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The new Financial System Act: Key Things to Know By MdME



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The new Financial System Act (“FSA”) has been approved and will come into force on 1 November 2023. The new FSA marks the end of the 30-year legal regime on the financial system of Macau as provided by Decree-Law no. 32/93/M, of 5 July. Since the previous legal framework dates back to 1993, it is clear that it needs to be updated to keep pace with the developments of the financial sector, align with the latest technological advancements and to meet international standards and best practices, to also establish Macau as a global city and as an international financial hub. The new FSA will be the main piece of legislation governing existing and prospective operators within the financial industry of Macau. There are significant changes to the legal regime. If you are currently operating in the financial sector, or are looking into this possibility, find out below the 5 key aspects introduced by the new FSA:

- 1. First and foremost: **flexibility** and **simplification** are the two keywords that have been used to describe the new FSA. Up until the enactment of this new act, there was only the possibility of issuing a license for universal banking services. The new FSA introduces a new type of license: “**bank with restricted scope of activity**”.

As the name indicates, this new type of license enables the new credit institutions to provide a number of different services (instead of the universal model). By providing this possibility to potential operators, the licensing procedure is expected to also be more flexible, as not all applicants wish to operate a full-service bank in Macau.

Restricted-license operators can be incorporated with a minimum share capital of MOP 100 million, instead of the MOP 300 million minimum imposed on full-service credit institutions. However, this is not the only change in the licensing requirements: the management body of the local credit institution is now required to be comprised of at least **five members** (by comparison to the previous minimum number of three members).

The authorized scope of activities will be later determined by dispatch from the Chief Executive. Licensed operators under this regime may also expand their scope of activities and/or launch new financial products or services. For this effect, these new operators will require the Monetary Authority of Macau (“**AMCM**”)’s non-opposition.

- 2. To bring the financial system to the age of technology, the new FSA has a specific section dedicated to **financial technology**. The new FSA introduces a legal framework to grant temporary licenses for financial technology projects on an experimental basis. What it means is that the new FSA allows non-financial institutions to hold a temporary license to carry out FinTech projects, within controllable risk parameters.

Entities such as research and development institutions in the academic or scientific fields, entities that carry out technological activities, financial institutions that carry out financial innovation projects outside of the scope of authorized activities may seek the AMCM’s temporary authorization to carry out the referred projects.

Further clarification and regulation have been enacted on this point recently, including the required information and documents for the temporary license (including clarifications on the innovative points of the project), risk management and approval standards, as well as duties such as requirement to submit a report every two months, and the submission of a final report at the end of the temporary license.

The temporary license should have the validity of 1 year. However, under duly justified exceptional cases, the license may be renewed (a maximum of 2 times). Each renewal should not exceed the period of one year.

- 3. The new FSA enables the AMCM, by its own initiative or by substantiated request of the credit institution or accounting firms, to convene a meeting to discuss matters related to the activities of the credit institution. Moreover, the accounting firms, in the course of their

functions, have the duty to communicate to the AMCM in writing upon detection of any fact that may cause serious damage to the credit institution or to the financial system of Macau (including legal or regulatory breaches by the credit institution or its corporate bodies/employees, financial deterioration of the credit institution, exercise of unauthorized activities, among other facts).

- 4. A short note should also be given to the improvement and simplification of administrative procedures. Under the new FSA, the procedure to authorize exceptions to the calculation of risk exposure has been simplified. In exceptional situations related to risk exposure, the AMCM can grant authorization following the analysis of the respective risk. Furthermore, the procedure to determine the annual supervisory fee has also been simplified.
- 5. Last, but not the least, to ensure the proper implementation of the new FSA and enforcement actions against non-compliance, the new FSA has implemented a more stringent sanctions framework.

To better deter the commission of the crime of unauthorized taking of deposits or other repayable funds, the new FSA increases the penalty to 2 to 5 years of imprisonment (by comparison to 2 years of imprisonment pursuant to the previous regime). In addition, the perpetrator may also be subject to ancillary penalties, including prohibition to carry out certain activities, deprivation of the right to subsidies or benefits granted by public services or entities, closure of establishment, judicial injunction, and publication of the judicial decision in a Chinese-language and Portuguese-language newspaper in Macau.

The new FSA also sets out the criminal liability of legal entities and clarifies the potential sanctions that may be imposed to them, including fine (up to MOP 20 million) and judicial dissolution.

The new FSA also foresees the legal regime applicable to administrative infractions (which were previously classified as 'contraventions'). Depending on the seriousness of the offence, the applicable fine could range from MOP 20,000 and MOP 10 million. Moreover, the new FSA sets out that the offender may also be subject to ancillary penalties, including publication of the decision in a Chinese-language and Portuguese-language newspaper in Macau, suspension of voting rights by shareholders, suspension from holding corporate positions and senior management positions in any financial institutions, and loss of the capital invested in the illegal exercise of the activity and loss of obtained revenue (through the illegal activity).