Setting up a Business

With Macau's promising economy, investors can benefit from a wide range of commercial advantages, such as low-tax regime, flexible corporate laws, and favorable geographical location. The procedures for investment and company incorporation in the region are relatively straightforward for both local and international investors.

This chapter aims to provide a comprehensive overview of how to start a business in Macau and indicates which type of entities can be incorporated in the region. We will present different characteristics of each incorporation option to help investors determine the most suitable vehicle for their needs, providing a successful business setup process in Macau.

1. Setting-up a company in Macau
Formation of a company: most common types of entities and its capital requirements

1.1. Most common types of vehicles
The main types of entities incorporated in Macau are joint stock companies, limited liability companies (by quotas) and sole shareholder companies.

The table below summarizes the minimum share capital and the number of shareholders' requirements for each company type:

TYPE OF COMPANY	MINIMUM SHAREHOLDERS	MINIMUM SHARE CAPITAL
Sole Shareholder Company	1	MOP25,000
Limited Liability Company *by Quotas*	2	MOP25,000
Joint Stock Company	3	MOP1,000,000

Sole Shareholder Company is a Limited Liability Company, wholly owned by a single shareholder, and its trade name must expressly indicate it in the Chinese and Portuguese versions.

This type of entity is subject to certain restrictions. A Sole Shareholder Company cannot have a sole shareholder company as its sole shareholder. Any business transaction between the sole shareholder and the Company must be set out in writing and be necessary, useful or convenient to pursue the business of the Company. Furthermore, such business transactions must be subject to a prior report issued by a local auditor, confirming that the interest of the Company is duly protected, and that the transaction is entered into arms-length. The rationale of this requirement is to protect the Company's creditors from potential risks arising from the sole shareholder's controlling influence.

Limited Liability Company by *Quotas* is the most common type of corporate vehicle to be incorporated in Macau, which offers better management flexibility and corporate governance - e.g. a minimum of 2 shareholders and a share capital of MOP25,000 - as well as lower accounting requirements.

The liability of the shareholder for the payment of share capital is limited to the value of their quota, and joint and several regarding the quotas of the remaining shareholders. The shareholders can be either a company or an individual, with the number of shareholders ranging from 2 (two) to 30 (thirty) for this type of company. The identification of the shareholders and directors is of public access through Macau Companies Registry (CR), i.e. anyone can request this information in the CR.

This type of company is normally used for standard commercial and business operations in Macau, such as for retail, consultancy and others.

Joint Stock Company requires a more complex structure (e.g. a minimum of 3 shareholders, share capital of MOP1,000,000, board of directors, company secretary and supervisor) and must comply with more stringent accounting and tax reporting obligations. It provides, however, more options in terms of bringing in additional investors by selling shares and issuing bonds, for example.

The share capital is divided into shares, all the same nominal value, which cannot be lower than MOP100, represented by share certificates. Pursuant to the Law 4/2015 issued on June 01, 2015, the Macau Government announced amendments to the Macau Commercial Code, including the elimination of bearer shares. With these amendments, only nominative shares are allowed, and bearer shares have been abolished since then.

The liability of a shareholder in this type of company is limited to the value of the shares subscribed. Shareholder information in a joint stock company is non-publicly available information. Only the identification of the founding shareholders is of public access, considering that this information is mandatory for the registration of the incorporation of the Joint Stock Company. Subsequent shareholders' identities can be only consulted by accessing the Shares Registry Book, which is not publicly available.

Joint Stock Companies are normally used for highly regulated activities or more investment driven companies, such as gaming operators, banks, finance, energy, telecom, aviation, hospitals, among others.

1.2. Incorporation Procedure
The procedure for incorporating a Macau Company requires the preparation and execution of several mandatory documents. Please refer to the summary below for an overview of the incorporation procedure.

1.2.1. Pre-Completion:

Trade Name
Firstly, it is necessary to decide on the type of company to be incorporated, its trade name, and the respective business scope. A trade name certificate, containing such information, must be obtained from the CR to reserve such a trade name. Please note that the certificate is valid in the

CR's database for only 60 days.

If there is a trademark already registered in Macau for the proposed trade name, a trademark consent letter may be required from the trademark holder to use such tradename. This document must be notarized and legalized, if applicable – i.e. when the Notary Certificate is issued by a notary outside Macau/Hong Kong/Mainland China jurisdictions.

1.2.2. Completion:

Company Information
In order to proceed with preparation of the incorporation documents, the investor must determine several key aspects of the company to be incorporated.

This includes, but not limited to, the corporate governance structure, intended business activities, shareholding structure, the authority and decision-making powers within the company (e.g. binding power of the Company – i.e. if the company is bound by signature of one or more director(s)), the composition of corporate bodies, where the registered office will be located, and other information.

