of the Ministry of Transportation Industrial Affairs.<sup>8</sup>

The internet service provider shall open its business within no more than 1 year after the date of issuance of the license.<sup>9</sup> The internet service provider has the rights to connect to a public telecommunication network, including a foundation telecommunication network, pursuant to applicable regulations and technical rules; to choose, at his discretion, licensed foreign telecommunication infrastructure operators pursuant to law; and to set at his discretion the prices of the services rendered.<sup>10</sup> The internet service provider has the obligations to take all necessary measures to ensure non-infringement and confidentiality of the communication when rendering service, to protect personal information and privacy; to maintain the non-infringement of the network and information system; to maintain human power, technology and financial resources sufficient for rendering the licensed services in Macao SAR; to keep developing its business to meet with the market demand; to explain all information necessary for telecom-

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<sup>4</sup>Art. 5.

<sup>5</sup>Art. 6.

<sup>6</sup>Art. 7.

<sup>7</sup>Art. 8.

<sup>8</sup>Art. 12.

<sup>9</sup>Art. 13.

<sup>10</sup>Art. 17.

munication supervision and provide duly authorized inspectors with access to all its facilities; to timely pay fees for the license granted; and to comply with technical standards that are commonly used in the world for providing internet services.<sup>11</sup>

The internet service provider must not restrict or suspend operation of its system or provision of its services without the prior permission of the government, and should immediately notify the government of the needs to restrict or suspend its provision of services due to any computer virus or illegal invasion to its network or services that is anticipated to bring serious harm to its users.<sup>12</sup>

The internet service provider must provide services in a non-bundle way, and must not require its users to enter into a contract on another service or product in order to obtain one of its main services or products.<sup>13</sup>

### XIII. GAMING IN MACAO

#### § 32:115 In general

“Casino” means a premises permitted and appointed to conduct such type of gambling business by the Macao Government. “Lucky gaming” means gaming with no certain result but based purely or mainly on the luck of the player. “Interactive gaming” means lucky gaming by means of telecommunication tools such as a telephone, facsimile, or internet, with cash or other valuable payment. “Public gaming activities” means gaming activities to be won merely by luck, such as a lottery, bingo, or lucky drawing. “Gaming agent” means a promoter of lucky gaming in a casino, who provides various convenience to a game player, with regard to transportation, boarding, food or entertainment, and who earns commissions or other remuneration from a contractor.<sup>1</sup>

The Gaming Inspection and Coordination Bureau (hereafter called as the DICJ<sup>2</sup>), provides guidance and assistance to the Chief Executive of Macao SAR on the definition and execution of the economic policies for the operation of casino games of fortune or other ways of gaming, Pari-Mutuels and gaming activities offered to the public.

Illegal gaming are given criminal penalties pursuant to special laws.<sup>3</sup> The following forms of lucky gaming are permitted to be operated in a casino:

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<sup>11</sup>Art. 19.

<sup>12</sup>Art. 20.

<sup>13</sup>Art. 22.

#### [Section 32:115]

<sup>1</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 2.

<sup>2</sup>See <http://www.dicj.gov.mo>.

<sup>3</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 1.

- (1) Baccarat,
- (2) Blackjack,
- (3) Roulette,
- (4) Craps,
- (5) Pai Gow,
- (6) Poker, etc.<sup>4</sup>

No form of interactive gaming is allowed for a contractor of a casino lucky gaming business. Interactive lucky gaming business will be approved independent to that of casino lucky gaming.<sup>5</sup> Casino lucky gaming businesses are restricted to premises permitted by the government. The Chief Executive Officer may approve, within a specified period, handling of any form of lucking gaming at ship or aircraft registered in Macao, when it is outside Macao and in the course of benefit to tourism.<sup>6</sup>

Macao is regarded as a continuous gaming region, where casinos are run all year long. A contractor may suspend casino operation for one or more days only under exceptional circumstances allowed by the government. Only under an emergency, such as serious accidents, disasters, Acts of God, etc., which poses a significant threat to personal life and safety can such governmental permission be exempted, in which case the relevant contractor should notify the government of the suspension of casino operations as soon as possible.<sup>7</sup> The right to management of a lucky gaming casino in Macao can only be given to approved joint-stock limited companies established in Macao, while relevant approval shall be executed pursuant to the provisions of law. Approval shall be given to operation of, at most, three casino lucky gaming businesses.<sup>8</sup>

Advance open bidding is required for approval of a casino lucky gaming business. Open bidding may be restricted by preliminary evaluated qualification.<sup>9</sup> Only a joint-stock limited company established in Macao with a scope of business restricted to operation of casino lucky gaming businesses, will be permitted to attend to bidding.

The Government is entitled, prior to giving approval, to order amendment to the Articles of Association of a joint-stock limited company, or to the Agreement of a quasi-company established by whole or partial stockholders. Those who do not amend the provisions in said Articles of Association or Agreement within the government-

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<sup>4</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 3.

<sup>5</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 4.

<sup>6</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 5.

<sup>7</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 6.

<sup>8</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 7.

<sup>9</sup>Legal Regulations on Casino Lucky Gaming Business, Art.8.

specified period will be considered a waiver of bidding. Each bidder shall provide a guaranteed bond for acceptance to bidding. Giving up bidding upon expiry of a period specified in the bidding acceptance form will result in the guaranteed bond being seized.<sup>10</sup>

The term of operation of a casino lucky gaming shall be provided in an approval contract, and be no more than 20 years. In case an approved term is shorter than the maximum term permitted by law, the Government may approve of one or several extensions in no later than 6 months prior to the expiry of said approved term, provided that such extension(s) will not exceed the longest term provided in the law. In case the approved term is up to the maximum term, the Chief Executive Officer may approve one or several extensions not exceeding 5 years in total.<sup>11</sup> Approval of the operation of a casino lucky gaming business will only be given to a bidder examined by the government to be qualified for obtaining approval. Fees to be paid by the bidder for qualification examination by the government will be deducted from the guaranteed bond for bidding. When making this determination, the Government will consider experience, business reputation, and financial ability of bidder and its associates.<sup>12</sup>

A contractor with corporate capital of less than Macao pataca 200 million, will not be permitted to engage in business operation. The contractor must show evidence that said corporate capital is paid in full in cash and provide relevant certification of deposit of the relevant amount in a credit organization in Macao. Such deposit shall be removed by the contractor prior to starting business operations.<sup>13</sup> A contractor's management power must be given to one managing director, who must be a permanent resident in Macao and in possession of at least 10% of corporate capital.<sup>14</sup>

Gaming agent activities must be conducted with a license, under the supervision of government. A gaming agent shall be registered at each contractor company for which he works.<sup>15</sup>

Contractors must pay a special gaming tax according to the net revenue of their gaming business. The special gaming tax rate is 35%, to be paid in 12 monthly payments each year.<sup>16</sup> A licensed company shall, in addition to paying the special tax on games of fortune, pay taxes, duties, expenses and handling charges as provided by law. For the public interest, the Chief Executive may temporarily or exception-

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<sup>10</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 10.

