

# NEWSLETTER



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

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## BANKING & FINANCE

### New Regime of Financial Leasing Companies

In order to meet the development needs of today's financial leasing industry in Macau, as well as revitalize the local financial leasing system, the Macau SAR Legislative Assembly enacted Law No. 6/2019, "Legal Regime of Financial Leasing Companies" and Law No. 7/2019, "Tax Incentives Regime for Financial Leasing Companies".

Both laws were published in the Macau SAR Gazette on April 8, 2019 and became effective on April 9 of the same year, replacing the existing Decree-Law no. 51/93/M that came into force more than 20 years ago.

#### Redefinition into financial institutions

The new law (Law No. 6/2019) changed the legal position of financial leasing companies. Instead of qualifying the financial leasing companies as credit institutions, those institutions are now considered financial institutions, leading to more relaxed and different regulatory requirements than the ones previously applicable, and thereby revising the respective regime towards the development needs.

In addition, the new law adds the concept of subsidiaries for the purposes of financial leasing, the existence of which is subject only to prior communication to the Monetary Authority of Macau ("AMCM"). This being said, the banks and financial leasing companies authorized to operate in the Macau SAR are now allowed to incorporate subsidiaries to hold and manage specific financial leasing projects, so as to facilitate the business operations of the same. The operation of these subsidiaries does not require licensing, but a mere communication to AMCM.

#### Authorized activities

According to article no. 3 (1) and (2) of Law No. 6/2019, both financial leasing companies and subsidiaries besides the business of financial leasing per se, may engage in the disposal and management of leased assets, exchange operations, interest rate and currency swaps, as well as in any other activities, provided that there is prior authorization from AMCM.

Similarly to what happened with the previous Decree-Law no. 51/93/M, financial leasing companies shall not receive deposits or other repayable funds from the public. Therefore, the provisions of article no. 121 of the current Financial System Act (Decree-Law no. 32/93/M) regarding the crime of unauthorized acceptance of deposits or other repayable funds shall remain applicable.

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The financial leasing business shall remain exclusive object of these entities, and therefore it is expressly prohibited for any person or entity to engage in leasing business without prior authorization to do so from AMCM. Thus, it is also prohibited to any person or entity that has not been authorized to do so, to include in his firm or to use in the exercise of his activity, words that express or imply that his corporate object is the activity of financial leasing.

### **Share capital reduction**

As the previous regulatory regime did, the new law provides that financial leasing companies are to be established in the form of either private or public companies. At the same time, the new law stipulates that the minimum share capital requirement for the incorporation of financial leasing companies shall be 10 million Patacas, which represents a decrease of 20 million Patacas when compared to the previous minimum amount provided by Decree-Law no. 51/93/M, which means the lowering of barriers and, therefore facilitating the entry of qualified participants in the market.

However, the new law does not ease the requirements regarding the subscription and payment of the share capital, which according to article no. 7 (2) should be fully paid up upon incorporation of the company. In addition, in order to prevent financial leasing companies from becoming shell companies, the new law requires at least one member of its administration body to have habitual residence in Macau.

### **Exemption of Stamp Duty and Complementary Income Tax (Law no. 7/2019)**

The acts of incorporation of financial leasing companies or of subsidiaries established for the purpose of financial leasing, as well as those relating to the increase or reinforcement of the share capital shall be exempt from the payment of stamp duty. In addition, any contracts of financial leasing regarding capital goods, excluding real estate, are also exempt from stamp duty.

Finally, leasing financial companies are also exempt from payment of stamp duty on the transfer of assets with consideration, of real estate properties intended exclusively to be used as office of the company. However, each financial leasing company may only enjoy the said exemption on one property and only up to the maximum exemption amount of MOP 500,000.00 (five hundred thousand Patacas).

Regarding complementary income tax, it should be noted that a fixed rate of 5% applies to the income obtained from the financial leasing activity. This 5% tax is not applicable once the respective income is earned abroad and it is taxed there.

*(...) it is expressly prohibited for any person or entity to engage in leasing business without prior authorization to do so from AMCM.(...)*

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