

# NEWSLETTER

Manuela António - 安文娜 大律師及公證員 | *Lawyers and Notaries*

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## Registration and De-Registration of foreign investment funds in Macau SAR

The Decree-law no.83/99/M of 22 November 1999 sets out the main rules applicable to investment funds in Macau Special Administrative Region of the People's Republic of China (the "Macau SAR").

The referred legal framework provides rules applicable namely to investment funds based in Macau SAR and to funds domiciled outside Macau SAR that intend to advertise and marketing fund investment units in Macau SAR.

### I. Procedure of registration of the Foreign Fund

Under the terms set out in Articles 61 and 62 of Decree-Law no.83/99/M of 22 November 1999, advertising and marketing in Macau SAR of investment fund units of funds domiciled abroad or managed by a management entity based outside Macau SAR (hereinafter referred as "Foreign Fund" or "Foreign Funds") is subject to prior authorization by the Monetary Authority of Macau (the "AMCM"). In other words, it is strictly forbidden under the terms of Macau Law to advertise and marketing in Macau SAR any fund units of Foreign Funds without obtaining the prior authorization of AMCM.

The nature of the Foreign Fund will determine if the petition to request the authorization with AMCM should be filed by the Manager entity of the Foreign Fund or by the Macanese distributor. In general terms, if the Foreign Fund qualifies as an open-ended type fund the petition should be filed by the Manager entity of the Foreign Fund. On contrary, if the fund qualifies as a close-ended fund said petition should be filed by the Macanese distributor.

It should be referred that petition requesting the authorization should contain the necessary information and documents to allow AMCM to assess if the Foreign Fund, Manager entity, Trustee and/or Custodian, fund units of the Foreign Fund are in accordance with Macau Law.

## LEGAL FRAMEWORK

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Notwithstanding the above, it should be noted that the referred authorization will only be granted by AMCM if the Foreign Funds have been duly authorized by the competent authorities of the country or territory of origin of the fund and if the Manager entity, Trustee and/or Custodian are subject to the supervision of the competent authority.

If the information and documents provided to AMCM are in accordance with its standards, the authorization should be granted. In accordance with our experience, AMCM usually takes one month - counting from the date of submission of all necessary information and documents – to issue an authorization letter to the Foreign Fund.

## **II. After the issuance of the authorization**

After the issuance of the authorization letter, the Foreign Funds may be advertised and marketed in Macau SAR.

In terms of marketing, it should be pointed out that any promotion in Macau SAR of the Foreign Funds must identify the Manager entity and the supervisory authority of the referred Manager entity as well as the Trustee and/or Custodian.

One important remark that should be taken into consideration, is that all changes to the main aspects of the Foreign Fund such as its designation, structure, change of the Manager entity, and/or of the Trustee and/or of the Custodian must be reported to AMCM within 30 days after the formal approval from the supervisory authority of the country or territory of origin of the fund.

In addition, AMCM must also be informed within 30 days as of the signing of any agency agreements with any new Macanese distributor. The AMCM must also be informed by the Manager entity on the termination of any agency agreement with any Macanese distributor.

If the Manager entity fails to comply with any of the referred obligations – as well with any other obligation referred to in the Decree-law no.83/99/M – it may be subject to the sanctions provided in the Financial System Act (Decree-law no. 32/93/M of 5 July).

## **III. De-Registration of a Foreign Fund**

The de-registration of the Foreign Fund before AMCM may be imposed to the Manager entity or may be voluntarily requested by the Manager entity.

If the supervisory authority of the country or territory of origin of the Foreign Fund withdraws its authorization, the Manager entity should stop immediately advertising and marketing the fund units in Macau SAR. In this scenario, the Foreign Fund investors in Macau SAR must be immediately notified by the Manager entity. The Manager entity must also file a petition with AMCM requesting the revocation of the authorization for the marketing and advertising of Foreign Fund in Macau SAR.

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The de-registration of the Foreign Fund with AMCM may also occur if the Manager entity wishes so. In this case, the Manager entity must give a prior written notice of at least three months to the investors in Macau SAR of such fact. Moreover, the Manager entity must also file a petition with AMCM requesting the revocation of the authorization.

In both cases, the interests of the investors must be taken into account. Therefore, AMCM will only issue a de-registration authorization if the Manager entity ensures that the rights of the investors will be respected during and after the de-registration stage. This assessment must be carried out through a case-by-case analysis hence one might state that it is complicated to determine *a priori* a de-registration plan that protects the investors in Macau SAR.

If there are no investors in Macau SAR, the de-registration procedure may be simpler as there is no need to determine a plan to protect their interests.

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