<sup>11</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 13.

<sup>12</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 14.

<sup>13</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 17.

<sup>14</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 19.

<sup>15</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 23.

<sup>16</sup>Legal Regulations on Casino Lucky Gaming Business, Art.27.



ally exempt a licensed company from paying supplementary taxes on income, in whole or in part.<sup>17</sup>

A contractor and its management company must, during the approval term, by April 30th of each year at the latest, publish the following information on *Communiqué of Macao SAR*, one Chinese newspaper and one Portuguese newspaper that have largest audience:

- (1) balance sheet, income statement and appendixes;
- (2) overall business report;
- (3) opinions of supervisor council;
- (4) general opinions by external auditor;
- (5) name list of major shareholders of 5% or more of corporate capital in the year and their respective proportion of shares; and
- (6) name of dominant person in company.<sup>18</sup>

The approval of operation of a casino lucky gaming business can only be cancelled by reason of expiry of the approved term, agreement between the government and the contractor, redemption, termination for default, or termination for public benefit.<sup>19</sup> Redemption means the withdrawal of approval of operations by the government prior to the expiry date of the contract. A contractor is entitled to receive compensation for redemption of approval.<sup>20</sup> The government may unilaterally remove approval of the operation of a casino lucky gaming operation for a contractor's nonperformance of laws or regulations, or default in major obligations set forth in contract.<sup>21</sup>

#### XIV. BUSINESS ORGANIZATIONS\*

##### § 32:116 Associations

The Basic Law provides all residents with freedom of association.<sup>1</sup>

##### § 32:117 Associations—Limited partnerships

A Limited partnership can be created as a simple limited partnership or, if participations of silent partners are represented by shares,

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<sup>17</sup>Legal Regulations of Casino Lucky Gaming Business, Art. 28.

<sup>18</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 31.

<sup>19</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 45.

<sup>20</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 46.

<sup>21</sup>Legal Regulations on Casino Lucky Gaming Business, Art. 47.

\*Amended by Code No. 16/2009 of Macao.

##### [Section 32:116]

<sup>1</sup>Art. 27.



as a partnership limited by shares.<sup>1</sup> Distinctive types of limited partnerships are a general partnership, which comprises general partners, and a silent partnership of funds.<sup>2</sup> Each silent partner is liable only for payment of his capital participation, but cannot contribute labor to the partnership. General partners are liable for the obligations of the partnership in the same manner as partners of a general partnership.<sup>3</sup>

Both private companies and public companies can be general partners.<sup>4</sup>

### § 32:118 Corporations—Civil liability of commercial entrepreneur

A producer commercial entrepreneur is liable, regardless of fault, for damages caused to third parties by defects of the products that he puts into commerce.<sup>1</sup> A “producer” is a manufacturer of a finished product, of a component part, or of a raw material, and includes whoever presents himself as such through apposition of his name, trademark or other distinctive sign to a product.<sup>2</sup>

The following are also considered specifically as producers:

- (1) anyone who, in exercise of his enterprise, imports products for sale, lease or financial lease or another form of distribution;
- (2) distributor of products whose Macao producer or importer is not identified, except if, after being notified in writing, he communicates to an injured party the identity of one or the other, of some preceding distributor, also in writing.<sup>3</sup>

Any movable good is considered to be a product, even if it is incorporated in another movable or immovable good.<sup>4</sup> A product is defective if, at the moment of its entry into commerce, it does not offer the safety that legitimately is to be expected, taking into account all circumstances, its presentation, characteristics, and use that reasonably can be made of it.<sup>5</sup> A commercial entrepreneur is not liable if he

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#### [Section 32:117]

<sup>1</sup>Art. 348.

<sup>2</sup>Art. 349.1.

<sup>3</sup>Art. 349.2.

<sup>4</sup>Art. 349.3.

#### [Section 32:118]

<sup>1</sup>Art. 85.1.

<sup>2</sup>Art. 85.2.

<sup>3</sup>Art. 85.3.

<sup>4</sup>Art. 86.1.

<sup>5</sup>Art. 87.1.

proves that he did not put said product into circulation.<sup>6</sup> Damage resulting from death or personal injury can be compensated. Damage to goods other than the defective product, provided that these are normally destined for private use or consumption, or which the injured party has mainly given them such destination can also be compensated.<sup>7</sup> The right to compensation is barred 3 years after date when the injured party gained or should have gained knowledge of the damage, of defect, and the identity of the entrepreneur.<sup>8</sup>

### § 32:119 Corporations—Commercial bookkeeping

A business entrepreneur shall have organized commercial bookkeeping that is prepared pursuant to the provisions of law, adequate to the enterprise itself, and informative of its transactions. The bookkeeping shall reflect the information relating to its financial condition and performance. Legalization of commercial entrepreneurs' books must be done by any duly authorized member of management or administration, secretary, by notary or by competent register.<sup>1</sup> The authentication of a business entrepreneur's electronic account books must go through the procedures provided for in supplementary legislation, which are capable of ensuring that no modifications can be made to the information recorded in the book of account.<sup>2</sup>

Entrepreneurs' commercial bookkeeping is confidential, except for special provisions described in the law and mentioned in the following sections.<sup>3</sup> A commercial entrepreneur is obliged to prepare annual accounting period accounts of his enterprise, within three months from the end of each accounting period, which comprise a balance sheet, profit, loss, account, and annex.<sup>4</sup>

### § 32:120 Corporations—Relations between shareholders and company

The nominal value of capital participation, paid in money or in kind, is in multiples of 100 patacas.<sup>1</sup> If made in money, its payment consists in delivery of an amount in patacas at least equal to the nominal value of participation; if in kind, in transfer to the company of

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<sup>6</sup>Art. 88.

<sup>7</sup>Art. 91.

<sup>8</sup>Art. 93.

#### [Section 32:119]

<sup>1</sup>Art. 41.1.

<sup>2</sup>Art. 41.6.

<sup>3</sup>Art. 52.1.

<sup>4</sup>Art. 54.1.

