Real Estate

This chapter provides a systematic analysis of Macau's real estate legal framework, covering property rights, acquisition strategies—including share and asset deals with procedural insights—lease regulations, and taxation issues. It serves as a practical guide for investors and businesses navigating Macau's property market.

1. Property Rights

1.1 Property Ownership Structure
In Macau, property ownership is well-established under the Macau Civil Code under two different forms:

- Full Ownership: This grants the owner absolute rights over the property.
- Strata Title Ownership: It is common in multi-unit residential or commercial buildings, which divide the property into individually owned units while the common areas (such as corridors and elevators, etc.) are jointly managed by the unit owners.

1.2 Land Regime
In Macau, the land where the property is located is divided into the following main categories regulated under the Macau Land Law:

- **Private Property**: There are some lands in Macau which ownership was granted to private individuals or entities before the establishment of the Macau SAR (i.e. prior to 1999) and is recognized as private ownership and does not belong to the government of the Macau SAR.
- **Freehold Land:** These are lands belonging to the government of the Macau SAR whereby the rights to develop the land and the ownership of the property built therein are granted to individuals or entities with permanent nature.
- **Leasehold Land:** A significant portion of land in Macau is held under long-term leasehold concessions. Typically, these concessions are granted for 25 years and may be renewed up to 2049 upon full development. The leasehold land may be reclaimed by the government if it is not fully developed before the period defined under the concession contract.

2. Property Acquisition
There are no restrictions on property acquisition by local residents or foreigners, whether as individual or corporate entities. However, all transactions must comply with anti-money laundering regulations and disclosure requirements designed to ensure transparency and compliance with local laws.

When acquiring property in Macau, investors can choose between a **share deal** or an **asset deal.** Each approach has distinct advantages, challenges and acquisition procedures.

2.1 Share Deal
A share deal involves purchasing a company that owns the property (i.e. the holding company), instead of directly transferring the property title. This method can be particularly attractive for investors aiming for operational continuity and potential tax benefits.

2.1.1 Advantages:

- **Continuity of Contracts:** Existing tenancy agreements and services agreements (e.g. management agreement, utilities) remain intact, requiring no notification to tenants or services providers, offering a seamless transition.

- **Tax Benefits:** Since the transaction involves transferring shares rather than property title, it does not trigger stamp duty, notarization charges and registration fees applicable to property transfer, provided less than 80% of the holding company's shares are transferred.

2.1.2 Challenges:

- **Liability Considerations:** Buyers acquire the entire corporate entity, including its assets and liabilities, which requires thorough due diligence.

- **Due Diligence Complexity:** Comprehensive checks on the company's financial, legal, and operational status are essential to identify any hidden liabilities or contractual complications.

- **Regulatory Approvals:** Additional approvals may be required if the company engages in regulated activities.

- **Integration Issues:** Post-acquisition integration may be challenging if the target company has complex operational structures.

2.1.3 Acquisition Procedures:

- **Limited Liability Company:** A share transfer agreement must be executed in one of Macau's official languages (Chinese or Portuguese), notarized by a Macau notary, and registered with the Macau Commercial Registry.

- **Joint Stock Company: S**hares are transferred via endorsement on the share certificate, accompanied by an annotation on the company's share registry book.

2.2 Asset Deal
An asset deal involves the direct purchase of the property, transferring the property title from the seller to the buyer. This method provides clarity in ownership and reduces exposure to the liabilities of a corporate entity.

2.2.1 Advantages:

- **Direct title of ownership:** The buyer acquires the property title directly, free from any hidden encumbrances or liabilities, provided the registered encumbrances were cancelled before acquisition.

- **Straightforward acquisition:** Only the property and related rights are acquired, which simplifies the transaction.

- **Transparency:** The transfer should be registered with the Macau Land Registry, which ensures a clear legal record of ownership.

2.2.2 Challenges:

- **Higher transaction costs:** The asset transfer triggers stamp duty, notary charges and registration fees, estimated to be 5% of the transfer value.

- **Public exposure:** Although the existing tenancy agreement will not be affected according to Macau law and services agreements are seldomly affected as they are directly linked to the property, notification is required to be issued to the relevant parties and registration of transfer will be made to the Macau Land Registry, which implies that the property transfer will be publicly acknowledged.