Incorporation Documents
The procedure for incorporating a Macau Company requires the preparation and execution of a set of mandatory documents, namely, the Memorandum of Association, the Articles of Association, acceptance letters from the social bodies members and others.

Subsequently, specific notarization requirements must be followed in accordance with Macau law, including certain AML requirements (for further details, please refer to section 5 below). Obtaining notarized corporate resolutions of the shareholders (translation to one of the official languages of Macau is also required if the resolutions are not written in Chinese/Portuguese), as well as certified true copies of identification documents of all parties (individuals) may be required.

1.2.3. Registration Requirements

CR Registration
Once all the above steps have been completed, application for the company's incorporation shall be submitted to the CR. The following main documents are required to be submitted with the registration application:

- Trade Name Certificate;
- Trademark consent, if applicable;
- Incorporation Documents (one set);
- Directors and shareholders lists;
- Declaration(s) of acceptance of the members of corporate bodies;
- Declaration issued by a Macau lawyer that, having followed the entire incorporation process, no irregularities were identified. This verification is conducted when the signatures in the incorporation document, specifically the Memorandum of Association, are notarized;
- Copies of shareholders (individuals) and members of corporate bodies' identification documents;
- Copy of the submitted M/1 tax form (see below).

The commercial registration takes a minimum of 15 (fifteen) working days to be completed.

Tax Registration
Once the registration with the CR is completed, subsequent tax registration with the local tax authorities is required. This tax registration is made by filing a tax form named "Declaration of Commencement of Activity - M/1 industrial contribution", which must be signed by the director(s) of the new company and such signature(s) notarized. The copy of the submitted M/1 tax form shall be subsequently submitted to the CR.

The tax registration takes 1 (one) working day to be completed.

1.2.4. Post-completion obligations

Mandatory Books
Macau Law requires companies to maintain the following mandatory books:

- Minutes book of the general meeting of shareholders
- Minutes book of the directors or board of directors (whichever is applicable)
- Minutes book of the supervisory board (if applicable)
- Register of liens, charges, and guarantees (if applicable)
- Share registry book (if applicable)

Accounting Books and Other Documents
Companies must also maintain accounting books, along with all correspondence, documentation, and supporting records related to their business activities (collectively, the **"Records"**). These Records must be properly organized and retained for a period of five years.

Annual Tax Filings
The Sole Shareholder Company and Limited Liability Company by Quotas must submit their Basic Profit and Loss Statement and Balance Sheet to Macau Tax Department, but there are no auditing requirements.

While Joint Stock Companies are required to provide certified accounts by local auditor or accountant for annual tax filings.

2. Setting up a Macau Branch/Representation Office
Registration as a branch/representation office

Any foreign company which undertakes any form of business on an extended or permanent basis in Macau, even without having their registered office or main administration locally, is subject to registration at CR and should be subject to local taxation laws.

Under Macau law, a branch is not considered an entity with separate legal personality and, therefore, due to this lack of separation from its parent company, the parent company and its directors are bound and liable to all acts performed by the Macau Branch and the individuals who represent the Macau Branch.
When compared with a Limited Liability Company by *Quotas*, Macau Branch is a less manageable vehicle. It requires the following:

- **Parent Company Corporate Approvals:** Relevant minutes of the meeting or resolutions from the parent company must be issued every time for each transaction of the branch (unless a wide range of powers is determined ab initio by way of minutes/ resolution or Power of Attorney). This parent company's minutes or resolutions must be notarized and if applicable, legalized - i.e. when the Notary Certificate is issued by a notary outside Macau/Hong Kong/Mainland China jurisdictions.
- **Translation requirements:** The said minutes or resolutions may be required to be translated into one of the official languages of Macau, if it is drafted in a language other than Portuguese or Chinese.
- **Secondment Arrangements:** Secondment of employees between the branch and the parent company is not allowed, as the branch is not a separate legal entity of the parent company.

On the other hand, branch incorporation may involve additional costs.

The branch incorporation process is similar to the incorporation of a Macau Company. Please refer to page 6 onwards.

Other branch registration requirements are as follows:

- **Macau representative:** Appoint at least one local legal representative, with a residential address in Macau. This representative will

be authorized and empowered to receive any communications, summons, and notifications that may be addressed to the foreign parent company under Macau laws.

- **Parent Company Minutes of the Meeting or Resolutions:** passing a corporate minutes or resolution by the parent company approving the establishment of a branch in Macau, including the details of the business activities and operations. This document must be duly notarized and if applicable, legalized - i.e. when the Notary Certificate is issued by a notary outside Macau/Hong Kong/Mainland China jurisdictions.
- **Translation:** All parent company documents may be required to be translated into one of Macau's official languages, either Portuguese or Chinese.