#### [Section 32:120]

<sup>1</sup>Art. 201.1.

goods susceptible to judicial seizure, valued at least equal to the nominal value of participation.<sup>2</sup> Goods with which capital participations in-kind are to be paid, must be identified, described, and appraised by means of a report to be prepared by an auditor or firm of auditors, which must be attached to the act of incorporation.<sup>3</sup>

If any shareholder has serious grounds to suspect gross irregularities in the activity of the company, he can request a court to conduct examination of the company to clarify the matter, indicating facts on which his suspicion is based regarding any irregularities.<sup>4</sup>

The dominant shareholder is an individual or collective person who, by himself or together with other companies of which he is also the dominant shareholder, with other shareholders to whom he is connected by agreements outside the company, retains a majority participation in the company capital, has more than half of votes, and has the power to elect the majority of members of the administration.<sup>5</sup> A dominant shareholder who, by himself or certain other persons, uses the power of domination to prejudice a company or other shareholders, is liable for damages caused to the former or the latter.<sup>6</sup>

### § 32:121 Corporations—Company organs

Organs of commercial companies are the general meeting, the administration, the company secretary, and the supervisory board or single supervisor.<sup>1</sup> Existence of a company secretary and of supervisory board or single supervisor, is compulsory in companies which are in any of the following situations:

- (1) those with 10 or more shareholders;
- (2) those which issue bonds;
- (3) those which have the form of public company;
- (4) those whose capital and the amounts or total revenues in its balance sheet exceed the maximum provided for in supplementary legislation.<sup>2</sup>

Besides matters specially attributed by law, shareholders have competence to pass resolutions on the following matters: election or removal of administration of supervisory organ; balance sheet, profit, loss account, report of administration concerning accounting period;

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<sup>2</sup>Art. 201.2.

<sup>3</sup>Art. 202.1.

<sup>4</sup>Art. 211.1.

<sup>5</sup>Art. 212.1.

<sup>6</sup>Art. 212.2.

#### [Section 32:121]

<sup>1</sup>Art. 214.1.

<sup>2</sup>Art. 214.2.

report, opinion of supervisory board or single supervisor; apportioning of results of accounting period; amendment of articles of association; increase or reduction of company capital; division, merger or transformation of company; dissolution of company; all matters which, in accordance with legal provisions and with the articles of association, do not fall within competence of other company organs.<sup>3</sup>

### § 32:122 Corporations—Administration

Any individual or collective person with full capacity can be an administrator.<sup>1</sup> If a collective person is appointed an administrator, it will nominate an individual to exercise the position on its behalf. A collective person is jointly and severally liable with the appointed person for acts of the latter.<sup>2</sup> The company secretary can be appointed, even if the company is not obliged to do so in accordance with paragraph 2 of Article 214.<sup>3</sup> Except for the first secretary, who must be appointed by shareholders immediately in the act of incorporation in accordance with subparagraph (f) of paragraph 3 of Article 179, a company secretary is appointed and dismissed by the administration, in the corporate minutes, chosen from amongst the administrators or any employees of the company. The function of the secretary can also be exercised by a lawyer hired by the company for this purpose.<sup>4</sup>

Pursuant to the provisions of the articles of association, the supervision of a company falls under the scope of authority of the Board of Supervisors which consists of three members, or of a single supervisor.<sup>5</sup> In order to perform obligations of a supervisory organ, the members of a supervisory board, jointly or separately, or a single supervisor, can obtain from the administration or the company secretary, if there is one, a presentation of books, records, and documents of the company for examination and verification.<sup>6</sup> Administrators are liable to the company for damage caused to it by acts or omissions practiced in breach of their duties arising from law and the articles of association, except if they prove that they acted without fault.<sup>7</sup>

### § 32:123 Corporations—Merger of companies

Two or more companies, even if they are of different types, can

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<sup>3</sup>Art. 216.

[Section 32:122]

<sup>1</sup>Art. 234.1.

<sup>2</sup>Art. 234.2.

<sup>3</sup>Art. 237.1.

<sup>4</sup>Art. 237.2.

<sup>5</sup>Art. 239.1.

<sup>6</sup>Art. 243.1[a].

<sup>7</sup>Art. 245.1.

merge into a single one.<sup>1</sup> Merger can be accomplished by the global transfer of patrimony of one or more companies to another one, attribution to shareholders of the former, shares in the latter; by creation of new company, to which patrimonies of merged companies are globally transferred, with shareholders of the latter being given parts or shares in the new company.<sup>2</sup> Upon absorption by one company of another of whose parts or shares the former is only a holder, the previous articles of association apply, with the exceptions mentioned in the following paragraphs.<sup>3</sup> A company is allowed to separate part of its patrimony in order to create a new company therewith, or to dissolve itself, dividing its patrimony with each of the resulting parts being used to create new companies.<sup>4</sup>

### § 32:124 Corporations—Liquidation

A company in liquidation continues to have a legal personality. Unless there is an express provision to the contrary, provisions that regulated it until dissolution continue to apply.<sup>1</sup> A company in liquidation keeps the same firm name, with addition of the expression ‘in liquidation’ (*em liquidação*).<sup>2</sup> Publication of the company acts, required by law and by articles of association, must be done in accordance with Art. 62.<sup>3</sup>

### § 32:125 Corporations—Limitation of actions

Claims of a company against its shareholders, administrators, members of the supervisory board, a single supervisor, company secretary, or liquidators, and their reciprocal claims against the company regarding obligation of payment of capital or supplementary payments, are barred 5 years from the start of delay. Claims related to willful or negligent conduct, are barred 5 years from its revelation if it has been hidden, or from the occurrence of damage, irrespective of whether damage has fully occurred, in relation to obligations to compensate a company. Claims related to any other obligation are

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#### [Section 32:123]

<sup>1</sup>Art. 272.1.

<sup>2</sup>Art. 272.2.

<sup>3</sup>Art. 291.1.

<sup>4</sup>Art. 293.1[a]–[b].

#### [Section 32:124]

<sup>1</sup>Art. 318.1.

<sup>2</sup>Art. 318.2.

<sup>3</sup>Art. 326.1.

barred 5 years from their maturity.<sup>1</sup> In a general partnership, each partner is subsidiarily liable to the partnership, jointly and severally with the other partners, for obligations arising from the partnership, even if these have occurred prior to the date when he joined.<sup>2</sup>

### § 32:126 Corporations—Private companies

Capital of a private company is broken down into shares, in which shareholders are jointly and severally liable for payment of all shares in accordance with provisions of Article 362.<sup>1</sup> Administrators are appointed in the acts of incorporation, elected by resolution of the shareholders.<sup>2</sup> If the articles of association do not provide to contrary, the term of office of the administrators is for an undetermined period of time.<sup>3</sup> If there is only one administrator, the company is bound by his acts done in its name, within the limits of his powers.<sup>4</sup> If the administration is made of two administrators, both have equal powers of administration, and the company is bound by the acts practiced by either of them in its name, within the limits of their powers, or those done jointly by both if the articles of association so provide.<sup>5</sup>

### § 32:127 Corporations—Public companies

Creation of a company through public subscription is initiated by one or more promoters, (being individuals or collective persons), who are jointly and severally liable for all the process until the registration of the company.<sup>1</sup> Promoters themselves subscribe to shares the nominal value of which must add up to at least 1,000,000 patacas, or 20% of capital, depending on which is higher. Such shares cannot be transferred or charged before the approval of the accounts of the third accounting period.<sup>2</sup> In companies created through public subscription, there can only be ordinary shares of a single category.<sup>3</sup> All promoters

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#### [Section 32:125]

<sup>1</sup>Art. 330.1.

