

AAM
MACAU LAWYERS ASSOCIATION

INSTRUCTION 1/2006

**INSTRUCTIONS REGARDING THE PROCEDURES TO BE ADOPTED IN ORDER TO
COMPLY WITH DUTIES REGARDING THE PREVENTION OF MONEY LAUNDERING
AND THE FINANCING OF TERRORISM**

Law no. 2/2006, of the 3rd of April, Law no. 3/2006, of the 10th of April and Administrative Regulation no. 7/2006, of the 15th of May, were published with a view to the prevention and punishment of the crimes of money-laundering and the financing of terrorism.

The purpose of these instructions is to implement the presuppositions for compliance with the duties with a view to the prevention of the crime of money laundering, as per Law no. 2/2006, which duties also apply to the crime of financing terrorism by express provision of Law no. 3/2006, and to systematise the procedure for compliance therewith, with a view to the specific nature of lawyers' practice.

Accordingly, and in compliance with the provisions of no. 2 of article 2 of Administrative Regulation no. 7/2006 and in the exercise of its supervisory powers, the Macau Lawyers Association (AAM) determines as follows:

Article 1.

(Personal ambit)

1. These instructions shall apply to lawyers and trainee lawyers, within the ambit of their professional activity.
2. References to lawyers in these Instructions shall be deemed to include trainee lawyers.

AAM
MACAU LAWYERS ASSOCIATION

Article 2.

(Material ambit)

Lawyers shall comply with the duties provided in art. 7 of Law no. 2/2006 and with these Instructions when they act with regard to, or intervene, in the following operations in a professional capacity:

1. Purchase and sale of realty;
2. Management of funds, securities and other assets belonging to clients;
3. Management of bank accounts, savings accounts or securities accounts;
4. Organisation of contributions with a view to the formation, operation or management of companies;
5. Formation, operation or management of juristic persons or entities without a corporate personality; or
6. The transfer of all or part of commercial undertakings.

Article 3.

(Definitions)

1. According to the current legislation, it is the nature of the operation, its complexity, the amounts involved and the volume or unusual nature of the activity of the client or party, which enable the lawyer to decide whether he/she considers that there is evidence of the crimes of money laundering or financing of terrorism.
2. Accordingly, in these Instructions:
 - (1) The nature of the operation means the type or sort of operation, which *per se* indicates the existence of a crime of money laundering or of financing of terrorism;

AAM
MACAU LAWYERS ASSOCIATION

- (2) The complexity of the operation means the series of acts in relation to the operation, which by reason of acts preparatory or subsequent thereto indicate the intention to conceal the true nature thereof, with a view to money laundering or the financing of terrorism;
- (3) The amount involved in the operation means the amount, the reasonableness of which, in the specific case, indicates the existence money laundering or the financing of terrorism;
- (4) The volume of the operation means the quantity of successive operations of the same nature, which are not plausibly justified; and
- (5) The unusual nature of the operation means an isolated operation, which is nevertheless unjustified in the specific case because it is not an operation, which is habitual for the client or party.

Article 4.

(The duty to identify)

1. Whenever the operations referred to in article 2 reveal indications of the commission of the crime of money laundering or of the financing of terrorism, or whenever the combined or individual value of the operations exceeds MOP1.000.000 (one million patacas), or its equivalent in any other currency, lawyers shall:
 - (1) Obtain and retain information regarding the identities of the parties and or their representatives (including name, identification document type and number and the issue date thereof). The identification documents of the parties, or of their representatives, shall be produced to the lawyer and shall contain a photograph, unless they are personal acquaintances of the lawyer; and

AAM
MACAU LAWYERS ASSOCIATION

- (2) Record the information obtained regarding the operation, i.e. the date on which it was effected, the purpose thereof (e.g. the identification of the property or corporation), the amount (e.g. the price, share capital), the payment methods employed (cheque, bank transfer, cash) and whether there was any bank finance.
2. The lawyer must, whenever possible, also obtain and record any other information, which make it possible to better identify the parties and/or their representatives (i.e. nationality, domicile, date and place of birth, occupation, employer or business activity) and with regard to the operation effected by them (i.e. the source of the funds).
3. For the purposes of the provisions of no. 1 of this article, the amount to be taken into consideration is the amount declared by the parties, unless the lawyer is in possession of information, which demonstrates that the real value of the operation is higher.
4. Lawyers shall decline to accept instructions and act whenever the client, or its representatives, refuses to provide the information necessary in order to comply with the duty to identify both themselves and the operation, with the exception of the operation envisaged in no. 2 of this article.
5. When the parties involved in the operation are natural persons, their relations or close associates, who hold or have held leading public office in a foreign country or territory, e.g. heads of state or government, leading politicians, senior civil servants, judicial or military officers, senior executives of public sector corporations and important representatives of political parties, or undertakings clearly related with them, the operation in question shall be subject to special scrutiny as to the existence of any indications of the commission of the crimes envisaged in these Instructions.
6. Lawyers shall increase their diligence:
 - (1) If they are involved in, or are aware of operations involving large amounts,

AAM
MACAU LAWYERS ASSOCIATION

which are foreign to the routine activity of the client or party, which occur with a frequency of less than 30 days and which, when taken as a whole, exceed the amount referred to in no. 1; or

- (2) Whenever the amount involved in the operations effected exceeds MOP100.000 (one hundred thousand patacas).