3. Management of the entities
How is the entity operated and managed, its requirements and restrictions related to appointments

The management of a Sole Shareholder Company and a Limited Liability Company by Quotas are composed of at least 1 (one) director. If there is only 1 (one) director, the Company is considered bound by acts carried out by that director, within the limits of powers determined under the articles of association of the company. However, if the management is composed of 2 (two) directors, both have equal management powers, and the Company is considered bound by acts carried out by either of them, within the limits of their powers. Alternatively, the articles of association may require the joint-signatures of 2 (two) or more directors, who must sign together for the Company to be bound.

Also, it is possible to choose having a board of directors, composed of at least 3 (three) members. Unless otherwise stipulated in the articles of association, the rule is that board of directors' resolutions shall be considered passed when approved by the majority of directors' votes.
The term of office of directors is indefinite, unless otherwise stipulated in the articles of association. While the management of a Joint-Stock Company is entrusted to a board of directors composed of at least 3 (three) directors, who may or may not be shareholders of the company.

By default, the term of the directors shall be 3 (three) years, unless the articles of association set a shorter term, and they may be re-elected. At the end of their term, the directors must remain in office until they are replaced by new directors.

The Macau Commercial Code allows the board of directors to delegate the management of the Company to a managing director or an executive committee composed of several directors.

Directors are forbidden, except in cases expressly authorized by the shareholders general meeting, to carry out, on their own account or on behalf of others, any activity covered by the company's business scope.

Regardless of the type of company, to proceed with the appointment of a director, the following is required:

- Shareholders Meeting Minutes or Written Resolutions approving the appointment;
- Director's Acceptance Letter;
- CR Application for registration;
- The registration proceedings take approximately 15 working days to be completed.

4. Foreign investments restrictions
Are there any restrictions on foreign investments

Macau maintains a transparent, non-discriminatory, and free-market economy and the Government of Macau aims to diversify its economy by attracting foreign investment and is committed to maintaining an investor-friendly environment.

Therefore, there are no restrictions on foreign investment or on the management nationality. This means that citizens or companies from any country may incorporate Macau entities, in fact, they can be 100% owned by foreign companies or individuals, and any foreign nationals may be appointed as directors of the Macau Companies.

5. Compliance requirements
Are there any exchange control or any registration requirements under anti-money laundering laws?

As a preliminary step, Macau notaries are required to comply with **anti-money laundering** ("**AML**") requirements, before proceeding with the notarization of certain incorporation documents, namely, the shareholder(s) signature notarizations in the memorandum of association. For this purpose, shareholders of the new entity are required to complete certain information in the respective AML forms. There are two types of AML forms, personal AML forms and corporate AML forms. For the corporate shareholder, the AML must be provided up to the ultimate beneficial Owner(s) (UBO), i.e., individual person or controlling person of the company.

The main AML guidelines are made available by the Macau Government in the Financial Intelligence Office's official website.

Under the AML laws, there are mandatory obligations to check and report on suspicious transactions applicable to f*inancial institutions, gaming entities, traders in goods of single high value* (such as pawnbrokers, precious metals, jewelry and luxury vehicles), *real estate agents and professionals* (namely lawyers, notaries, registrars, auditors, tax advisors and accountants, tax advisers), who on a professional basis assist on activities such as property transactions, fund management and bank account management, providers of services relating to the incorporation and management of any companies or trusts and persons acting as proxies to the shareholders thereof.

These obligations, among others, include:

- identifying any customer or transaction where there is a suspicion of money laundering or if any sign of money laundering is absent but involves significant sums of money in the context of the transaction;
- refusing to carry out transactions when the necessary information to comply with the AML guidelines is not provided;
- maintaining records with the identification of the customers for a period of five years;
- notifying any sign of money laundering to the competent authorities; and
- collaborating with all the competent authorities for the prevention and repression of money laundering by providing all required information and documentation requested in relation to AML activities.

There are other additional reporting obligations. For example, duty of identification and verification of identity of the intervenient in transactions. The retailers of precious metals—particularly those dealing in high-value goods, including pawnbrokers, traders of precious metals, precious stones, and luxury vehicles, whether exclusively or not—are required to identify and verify the identity of parties involved in operations and transactions, when a payment is made in cash amounting to MOP 120,000 or more, or an equivalent value in foreign currency, traveler's cheques, or bearer shares. This requirement also applies to multiple transactions conducted by the same client or their representative with the same operator within a 30 (thirty) day period if their cumulative value exceeds the stipulated threshold.

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