<sup>2</sup>Art. 331.1.

#### [Section 32:126]

<sup>1</sup>Art. 356.1.

<sup>2</sup>Art. 384.1.

<sup>3</sup>Art. 384.2.

<sup>4</sup>Art. 386.1.

<sup>5</sup>Art. 386.2.

#### [Section 32:127]

<sup>1</sup>Art. 396.1.

<sup>2</sup>Art. 396.2.

<sup>3</sup>Art. 396.3.

of a company are personally, jointly and severally liable for the accuracy of factual elements mentioned in the project.<sup>4</sup>

For the purpose of registration, the acts of incorporation consist of the minutes of the incorporation meeting, including the respective list of attendance.<sup>5</sup> Subscription is public even if it is indirectly done by credit institutions authorized by law to intervene in such operations.<sup>6</sup> In such cases, intervening institutions subscribe to all capital reserved for public subscription, undertaking an obligation to offer shares at the public at price and on conditions mentioned in the project.<sup>7</sup>

### § 32:128 Corporations—Public companies—Relations of shareholders with the company

The articles of association can authorize a company to issue up to half of the company capital, as shares without the right to vote, which grants the right to priority dividend of no less than 5% of its nominal value (in accordance with paragraph 1 of Art. 408), to be defined in the resolution of issuance, as well as the right to priority reimbursement of its nominal value in distribution of the balance of liquidation.<sup>1</sup> From the profits of the accounting period, not less than 10% must be retained by a company as a legal reserve, until it reaches an amount equal to one-quarter of the company capital.<sup>2</sup>

Public companies can issue negotiable instruments designated as bonds, which, in a single issue, grant equal credit rights for the same nominal value.<sup>3</sup> Each bond issued is subject to registration, as is issuance of each series of bonds.<sup>4</sup> Bondholders have the right to interest on their respective bonds up to the moment of conversion, which, for this purpose, is always accounted for at the end of the quarter in which the conversion request is presented.<sup>5</sup>

Shareholders who have such capacity at the date of increase of capital by subscription of new shares payable in money, have a pre-emption right to the subscription of new shares, proportional to the number of shares that they hold.<sup>6</sup> A dominant shareholder who, by himself or by means of other companies of which he is also a dominant

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<sup>4</sup>Art. 398.1.

<sup>5</sup>Art. 405.

<sup>6</sup>Art. 406.1.

<sup>7</sup>Art. 406.2.

#### [Section 32:128]

<sup>1</sup>Art. 420.1.

<sup>2</sup>Art. 432.1.

<sup>3</sup>Art. 433.1.

<sup>4</sup>Art. 436.1.

<sup>5</sup>Art. 443.1.

<sup>6</sup>Art. 469.1.



shareholder, or with other shareholders to whom he is connected by agreements outside the company, uses power of domination which causes damage to the company, or to other shareholders in accordance with paragraph 3 of Article 212, is punishable with fine or up to 120 days incarceration.<sup>7</sup>

## XV. CIVIL ACTIONS AND PROCEDURES

### § 32:129 In general

Under the Basic Law, Macao has its own independent judicial system, with a high court. The Basic Law vests independent judicial power, including that of final adjudication, to the Court of Final Appeal.<sup>1</sup> Courts exercise judicial power independently, and are not subject to any interference.<sup>2</sup> Macao courts have jurisdiction over all cases in their region, with the exception of acts of state, such as defense and foreign affairs.<sup>3</sup>

The primary court has general jurisdiction at first instance, including the Criminal Instruction Court.<sup>4</sup> The Administrative Court has jurisdiction at first instance in administrative disputes, and the Court of Second Instance and the Court of Final Appeal are also established in Macao.

Judges are selected by a committee appointed by the Chief Executive. The Committee recommended 24 judges who were appointed by the first Chief Executive, Mr. Edmund Ho. Judges are appointed by the Chief Executive on recommendation of the independent commission composed of local judges, lawyers and eminent persons.<sup>5</sup> Judges are chosen based on professional qualifications.<sup>6</sup> Judges of foreign nationality may be employed if qualified.<sup>7</sup>

Decisions for removal of a judge for the inability to discharge job functions and for inappropriate behavior, are made by the Chief Executive on the recommendation of a tribunal appointed by the President of the Court of Final Appeal which consist of not fewer than three lo-

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<sup>7</sup>Art. 475.1.

**[Section 32:129]**

<sup>1</sup>Art. 84.

<sup>2</sup>Arts. 19, 83.

<sup>3</sup>Art. 13.

<sup>4</sup>Arts. 10, 27 to 54.

<sup>5</sup>Art. 87.

<sup>6</sup>Art. 87.

<sup>7</sup>Art. 87.



cal judges.<sup>8</sup> Appointment and removal of judges on the Court of Final Appeal must be reported to the National People's Congress.<sup>9</sup>

Judges exercise judicial power in accordance with the law, except in cases relating to foreign affairs or defense.<sup>10</sup> While discharging judicial functions, the judges are immune from legal action.<sup>11</sup> A judge may not concurrently assume other public or private posts, or any post in organizations of a political nature.<sup>12</sup>

Procurators exercise procuratorial functions vested by law, independently, and free from any interference.<sup>13</sup> The office of Procurator-General is reserved for a Chinese citizen who permanently resides in Macao, is nominated by the Chief Executive, and appointed by the Central Government.<sup>14</sup>

### § 32:130 Jurisdiction of the courts

Under the Civil Procedure Law, jurisdiction shall be confirmed when the litigation is filed.<sup>1</sup>

The Macao court has jurisdiction where the cause of action or any fact that consists of the cause of action takes place in Macao; and where the defendant is not a Macao resident although the plaintiff is, and, as long as said defendant files the same suit at the court of the area where he resides, said plaintiff shall be sued locally. If a Macao plaintiff does not file a suit in the Macao court, it will be impossible to realize his relevant rights, and there should be some connection between the intended suit and people or things in Macao.<sup>2</sup>

The Macao court has jurisdiction over the following types of litigation:

- (1) claims for nonperformance or default in performing duties, or litigation filed for termination of a contract due to nonperformance of duties, as long as the relevant duties were to be performed in Macao or the defendant has residence in Macao;
- (2) litigation for strengthening, replacing, reducing or offsetting pledges, as long as the involved ship and aircraft was registered in Macao or involved other properties in Macao;

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<sup>8</sup>Art. 87.

<sup>9</sup>Art. 87.

