

LEGAL UPDATE

Guidelines for the Performance of Trustee Functions (Circular No. 006/B/2024/AMCM)

Introduction

Law No. 15/2022 (Macau Trust Law) was implemented in Macau to establish the foundational principles and general regime for trust relationships, listing the qualifications for specific financial institutions to act as trustees. In complement to Macau Trust Law, AMCM has just introduced **Circular No. 006/B/2024/AMCM**, which provides **Guidelines for the Performance of Trustee Functions**. These guidelines, effective from **6 May 2024**, define the supervisory requirements for trustees and aim to enhance the necessary protections for settlors and beneficiaries.

Key Highlights of the Guidelines

1. Corporate Governance:

- **Responsibilities of the Board or the General Representative:** Trustees must maintain robust corporate governance structures. This includes a clear organizational structure, effective risk management, compliance management and internal controls. The Board of Directors or the General Representative is expected to be actively involved in formulating these policies and ensuring their effectiveness.
- **Senior Management Responsibilities:** Senior management must implement and monitor the trust operational processes,

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ensuring alignment with the principles of prudent management and duty segregation. They are also responsible for being informed about the business environment and associated risks, reporting these to the Board as necessary.

- **Risk Management:** An effective risk management framework is mandatory, with adequate internal controls to identify, monitor and manage potential risks.
- **Compliance Management:** Trustees are required to have a dedicated compliance team to oversee fiduciary duties. Compliance issues must be promptly addressed and reported.

2. Business Conduct and Ethics:

- **Conducts and Ethics:** Trustees must operate with integrity, fulfilling all statutory obligations and ensuring accurate and complete information disclosure to principals and beneficiaries. Conflict of interest must be effectively managed through established policies.
- **Act with competence:** Trustees should operate within their scope of expertise, ensuring all actions taken are informed and justified. Outsourcing requires careful selection and monitoring of third-party services to ensure compliance with ethical and professional standards.
- **Conflict Avoidance Duties:** Trustees should not take on or assume outside duties or responsibilities that could jeopardize the interests of the Trust.
- **Conflicts of Interest Management Policy:** Trustees must have effective policies and procedures to identify and manage actual or potential conflicts of interest. Specific measures include, but are not limited to:
 - a) **Identification Mechanisms and Approval Processes:** Mechanisms to identify relationships or transactions that may give rise to a conflict of interest for the trustee and appropriate approval processes are in place.

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- b) **Avoidance rules:** In actual or potential conflict of interest situations, relevant personnel should not be involved in discussions or decision-making processes.
- c) **Segregation of duties and information:** Adequate segregation of duties, establishment of an internal confidentiality system, physical segregation of departments and information where necessary and establishment of appropriate information boundaries.
- d) **Disclosure Policy:** Full disclosure to the principal or beneficiary of any actual or potential conflict of interest that may arise for the principal or beneficiary.

3. Trust Business Management:

Trustees are required to establish detailed business management processes to ensure the efficiency and correctness of the trust business. Business management includes:

- **Trust Relationship Due Diligence:** Ensure that a thorough evaluation of all parties is conducted prior to the establishment of the trust.
- **Trust Asset Management:** Effective management of trust assets, including investment decisions and asset protection.
- **Information Management and Confidentiality:** Establish strict information management and confidentiality mechanisms to protect all trust-related information.
- **Risk Management Plan or Liability Insurance:** Develop a risk management strategy for possible risks and consider purchasing appropriate liability insurance to further protect the trustee and beneficiaries.

4. Regulatory Oversight:

AMCM will conduct both on-site and off-site inspections to ensure compliance with these guidelines, safeguarding the rights and interests of principals and beneficiaries.

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Conclusion:

AMCM's guidelines lay out critical considerations for trustees entering the trust business in Macau, emphasizing the need for transparency, risk management and ethical practices. These guidelines are instrumental for establishing a compliant and trustworthy operation. Trustees planning to offer trust services should integrate these standards into their foundational business models and operational strategies.

It is important to note, however, that these guidelines do not establish a specific regime for trust activities nor do they clarify the specific methods by which banks and insurers may engage in trust business. They primarily set forth general principles governing the conduct of trustees. Consequently, some legal uncertainties remain unresolved under the current framework.

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