2.2.3 Acquisition Procedure:

- **Negotiation and due diligence:** Buyer to conduct basic due diligence against the property, namely its property ownership and land regime, and both parties should agree on the key terms of the transaction (usually documented in a Letter of Intent);

- **Promissory agreement:** A promissory agreement may be executed, often with a deposit, to further ensure the intention to complete the deal, and notarization is recommended to prevent disputes over forgery or authority;

- **Banking mortgage:** Buyer may finance the acquisition of the property by mortgage created over the property;

- **Execution of public deed and registration:** The official transfer of the property occurs through the execution of a public deed of sale and purchase drafted by a Macau notary in one of Macau's official languages (Chinese or Portuguese). This document must be executed by the parties (or their representatives) in front of a Macau notary and submitted to Macau Land Registry for registration.

3. Tenancy Regulations
The legal regime of tenancy (whether for residential, commercial or industrial purposes) are mainly governed by the Macau Civil Code, which contains several mandatory provisions that cannot be overridden by contractual terms.

3.1 Key Components of Tenancy Agreements

- **Tenancy term:** Fixed-terms are required and cannot exceed 30 years.

- **Rent and payment terms:** The rent amount, currency (usually in Macau Patacas or Hong Kong Dollars), and payment frequency are clearly specified in the agreement.

- **Security deposits and guarantees:** Landlords usually require a deposit equivalent to two months' rent to cover potential breaches or damages.

- **Construction works and rent-Free period:** Construction work often requires landlord's consent and a rent-free period is common practice for carrying out such construction work.

- **Handover condition:** The agreement should clearly state the handover condition (whether to return the property in its original condition or in good condition or otherwise) as disputes often arise at the end of tenancy terms.

- **Liabilities for stamp duty:** A 0.5% stamp duty calculated based on the total rent will apply. The tenancy agreement shall specify whether this cost is shared or borne by one party.

- **Jurisdiction:** The parties may specify whether disputes will be resolved by Macau courts or arbitration centers. The stamp duty will be deducted in half if the parties submit to one of the local arbitration centers.

3.2 Termination Regime
The regime for termination of the tenancy agreement is strictly regulated under the Macau Civil Code by mandatory provisions, including the following alternatives:

- **By mutual consent:** The tenancy agreement can be terminated at any time by mutual written consent;

- **By unilateral termination with legal grounds:** The landlord may unilaterally terminate the tenancy agreement under very limited circumstances defined by law and through judicial proceeding. The tenant can unilaterally terminate the tenancy agreement if the landlord breaches the contractual obligations or under specific circumstances defined by law.

- **By unilateral termination for residential units:** The tenant of residential units may always terminate the tenancy agreement without grounds by serving a 90-day written prior notice and compensating up to two months' rent.

- **By expiry of the tenancy term:** The tenancy agreement is subject to automatic renewal unless one of the parties declares the expiry (i.e. the intention of non-renewal) by serving a written prior notice within the minimum period defined by law.

3.3 Legal Formalities

The tenancy agreement executed after 18 February 2018 is subject to notarization to be valid, moreover, the stamp duty must be settled before notarization.

4. Tax Issues

4.1 Taxes and Stamp Duty

- **Property tax:** The property owner is subject to a tax of 6% or 10% (currently reduced to 8% by annual budget law), depending on whether the property is owner-occupied or leased.

- **Stamp duty for property transfer:** In asset deals, the buyer is liable for a property transfer tax ranging from 3% to 5% of the property's purchase price.

- **Stamp duty for tenancy agreement:** The tenancy agreement incurs a 0.5% stamp duty based on total rent.

4.2 Exemptions and Incentives

- **Tax benefits granted by budget law:** currently an exemption applies to stamp duty for property up to MOP 3 million;

- **Revocation of special and additional stamp duty:** The special stamp duty for non-resident buyers and enterprise and the additional stamp duty for second residential units have been revoked;

- **Tax Benefits for technology innovative companies:** They are exempted from stamp duty on property transfer for operational use and from property tax for 5 years upon acquisition.

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