<sup>10</sup>Art. 89.

<sup>11</sup>Art. 89.

<sup>12</sup>Art. 89.

<sup>13</sup>Art. 90.

<sup>14</sup>Art. 90.

#### [Section 32:130]

<sup>1</sup>Art.13.

<sup>2</sup>Art.15.

- (3) litigation filed for common sea damages suffered by the ships that deliver relevant goods to Macao ports;
- (4) litigation for ship collisions that take place within the Macao waters, and the owner of the ship that causes such accident resides in Macao, and the ship that causes the accident is registered in Macao or found in a Macao port;
- (5) litigation for dividing common properties, as long as the objects of litigation is in Macao; and
- (6) litigation for divorce, where the plaintiff has residence in Macao.<sup>3</sup>

The Macao court has exclusive jurisdiction over the following types of litigation: (a) litigation relating to property rights in immovables in Macao, and (b) litigation with an intent to declare bankruptcy or insolvency of a legal person who is residing in Macao.<sup>4</sup>

Enforcement based on a judgment of a court or arbitrator *not* located in Macao shall be conducted as an attached document to the file of the proceedings for review of said judgment or as a copy of said file, which shall be sent to the primary court that has jurisdiction.<sup>5</sup>

### § 32:131 Parties to a lawsuit

All those with legal personality have the capacity to be parties to a lawsuit.<sup>1</sup> Affiliates, agent offices, subsidiaries or representative offices may bring, or be brought to, an action in court, as long as the cause of action is related to their acts.<sup>2</sup>

An incapacitated person is not allowed to conduct litigation unless they do so with the assistance of their agent or curator, except for the acts personally conducted at their own free discretion. Similarly, minors may have their parents conduct litigation on their behalf, provided that a unanimous agreement has been obtained from the parents who file the litigation.<sup>3</sup> An incapacitated person should apply to the court of jurisdiction for appointment of an agent. In emergencies, the judge responsible for relevant cases may immediately appoint a special curator, who shall act as the agent is authorized to act during the course of litigation or enforcement of judgment. In case the plaintiff is an incapacitated person, the procurator shall appoint an

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<sup>3</sup>Art. 16.

<sup>4</sup>Art. 20.

<sup>5</sup>Art. 24.

#### [Section 32:131]

<sup>1</sup>Art. 39.

<sup>2</sup>Art. 41.

<sup>3</sup>Art. 44.

agent or a special curator upon his request. Where the defendant is an incapacitated person, the plaintiff shall make the application.<sup>4</sup>

In case a litigation agent is entrusted, the procurator will defend on his behalf. Therefore, the procurator must be summoned, and the defending period will resume. If the procurator acts on behalf of the plaintiff, then it should appoint a public agent for the person missing or the person who has no capacity.<sup>5</sup>

If two or more plaintiffs join to file different claims against one or several defendants for the same cause of action, or there is a predetermined or dependent relationship between the claims before the court, the plaintiff must sue against such several defendants with different claims.<sup>6</sup>

## XVI. RECOGNITION OF FOREIGN JUDGMENTS

### § 32:132 In general

A Judgment made by a court or arbitrator outside of Macao with respect to private rights, shall not become effective until it has been reviewed and recognized, except for those otherwise provided for by applicable international conventions with Macao, judicial assistance agreements or special laws.<sup>1</sup> It is not necessary to review said later judgment when it is invoked in a case pending in a Macao court but it is simply presented as a means of proof subject to the consideration of the person who should decide the case.

A judgment made by a local court outside of Macao must meet the following criteria in order to be recognized:

- (1) the authenticity of the document recording the relevant judgment, as well as the understanding of the judgment, are free of doubts;
- (2) the judgment has determined the law of the place of judgment;
- (3) the court making the judgment has legal jurisdiction with no fraud involved, and the judgment does not involve those matters over which the Macao courts have exclusive jurisdiction;
- (4) no counterplea can be made that the suit is already in court proceedings or the case has been clearly ruled upon, for the reason that the case has been heard by a Macao court, except that the court outside of Macao first made the judgment;
- (5) pursuant to the laws of the place of the court of the original trial, the defendant has been summoned as is required, and the

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<sup>4</sup>Art. 45.

<sup>5</sup>Art. 49.

<sup>6</sup>Art. 64.

#### [Section 32:132]

<sup>1</sup>Civil Procedure Code Art. 1199.1.

relevant litigation proceedings are in compliance with the doctrine of adversariality and the principle of equality between the parties; and

- (6) the relevant judgment does not include a decision which, once the judgment is recognized, will lead to a result that is clearly incompatible with public order.<sup>2</sup>

The applicable sections of the above provisions apply to arbitral awards as well.<sup>3</sup>

The trial shall follow the rule on which an original appeal is brought to the Intermediate Court.<sup>4</sup> As to judgments from the Intermediate Court, an ordinary appeal shall be brought to the Court of Last Resort pursuant to the general requirements established by law.<sup>5</sup>

## **XVII. ARBITRATION**

### **§ 32:133 Adoption of Arbitration Law of China**

Disputes related to Macao, or arising from economic or trade transactions of a contractual or non-contractual nature, may be arbitrated in accordance with the China International Economic and Trade Arbitration Commission (CIETAC) rules effective as from October 1, 2000.<sup>1</sup>

### **§ 32:134 Scope of arbitration**

Contractual and non-contractual disputes regarding economic and trade transactions arising from project financing, invitations to tender and bidding submissions, project construction, or other activities conducted by Chinese legal persons, physical persons and/or other economic organizations which utilize capital, technology or services from foreign countries, international organizations, and those from the Macao region, may resort to arbitration.<sup>1</sup> Disputes concerning marriage, adoption, guardianship, fosterage and inheritance and administrative disputes which should be handled by administrative agencies, must not resort to arbitration.<sup>2</sup>

Where parties intend to resort to arbitration, they must reach an agreement and submit a written application to the Arbitration Com-

<sup>2</sup>Art. 1200.1.

<sup>3</sup>Art. 1200.2.

<sup>4</sup>Art. 1203.3.

<sup>5</sup>Art. 1205.1.

#### **[Section 32:133]**

<sup>1</sup>Art. 2.

#### **[Section 32:134]**

<sup>1</sup>Art. 2.