Article 5.

(The duty to retain documents and records)

1. The information and records referred to in the preceding number shall be retained for at least 5 years, as from the day following the date on which the operation is effected and shall be available for the purposes of supervision of compliance with preventive duties.
2. In the event of the cancellation or suspension of membership of the Lawyers Association, the documents gathered and the records kept shall be sent to the AAM for safekeeping.
3. Lawyers may use the records they are required to keep, in the capacity of private notaries, in accordance with the Instructions against money laundering and the financing of terrorism, issued by the Direcção dos Serviços de Assuntos de Justiça, in order to comply with the provisions of this article and the other provisions of these Instructions.

Article 6.

(The duty of secrecy and the duty to provide information regarding suspect operations)

1. The operations referred to in art. 2, which indicate the commission of the crimes of money laundering or of the financing of terrorism, shall be communicated to the Financial Information Office (GIF), within two working days of the occurrence thereof.

AAM
MACAU LAWYERS ASSOCIATION

2. Lawyers shall also effect the communication referred to in the preceding number if they are of the opinion that, given the unusual character of the operation or refusal to provide the identification information referred to in no. 2 of article 4, reveal the commission of the crimes of money laundering or the financing of terrorism.
3. Lawyers shall not reveal to the client or party, or their representatives, that they consider that a certain operation indicates the commission of the crimes referred to in these Instructions, or that, the operation is accordingly subject to communication to the proper authority.
4. The form for the communication of suspect operations is in Annexe I of these Instructions and can be obtained from the AAM website (<http://www.aam.org.mo>). Reports of suspect operations shall be submitted together with copies of all the documents collected or records made.

Article 7.

(The duty to co-operate)

1. Lawyers shall provide all information and submit all documents at their disposal, which are requested by authorities with powers in relation the prevention and punishment of the crimes of money laundering and the financing of terrorism, i.e. the Judicial Authorities, the GIF and the AAM.
2. Co-operation pursuant to the provisions of the preceding number shall not be revealed to the clients or parties, their representatives or to third parties.

AAM
MACAU LAWYERS ASSOCIATION

Article 8.

(Professional Privilege)

1. Compliance with the duties envisaged in articles 6 and 7 of these Instructions shall not imply the communication or provision of any information obtained by a lawyer in the context of the legal evaluation of a client's circumstances, within the context of the provision of legal advice, the defence or representation of the client in legal proceedings or with regard to legal proceedings, including advice regarding the way in which to commence or avoid proceedings, whether the information is obtained before, during or after the proceedings.
2. The communication and/or provision of information, in good faith, in accordance with the duties imposed by Law no. 2/2006, Regulation no. 7/2006 and by these Instructions, shall not involve liability of any type.
3. Lawyers shall require their associates, employees or any persons that collaborate with them in the provision of professional services, to comply with the provisions of these Instructions.

Article 9.

(Client Accounts)

1. Monies received from clients, i.e. sums paid to a lawyer as depository, which are not payments on account of professional fees and disbursements or advances in respect thereof, shall be deposited at a bank in an account or accounts opened for that purpose, which are separate from any of the lawyer's personal accounts, i.e. those used with regard to the routine operation of the office.
2. Lawyers shall keep a detailed record of the transactions effected in the said account or

AAM
MACAU LAWYERS ASSOCIATION

accounts.

3. Lawyers shall, by the end of January each year, submit a certificate issued by an auditor or accountant authorised to practice in the Macau Administrative Region, which certifies that the transactions effected are proper.
4. Lawyers shall not permit their clients to use the accounts referred to in no. 1 in order to deposit sums, when the lawyer is unaware of the source and/or purpose thereof.
5. Failure to comply with the provisions of this article shall be a disciplinary offence.

Article 10.

(Administrative offences)

Breach of the duties provided in no. 4 of article 7 of Law no. 2/2006 and in articles 3 to 8 of Administrative Regulation 7/2006, the presuppositions and procedures whereof are implemented and systematised in these Instructions, shall be an administrative offence.

Article 11.

(Jurisdiction)

1. The AAM shall have jurisdiction to commence and prosecute administrative offence proceedings within the ambit of its supervisory powers.
2. The final decision shall be made by the Leader of the Executive, on the basis of a draft decision submitted by the AAM. The Leader of the Executive may delegate the said power.
3. The imposition of a penalty and the payment of a fine shall not operate so as to release the lawyer from the duty in question, if it is still possible to perform the same.

AAM
MACAU LAWYERS ASSOCIATION

Article 12.

(Disciplinary Proceedings)

Administrative offence proceedings shall be independent of such disciplinary proceedings as there may be.

Article 13.

(Commencement)

1. These Instructions shall come into force on the 12th of November 2006, without prejudice to the provisions of the following number.
2. The provisions of no. 9 of these Instructions shall come into force on the 1st of January 2007.