

## **MACAO SPECIAL ADMINISTRATIVE REGION**

### **Law No. 2/2006**

#### **Prevention and suppression of the crime of money laundering**

The Legislative Assembly decrees, pursuant to Article 71, paragraph 1, of the Basic Law of the Macao Special Administrative Region, the following with the force of law:

#### **CHAPTER I**

##### **General provisions**

###### **Article 1**

###### **Object**

This law establishes measures aimed at preventing and suppressing the criminal offence of money laundering.

###### **Article 2**

###### **Subsidiary law**

The provisions of the Criminal Code shall be subsidiarily applicable to the criminal offence provided for in this law.

#### **CHAPTER II**

##### **Criminal provisions**

###### **Article 3**

###### **Money laundering**

1. For the purpose of this law, advantages shall be regarded as any assets derived from the commission, through any form of participation, of a typified act punishable with a penalty of imprisonment of a maximum term above 3 years, as well as any assets obtained therefrom.

2. Whoever converts or transfers advantages, or assists or facilitates any of those operations, for the purpose of disguising its illicit origin or of avoiding the main perpetrator or participant of the preceding crimes from being prosecuted or

submitted to a criminal sanction, shall be punished with a penalty of 2 to 8 years of imprisonment.

3. Whoever conceals or disguises the true nature, source, location, disposition, movement or ownership of the advantages incurs the same penalty.

4. The punishment for the criminal offences provided for in paragraphs 2 and 3 shall take place even when the typified act from which the advantages derive from has been committed outside the Macao Special Administrative Region, hereinafter referred to as the MSAR, provided it is also punishable by the law of the State or Region with jurisdiction over such act.

5. The act is not punishable when the criminal procedure relative to the typified offence from which the advantages derive depends on a complaint and that complaint has not been lodged in time, except if the advantages derive from the typified acts provided for in Articles 166 and 167 of the Criminal Code.

6. The penalty applicable under the terms of the previous paragraphs may not exceed the maximum limit of the penalty provided for the typified act from which the advantages derived.

7. For the purposes of the previous paragraphs, in case that the advantages derived from two or more kinds of typified acts, the penalty with the highest maximum limit shall be the one to be taken into account.

#### **Article 4**

##### **Aggravation**

The penalty provided for in the previous Article is aggravated by one half in its minimum and maximum limits, with the limits referred in paragraphs 6 and 7 of the said Article, if:

- 1) The criminal offence of money laundering is committed by a criminal association or a secret society, or by someone who is a member of or supports such association or society;

- 2) The typified act from which the advantages derive is that of terrorism, illicit traffic of narcotics and psychotropic substances, international traffic of persons or of prohibited weapons or explosive substances;
- 3) The perpetrator commits the criminal offence of money laundering in a habitual manner.

## **Article 5**

### **Criminal liability of legal persons**

1. Legal persons, even if irregularly formed, and the associations without legal personality shall be liable for the criminal offence of money laundering when it is committed on their behalf and in their collective interest:

- 1) By their organs or representatives; or
- 2) By a person under their authority, when the commission of the criminal offence has been rendered possible by virtue of an intentional breach of the duties of supervision or control that they are entrusted with.

2. The responsibility of the entities referred to in the previous paragraph does not exclude the individual responsibility of the respective perpetrators.

3. For the criminal offence referred to in paragraph 1, the following principle penalties shall be applicable to the entities therein referred:

- 1) Fine;
- 2) Judicial dissolution.

4. The fine penalty is fixed in days, the minimum being 100 and the maximum being 1000.

5. Each day of fine corresponds to an amount between \$100.00 (one hundred patacas) and \$20,000.00 (twenty thousand patacas).

6. If the fine is applied to an association without legal personality, its common property shall be liable, and in its absence or insufficiency, the property of each one of its associates shall be, jointly and severally, liable.

7. The penalty of judicial dissolution shall be only imposed when those who established the entities referred to in paragraph 1 had the exclusive or predominant intention of, through the entity, committing the criminal offence therein provided for or when the repeated commission of such criminal offence demonstrates that the entity is being used, exclusively or predominantly, for that purpose, be it by its members or by whoever exercises its management.

8. The following accessory penalties may be applicable to the entities referred in paragraph 1:

- 1) Prohibition of the exercise of certain activities for a period of 1 to 10 years;
- 2) Deprivation of the right to subsidies or subventions granted by Government departments or public entities;
- 3) Closing of the establishment for a period of 1 month to 1 year;
- 4) Definite closing of the establishment;
- 5) Judicial injunction;
- 6) Publicity of the sentence, at the expense of the sentenced person, in one of the most widespread Chinese language newspapers and Portuguese language newspapers of the MSAR, as well as through a notice, written in the referred languages, for a period not less than 15 days, affixed at the place where the activity was exercised, in such a manner as to be visible to the public.

9. The accessory penalties may be applied cumulatively.

10. The termination of employment that may occur as a result of the application of the penalty of judicial dissolution or of any of the accessory penalties provided for in paragraph 8, shall be considered, for all purposes, as being a wrongful dismissal, in which case the employer is held liable.