<sup>2</sup>Art. 2.

mission for arbitration.<sup>3</sup> Where parties have reached an arbitration agreement and one of the parties requests the court to review and make a ruling, the court will make such ruling.<sup>4</sup> An arbitration clause contained in a contract should be regarded as existing independently and separately from the contract itself.<sup>5</sup> Validity of an arbitration agreement should not be affected by any modification, rescission, termination, expiration, invalidity, or nonexistence of a contract.<sup>6</sup>

If a party objects to an arbitration agreement and/or jurisdiction over an arbitration case, such objection should be raised before the first hearing conducted by the arbitration tribunal.<sup>7</sup> If the parties agree to submit a dispute to the Arbitration Commission, it will be taken that they have agreed to the case being arbitrated under the Commission's rules.<sup>8</sup> However, if the parties agreed otherwise, subject to the consent of the Arbitration Commission, parties' agreement will prevail.<sup>9</sup>

The Arbitration Commission has one chairman, and several advisers.<sup>10</sup> A panel of arbitrators is selected by the Arbitration Commission from among Chinese and foreign persons with professional knowledge, practical experience in the fields of law, economics, trade, science, etc.<sup>11</sup> Based in Beijing, the Arbitration Commission has a Shenzhen Sub-Commission in the Shenzhen Special Economic Zone, as well as a Shanghai Sub-Commission.<sup>12</sup> Parties may agree to have their dispute arbitrated in either Commission.<sup>13</sup>

### § 32:135 Arbitration proceedings

When a Notice of Arbitration is issued by the Arbitration Commission or its Sub-Commissions, arbitration proceedings will commence.<sup>1</sup> The claimant submitting an Application for Arbitration must do the following:

- (1) submit the Application for Arbitration in writing, which should contain the names and addresses of Claimant, Respondent, the

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<sup>3</sup>Art. 3.

<sup>4</sup>Art. 4.

<sup>5</sup>Art. 5.

<sup>6</sup>Art. 5.

<sup>7</sup>Art. 6.

<sup>8</sup>Art. 7.

<sup>9</sup>Art. 7.

<sup>10</sup>Art. 8.

<sup>11</sup>Art. 10.

<sup>12</sup>Art. 11.

<sup>13</sup>Art. 12.

#### [Section 32:135]

<sup>1</sup>Art. 13.

- arbitration agreement, facts of the case, main points of dispute, Claimant's claim, and facts on which claim is based;
- (2) attach relevant documentary evidence which supports facts; and
  - (3) pay the arbitration fee according to the fee schedule.<sup>2</sup>

Upon receipt of the Application for Arbitration and its attachments, the Arbitration Commission should promptly send the Respondent a Notice of Arbitration, together with one copy each of Claimant's Application for Arbitration.<sup>3</sup> The Claimant and Respondent have within 20 days as from date of receipt of the Notice of Arbitration, to appoint arbitrator from among a Panel of Arbitrators.<sup>4</sup> The Respondent has 45 days from date of receipt of the Notice of Arbitration to submit a written defense along with relevant documentary evidence to the Arbitration Commission.<sup>5</sup> Respondent must also, within 60 days from the date of receipt of the Notice of Arbitration, file with the Arbitration Commission any counterclaim in writing.<sup>6</sup> The arbitration tribunal may extend this time limit for justifiable reasons.<sup>7</sup> When filing a counterclaim, the Respondent must state specific claims, facts, and reasons upon which the claim is based, and attach relevant documentary evidence.<sup>8</sup>

A request to amend a claim or counterclaim may be denied if the arbitration tribunal considers the request has been raised too late, or may affect the progress of the proceedings.<sup>9</sup> When submitting an application for arbitration, a written defense, statement of counterclaim, documentary evidence, or other documents, parties should submit them in quintuplicate.<sup>10</sup> If the number of parties is more than two, additional copies should be provided accordingly.<sup>11</sup>

Parties may authorize arbitration agents to deal with matters relating to arbitration, although an authorized arbitration agent must produce a Power of Attorney to the Arbitration Commission.<sup>12</sup> If a party applies for property preservative measures, the Arbitration Commission should submit the party's application to a court for ruling in the place where the party against whom the property preservative

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<sup>2</sup>Art. 14.

<sup>3</sup>Art. 15.

<sup>4</sup>Art. 16.

<sup>5</sup>Art. 17.

<sup>6</sup>Art. 18.

<sup>7</sup>Art. 18.

<sup>8</sup>Art. 18.

<sup>9</sup>Art. 19.

<sup>10</sup>Art. 20.

<sup>11</sup>Art. 20.

<sup>12</sup>Art. 22.

measures are sought is domiciled, or in the place where property of said party is located.<sup>13</sup>

### § 32:136 Arbitration tribunal

Each party in an arbitration proceeding can appoint one arbitrator from among the Panel of Arbitrators, or entrust the Chairman of the Arbitration Commission to make such an appointment.<sup>1</sup> A third arbitrator should be jointly appointed by the parties, or appointed by the Chairman.<sup>2</sup> In case two parties fail to jointly appoint the third arbitrator, or fail to entrust the Chairman to appoint the same within 20 days from date on which the Respondent receives a Notice of Arbitration, then the third arbitrator will be appointed by Chairman.

The third arbitrator will act as the presiding arbitrator.<sup>3</sup> The presiding arbitrator and two appointed arbitrators will jointly form an arbitration tribunal to jointly hear the case.<sup>4</sup> If the parties wish, they may jointly appoint, or authorize the Chairman to appoint, a sole arbitrator to form the arbitration tribunal to hear case alone.<sup>5</sup> Where two or more Claimants and/or Respondents are involved, the Claimants' side and/or Respondents' side should appoint, or entrust the Chairman to appoint, one arbitrator from among a Panel.<sup>6</sup>

Any appointed arbitrator having a personal interest in a case should disclose such circumstances to the Arbitration Commission, and request to withdraw from office.<sup>7</sup> If a party has justified reasons to suspect a lack of impartiality or independence of an appointed arbitrator, a request may be submitted in writing for the arbitrator's withdrawal.<sup>8</sup> A challenge against an arbitrator must be in writing, and put forth no later than the first oral hearing.<sup>9</sup> Decisions to remove an arbitrator are decided by the Chairman of the Arbitration Commission.<sup>10</sup>

### § 32:137 Hearings

The arbitration tribunal will hold oral hearings. At the request of

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<sup>13</sup>Art. 23.

#### [Section 32:136]

<sup>1</sup>Art. 24.

<sup>2</sup>Art. 24.

<sup>3</sup>Art. 24.

<sup>4</sup>Art. 24.

<sup>5</sup>Art. 25.

<sup>6</sup>Art. 27.

<sup>7</sup>Art. 28.

<sup>8</sup>Art. 29.

<sup>9</sup>Art. 29.

