

THE NEW FINANCIAL SYSTEM ACT

WHAT YOU NEED TO KNOW

The financial system legal framework has been in force for over 30 years. To modernize the financial system, revitalize the post-epidemic economy and diversify the economy, the new Financial System Act (“FSAM”), already approved, but pending publication at the Macau official Gazette at the time of writing of this legal note, has introduced many changes, the most relevant of which are as follows:

I. Definition and scope

- a) The new FSAM is now applicable to insurance activities and management of pension funds – although their specific discipline is provided in separate legislation.
- b) The definition of ‘Financial Institution’ has been amended to now include in its scope the ‘Financial Intermediary’.
- c) The FSAM clarifies that only credit institutions may take public deposits and other repayable funds.

- d) The FSAM no longer refers to credit institutions with offshore license (following revocation of Decree-Law no. 58/99/M, which establishes the Offshore Activity General Regime).

II. Simplification and flexibility in licensing and registration procedures

- a) The FSAM introduces a new type of license: “**bank with restricted scope of activity**”. Until now, there was only the

possibility of issuing a license for universal banking services. The new license enables the new credit institutions to provide a number of different services (instead of the universal model), thus making the **licensing procedure more flexible**. The authorized scope of activities will be determined by dispatch from the Chief Executive. Expansion of the scope of activities or launching of new financial products or services require AMCM's non-opposition.

- b) The **public issuance of bonds is simplified** and is now reliant on a registration system (instead of the previous authorization by the Chief Executive).
- c) The FSAM introduces a legal framework to grant **temporary licenses for financial technology projects** on an experimental basis. This will allow qualified entities to carry out FinTech projects without a financial license, but still within controllable risk parameters.

III. **Harmonization of supervisory requirements with international standards**

- a) Credit institutions can only be incorporated with at least **MOP 300 million of share capital** (by comparison to the previous minimum share capital of MOP 100 million). Banks with restricted scope of activity can be incorporated with a minimum share capital of **MOP 100 million**.
- b) During the licensing process, criteria such as shareholder structure, corporate governance, strategies and business plan, financial situation and authorization granted by foreign

supervisory authorities will be factored in.

- c) 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).
- d) The FSAM 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.
- e) The FSAM strengthens the prudential rules on risk exposure. For instance, credit institutions may not incur an exposure to a customer or group of connected customers which exceeds 25% of its Tier-1 capitals.
- f) The intervention status regime has been improved by the new Financial System Act, including acts of intervention, liquidation procedures, expansion of scope of powers attributed to delegates and the appointed administrative commission.

IV. **Improvement and simplification of administrative procedures**

- a) In the FSAM, 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.

- b) The procedure to determine the annual supervisory fee has also been simplified.

V. Sanctions

- a) To better deter the commission of the crime of unauthorized taking of deposits or other repayable funds, the FSAM 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.

- b) The FSAM Act 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.
- c) What was previously classified as ‘contraventions’ are now ‘administrative infractions’. Depending on the seriousness of the offence, the applicable fine could range from MOP 20,000 and MOP 10 million.

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