### **CHAPTER III**

#### **Preventative provisions**

#### **Article 6**

##### **Subjective scope**

The following entities are under the obligation of complying with the duties provided for in Article 7:

- 1) Those subject to the supervision of the Monetary Authority of Macao, such as credit institutions, financial companies, offshore financial institutions, insurance companies, money changers and remittance companies;
- 2) Those who are subject to the supervision of the Gaming Inspection and Coordination Bureau, such as entities that operate games of chance, lotteries, mutual bets and promoters of games of chance in casinos;
- 3) Traders of goods of very high unit value, such as entities trading in pawned objects, precious metals, precious stones and luxury transport vehicles;
- 4) That exercise the intermediary activities of real estate or of buying real estate for re-selling;
- 5) Lawyers, solicitors, notaries, registrars, auditors, accountants and tax advisers, when participating or assisting, in the exercise of their professional activities, the operations of:
  - (1) Buying and selling of real property;
  - (2) Managing of client funds, securities or other assets;

- (3) Managing of bank, savings or securities accounts;
  - (4) Organization of contributions necessary for the creation, operation or management of companies;
  - (5) Creation, operation or management of legal persons or entities without legal personality or buying and selling of enterprises.
- 6) Providers of services, in preparing or performing operations for a customer, within the scope of the following activities:
- (1) Acting as an agent in forming legal persons;
  - (2) Acting as a director or secretary of a company, a partner or holding of a similar position in relation to other legal persons;
  - (3) Providing a registered office, business address, correspondence or administrative address for a company, or any other legal person or entities without legal personality;
  - (4) Acting as a trustee;
  - (5) Acting as a partner of a company on behalf of another person;
  - (6) Carrying out the measures necessary for a third party to act in the manner prescribed in subparagraphs (2), (4) and (5).

## **Article 7**

### **Duties**

1. The entities referred in the previous article are subject to the following duties:
  - 1) Duty of identifying the parties to contracts, customers or patrons, whenever the operations might provide indicia of the commission of the

criminal offence of money laundering or might involve substantial amounts, within the context of the respective activity;

2) Duty of identifying the operations, in the cases referred to in the previous paragraph;

3) Duty of refusing to perform such operations, when the necessary elements are not provided for the compliance with the duties established in subparagraphs 1) and 2);

4) Duty of keeping records, for a reasonable period of time, relative to the compliance with the duties established in subparagraphs 1) and 2);

5) Duty of communicating the operations, when these provide indicia of the commission of the criminal offence of money laundering;

6) Duty of collaborating with all the authorities with competence in the prevention and suppression of the criminal offence of money laundering.

2. The compliance with the duties established in subparagraphs 5) and 6) of the previous paragraph does not entail, for lawyers and solicitors, within the scope of the operations referred to in Article 6(5), the obligation of disclosing information obtained in the course of ascertaining the legal position for the client, within the context of legal counseling, or in the course of legal defence or representation of a the client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether the information is obtained before, during or after such proceeding.

3. The disclosure of information, in good faith, in compliance with the duties established in subparagraphs 5) and 6) of paragraph 1, shall not constitute breach of any secrecy, nor shall it imply responsibility of any nature to whoever made such disclosure.

4. Facts that become known as a result of the performance of functions, relative to the compliance with the duties referred in subparagraphs 5) and 6) of paragraph 1, may not be revealed to parties to a contract, customers, patrons or to third parties.

5. The information disclosed in compliance with the duties established in paragraph 1 may only be used for purpose of criminal proceedings or for the prevention or suppression of the criminal offence of money laundering.

## **CHAPTER IV**

### **Final and transitory provisions**

#### **Article 8**

##### **Regulatory provisions**

1. The prerequisites and the contents of the duties established in Article 7, the creation of the supervision system for the respective compliance and the framework of applicable penalties in case of infringement shall be regulated by an administrative regulation.

2. The competences to centralize, analyze and disclose information resulting from the compliance with the duties established in Article 7(1) are conferred to a yet to be created entity or to an existent entity.

3. The entity referred in the previous paragraph may, for carrying out of the functions conferred upon it:

- 1) Request information from any public or private entities;
- 2) Provide information to entities outside the MSAR, in compliance with inter-regional agreements or with any other instrument of international law.

#### **Article 9**

##### **Repealing provision**

It is repealed:

- 1) Articles 10, 14 and 18(3), (4) and (5) of Law No. 6/97/M, of 30 July;

2) Decree-Law No. 24/98/M, of 1 June, without prejudice to the following article.

### **Article 10**

#### **Transitory regime**

1. Decree-Law No. 24/98/M, of 1 June, shall continue to be applicable, transitorily, until the date of the entry into force of the Administrative Regulation referred to in Article 8(1).

2. The entities referred to in Article 6 shall only be under the obligation to comply with the duties established in Article 7 from the date of entry into force of the Administrative Regulation referred to in Article 8(1).

### **Article 11**

#### **Alterations to Law No. 6/97/M, of 30 July**

1. Article 1(1)(u) of Law No. 6/97/M, of 30 July, is amended as follows:

“u) Money laundering”.

2. References to article 10 of Law No. 6/97/M, of 30 July, shall be deemed to be made to Article 3 of this law, when the aggravating circumstances provided for in Article 4 occur.

### **Article 12**

#### **Entry into force**

This law enters into force on the day following its publication.

Approved on 23 March 2006.

The President of the Legislative Assembly, *Susana Chou*.

Signed on 25 March 2006.

To be published.

The Chief Executive, *Ho Hau Wah*.