<sup>10</sup>Art. 30.



the parties or with their consent, the arbitration tribunal may decide not to hold oral hearings and decide the case on the basis of documents only.<sup>1</sup> The date of the first hearing decided by the arbitration tribunal is in consultation with the Secretariat of the Arbitration Commission.<sup>2</sup> The Secretariat should notify the two parties of its decision 30 days before the date of the hearing. Any party having justified reasons to do so may request postponement of the hearing, but a written request must be submitted to the Arbitration Commission 12 days before the date of the hearing.<sup>3</sup> Notice of the date of hearings subsequent to the first hearing is not subject to the 30-day time limit.<sup>4</sup>

Where the parties agreed on a place of arbitration, the case should be arbitrated in that place.<sup>5</sup> Unless parties agree otherwise, cases accepted by the Arbitration Commission will be heard in Beijing.<sup>6</sup> For cases heard in closed sessions, parties, arbitration agents, witnesses, arbitrators, experts, and appraisers appointed by the arbitration tribunal should not disclose to outsiders substantive, or procedural matters of the case.<sup>7</sup>

The arbitration tribunal may, on its own initiative, undertake investigation and collect evidence as it considers necessary.<sup>8</sup> The arbitration tribunal may consult experts and appoint appraisers for clarification of specific issues relating to the case. It also has the power to order the parties to submit and produce any relevant materials, documents, properties, or goods for check-up, inspection and/or appraisal.<sup>9</sup>

Should one party fail to appear at the hearing, the arbitration tribunal may proceed with the hearing and make an award by default.<sup>10</sup> During the hearing, the arbitration tribunal may make record in writing and/or by tape recording.<sup>11</sup> If the parties make an amicable settlement agreement by themselves, they may either request to conclude the case by making an award in accordance with the contents of their amicable settlement agreement, or request dismissal of the

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**[Section 32:137]**

<sup>1</sup>Art. 32.

<sup>2</sup>Art. 33.

<sup>3</sup>Art. 33.

<sup>4</sup>Art. 34.

<sup>5</sup>Art. 35.

<sup>6</sup>Art. 36.

<sup>7</sup>Art. 37.

<sup>8</sup>Art. 38.

<sup>9</sup>Art. 39.

<sup>10</sup>Art. 42.

<sup>11</sup>Art. 43.



case altogether.<sup>12</sup> In cases where the parties reached amicable settlement outside the arbitration tribunal in the course of conciliation conducted by the arbitration tribunal, such settlement should be taken as one which has been reached through the arbitration tribunal's conciliation.<sup>13</sup> Parties should sign an arbitration agreement in writing when an amicable settlement is reached through conciliation conducted by the arbitration tribunal, and the arbitration tribunal will close the case by making an award in accordance with contents of the settlement agreement unless otherwise agreed to by the parties.<sup>14</sup>

Should conciliation fail, any statement, opinion, view, or proposal which has been made, raised, put forth, acknowledged, accepted, or rejected by either party, or by the arbitration tribunal in the process of conciliation, is not to be invoked as grounds for any claim, defense and/or counterclaim in subsequent arbitration proceedings.<sup>15</sup> A party who knows or should have known that any provision or requirement of these Rules has not been complied with, yet proceeds with arbitration proceedings without explicitly raising in writing objection to the non-compliance in a timely manner should be taken to have waived his right to object.<sup>16</sup>

#### § 32:138 Arbitration award

An arbitration tribunal should render the arbitral award within 9 months from the date on which the arbitration tribunal is formed. The Secretary-General of the Arbitration Commission may extend the time limit at the request of the arbitration tribunal if necessary, so long as the reason for extension is justified.<sup>1</sup> In making its arbitral award, the arbitration tribunal should consider facts in accordance with law, and terms of contracts with reference to international practices, in compliance with principle of fairness and reasonableness.<sup>2</sup>

Where the case is heard by an arbitration tribunal composed of three arbitrators, the arbitral award should be decided by a majority of arbitrators, although the minority opinion may be recorded and placed on file.<sup>3</sup> When an arbitration tribunal cannot attain a majority opinion, the arbitral award should be decided in accordance with the

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<sup>12</sup>Art. 44.

<sup>13</sup>Art. 48.

<sup>14</sup>Art. 49.

<sup>15</sup>Art. 50.

<sup>16</sup>Art. 51.

#### [Section 32:138]

<sup>1</sup>Art. 52.

<sup>2</sup>Art. 53.

<sup>3</sup>Art. 54.

presiding arbitrator's opinion.<sup>4</sup> The arbitration tribunal should state in the arbitral award claims, facts of dispute, and reasons on which the award is based, the result of the award, and allocation of arbitration costs, as well as the date and place on which the award is made.<sup>5</sup> Facts of dispute and reasons on which an arbitral award is based, may not be stated in the arbitral award if the parties have agreed not to state them.<sup>6</sup> Unless an arbitral award is made in accordance with the opinion of the presiding arbitrator or sole arbitrator, the arbitral award should be signed by the majority of arbitrators. An arbitrator who has a dissenting opinion may sign or not sign his name on the arbitral award.<sup>7</sup> A draft of the arbitral award should be submitted to the Arbitration Commission before the arbitrators sign said award.<sup>8</sup> The Arbitration Commission's stamp should be affixed to the arbitral award to give it legal effect.<sup>9</sup>

An interlocutory award, or partial award, may be made on any issue regarding the case at any time in the course of arbitration before the final award is made, if considered necessary by the arbitration tribunal, if the parties make such a proposal, and it is agreed to by the arbitration tribunal.<sup>10</sup> Expenses and other fees are to be paid by the parties as determined by the Arbitration Commission.<sup>11</sup> Furthermore, the arbitration tribunal has the power to decide in an arbitral award that the losing party should pay the winning party as compensation, a proportion of the expenses reasonably incurred by the winning party.<sup>12</sup> The amount of such compensation should not exceed 10% of the total amount of the award to the winning party.<sup>13</sup> An arbitral award is final and binds the disputing parties.<sup>14</sup> If anything claimed or counterclaimed is found omitted in the final arbitral award, either party may make a request in writing to the arbitration tribunal for an additional award within 30 days from date on which the arbitral award is received.<sup>15</sup>

### § 32:139 Execution of awards

Parties must automatically execute the arbitral award within the

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<sup>4</sup>Art. 54.

<sup>5</sup>Art. 55.

<sup>6</sup>Art. 55.

<sup>7</sup>Art. 56.

<sup>8</sup>Art. 56.

<sup>9</sup>Art. 56.

<sup>10</sup>Art. 57.

<sup>11</sup>Art. 58.

<sup>12</sup>Art. 59.

<sup>13</sup>Art. 59.

<sup>14</sup>Art. 60.

<sup>15</sup>Art. 62.

time limit specified in the arbitral award. If no time limit is specified in the arbitral award, then parties should carry out the arbitral award immediately.<sup>1</sup> In case one party fails to execute an arbitral award, the other party may apply to a competent court for enforcement of the arbitral award.<sup>2</sup>

### § 32:140 Supplementary provisions

Chinese is the official language of the Arbitration Commission. If parties agreed to use of a different language, their agreements should prevail.<sup>1</sup> At the hearing, if the parties and the arbitration agents require language interpretation, the Arbitration Commission may provide an interpreter for them, or the parties may bring their own interpreter.<sup>2</sup>

All arbitration documents, notices, and materials may be sent to the parties in person, by registered mail, express mail, telefax, telex or cable, or by any other means considered proper by the Secretariat of the Arbitration Commission.<sup>3</sup> Any written correspondence to the parties, or arbitration agents should be taken to have been properly served if delivered to the addressee, delivered at his place of business, or habitual residence mailing address.<sup>4</sup> If, after reasonable inquiries, none of the aforesaid addresses can be found, written correspondence is sent to the addressee's last known place of business, habitual residence, or mailing address by a registered letter or by any other means which provides a record of the attempt.<sup>5</sup>

## XVIII. BANKRUPTCY AND CREDITOR'S RIGHTS

### § 32:141 In general

Goods used by a foreign commercial entrepreneur's enterprise in Macao are only liable for the obligations contracted abroad after the payment of all obligations contracted in the exercise of the said enterprise in Macao. A decision of an outside authority that decrees the bankruptcy of a commercial entrepreneur from abroad shall only

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#### [Section 32:139]

<sup>1</sup>Art. 63.

<sup>2</sup>Art. 63.

#### [Section 32:140]

<sup>1</sup>Art. 85.

<sup>2</sup>Art. 85.

<sup>3</sup>Art 86.

<sup>4</sup>Art. 87.

<sup>5</sup>Art. 87.

apply to such goods after the fulfillment of the provisions of Macao bankruptcy law.<sup>1</sup>

If the bankruptcy of a company with only one shareholder is declared, whether or not the company holds parts of its own capital, the single shareholder is personally, jointly and severally liable for all the debts of the company if it is proven that the assets of the company were not exclusively used in the performance of the respective obligations.<sup>2</sup>

Companies are dissolved pursuant to the law, in the articles of association, and also by bankruptcy.<sup>3</sup> If the assets of the company are not sufficient for the payment of all of its debts, the liquidators shall file for bankruptcy of the company as soon as they realize this fact, unless the unlimited liability shareholders pay those debts.<sup>4</sup>

A partnership can exclude a partner under law and by the terms of the articles of association, and also in case of interdiction, inability, or declaration of bankruptcy or insolvency of the partner.<sup>5</sup> An economic interest grouping is dissolved under law, and also by bankruptcy.<sup>6</sup> The declaration of bankruptcy in relation to any of the contracting parties is considered as just cause for the rescission of a consortium contract.<sup>7</sup> An association is extinguished by the facts foreseen in the contract, and also by bankruptcy of the associating party.<sup>8</sup> Likewise, an agency contract lapses especially by the bankruptcy of the agent or of the principal.<sup>9</sup> Goods deposited in a general warehouse cannot be seized, apprehended, pledged, or charged in any other way, except in cases of loss of the warehouse receipt or of the pledge certificate, or litigation over succession rights, or bankruptcy.<sup>10</sup> In case of interdiction, inability, bankruptcy, or death of one of the parties to a contract, any of them, or their heirs, has the right to revoke the contract.<sup>11</sup>

Whenever a factor has totally or partly paid the value of assigned credits, and the payment has a certain maturity date, such assignment can be invoked against the bankrupt estate of the supplier, if bankruptcy has occurred after the date of payment, except as provided

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**[Section 32:141]**

<sup>1</sup>Art. 83.

<sup>2</sup>Art. 213.

<sup>3</sup>Art. 315.

<sup>4</sup>Art. 322.

<sup>5</sup>Art. 342.

<sup>6</sup>Art. 516.

<sup>7</sup>Art. 550.

<sup>8</sup>Art. 558.

<sup>9</sup>Art. 646.

<sup>10</sup>Art. 791.

<sup>11</sup>Art. 830.

in the law. Assignment cannot be invoked against a bankrupt estate if its administrator proves that the factor knew of the state of insolvency of the supplier when he made payment, and also if such payment has been made within the year preceding the judicial decision that declared bankruptcy, but before the maturity of the credit assigned.<sup>12</sup> In case of bankruptcy of a transferor, the right of the fiduciary owner can be invoked against the bankrupt estate.<sup>13</sup>

An insurer that has made payment has a right of return against the others, in proportion to the amounts insured; in case of bankruptcy of one of them, or of nullity, or lack of legal effect of one of the contracts, its share shall be distributed among the others.<sup>14</sup> In case of bankruptcy or insolvency of an insurance holder, or of an insured, the rights and obligations arising from the contract are transferred to the bankrupt estate. The insurer and the administrator of the bankrupt estate can rescind the contract within three months from the date on which the judicial decision declaring bankruptcy was pronounced, whether or not it has been appealed, or from the date at which the insurer had knowledge thereof. If the contract is rescinded by the insurer, the administrator of the bankrupt estate has the right to claim return of the part of the premium corresponding to the time during which the risk ceased to be covered.<sup>15</sup>

In credit insurance, the insurer undertakes (within the limits set in the law and in the contract), to compensate the insured for damage arising from lack of payment, including bankruptcy or insolvency of his debtors.<sup>16</sup> Facts generating a claim include insolvency certified by a judicial decision declaring bankruptcy of a debtor, or another judicial act with the same effect, and also by judicial or extrajudicial agreement (*concordata*), provided that it is agreed to with all creditors and enforceable against each of them.<sup>17</sup> If payment has not been made, a holder can exercise his right of recourse against the endorsers, the drawer, and other liable parties, on maturity. Likewise, the right of recourse may be pursued even before maturity, if there has been total or partial refusal of acceptance in the case of the bankruptcy of the drawee—whether or not he has accepted it—or in the event of a suspension of payments on his part (even if not declared by a judicial decision), or if an execution of his assets has been unsuccessfully at-

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<sup>12</sup>Art. 880.

<sup>13</sup>Art. 927.

<sup>14</sup>Art. 1002.

<sup>15</sup>Art. 1011.

<sup>16</sup>Art. 1020.

<sup>17</sup>Art. 1021.

tempted; and in the event of the bankruptcy of the drawer of a non-acceptable bill.<sup>18</sup>

## **XIX. ONLINE RESOURCES**

### **§ 32:142 In general**

For further information on Macao see:

*CIA World Factbook*: <https://www.cia.gov/library/publications/the-world-factbook/geos/mc.html>

*The Library of Congress Country Studies*: <http://lcweb2.loc.gov/frd/cs/motoc.html>

#### ***Macao SAR Legislation:***

*Generally*: <http://en.io.gov.mo/Legis/>

*Commercial Code*: <http://bo.io.gov.mo/bo/i/99/31/codcomen/default.asp>

*Industrial Property Code*: <http://bo.io.gov.mo/bo/i/99/50/codripien/default.asp>

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<sup>18</sup>Art. 1176.