

## Manivest International Special Report

# An Introduction to Offshore Law of Macau

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8 April 2003

Hong Kong



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## Introduction – reasons for having an Offshore Law(離岸法例)

On October 13 1999, just 61 days before the hand-over of Macau from Portugal to China, the then Governor, Vasco Rocha Vieira, signed and approved the “Offshore Law” of Macau, (Decree-Law No. 58/99M) and was effective from November 1, 1999. The offshore law of Macau provides the regulation of various offshore vehicles, namely, offshore institution (離岸機構) authorization granted to corporations conducting business activities, insurance companies, banks and offshore trust. The reasons for enactment of the law, was<sup>1</sup>

*“The natural propensity of the economy of the territory of Macau towards tertiarisation and the improvements seen in local infrastructures, particularly in terms of transports and communication, justify the development of an international business centre in the Territory, upgrading the incipient model currently defined by Decree-Law no. 25/87/M, of 4th of May.*

*Consequently, in the financial domain, not only is that activity to be allowed to credit institutions, but also to other financial institutions and financial intermediaries, as well as to insurance companies, opening up the possibility to economic agents to apply for the constitution of an institution to be incorporated in the Territory to be engaged exclusively in Macau’s offshore sector, and allowing credit institutions incorporated in the Territory to operate in the same sector through subsidiaries.*

*An institutional framework is also established for asset management in the form of trusts that are so broadly used in other jurisdictions.*

*Finally, the forms of the offshore commercial services institution (離岸商業服務機構)and of the offshore auxiliary services institution (離岸輔助服務機構)are considered, the later associated to the currently named call centre and back office.”*

The reasons can be summarized in these words: to enable Macau to become an International Business Centre.

This was probable one of the last “gifts” left over by the Portuguese Government before handing over Macau to PRC government. As the name of the law suggested, Offshore Law of Macau regulates the Offshore Services Sector of Macau<sup>2</sup>.

## The structure of the Offshore Law

The law is divided into seven chapters with 80 articles. Chapter I and II are general provisions and definitions. Chapter III concerns the regulation of offshore financial activity, including offshore

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<sup>1</sup> Decree-Law no. 58/99M of 18<sup>th</sup> of October – Offshore Law : Introduction

<sup>2</sup> Ibid, Article 1: Scope “This law defines the legal regime governing offshore activity:.

banks, offshore insurance, re-insurance and captive insurance activities. Chapter IV concerns the regulations of Offshore Trust Activities. Chapter V is of interest to the audience today, it regulates offshore commercial and auxiliary services, that is, Offshore Institutions which engaged in commercial activities. Chapter VI and VII deal with transitional matters, sanctions and penalties and other final provisions.

In summary, the offshore laws regulates the following types of offshore industry:-

- Offshore banking and insurance activities
- Offshore trust and asset management activities
- Offshore commercial activities
- Offshore auxiliary services Activities.

## The Offshore Services Industry in Macau

In practice, the Offshore Law can be taken as indeed an instrument of attracting investments to improve the onshore economy of Macau. I think the audiences present in this room are not interest in offshore banking, insurance or trust and asset management services, I shall concentrate my presentation in Chapter V activities, that is, offshore commercial and auxiliary services activities.

## What Offshore Institution is and is not - definitions

Not to be confused by the name “offshore”, the Offshore Law is indeed an instrument of attracting investments to improve the onshore economy of Macau. Audience should be reminded that Offshore Institution in Macau is not the same as a British Virgin Islands International Business Company. It is not the same as a Hong Kong Company. I begin to highlight some of their difference in a table:

	BVI IBC	HK Company	Macao OI
Jurisdictions – law system	British style common law	British style common law	Portuguese style Civil (Code) law
Nature of the Vehicle	Corporation governed by IBC Act	Corporation governed by HK Companies Ordinance	A licensing (authorization) system governed by Offshore Law of Macau
Trade with local residents	NO	Yes	NO
Currency	Any kinds	Any kinds	MOP

	BVI IBC	HK Company	Macao OI
Supervising authority	Companies Registry	Companies Registry	IPIM or ACIM
Office	RO at the address of the Registered Agent	RO at any place in Hong Kong	Office in Macau, one address can only accommodate one OI
Audit, accounting	No requirement	Required	Required
Trade restrictions	None, except prohibited by Art. 5 of IBCA	None, except prohibited by law	Permitted industry only
Name	Wide selection	Must end with "Ltd" (limited co)	Must contain specified expressions
Official Language	English	English or Chinese	Chinese or Portuguese

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Let us begin in defining terms we are using<sup>3</sup>:-

- “a) Offshore activity: any economic activity dedicated to foreign markets, to be pursued exclusively with non-residents and by means of transactions in currencies other than the pataca”;*
- “c) Offshore institution: institution having legal personality or without independent legal status, engaging in offshore activity;*
- d) Offshore subsidiary: offshore institution incorporated according to the Territory’s law with its own legal personality, which is controlled by another institution by means of holding shares in its capital, or through statutory or contractual provisions;*
- e) Offshore branch: offshore institution without independent legal status which is the branch, in the Territory, of an institution incorporated abroad;”*
- “g) Offshore commercial services institution: offshore institution that pursues any of the activities indicated in a table therefore approved by decision of*

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<sup>3</sup> Ibid, Article 2 Definitions

*the Governor, to be published in the Official Gazette;*  
h) *Offshore auxiliary services institution: offshore subsidiary or branch of institution incorporated abroad whose exclusive company object is to provide the institution on which it depends or to which it belongs with some of the auxiliary services indicated in a table therefore approved by decision of the Governor, to be published in the Official Gazette; “*

## Essential features of the Offshore Law in connection with Chapter V Offshore Institutions

1. **Licensing System** The law offers a licensing procedure to companies (known as Offshore Institutions, “OI” – defined above), which wish to operate offshore business in Macau. The authorizing body will approve the applicant to set up an OI if he satisfies certain criteria<sup>4</sup>.
2. **Form of the Offshore Institution** Companies incorporated in Macau (an “offshore subsidiary”) or outside Macau (an “offshore branch”) may apply for approval<sup>5</sup>. Therefore, it is quite different from those offshore jurisdictions where a new vehicle, e.g. IBC or exempted companies is required. Companies incorporated in Macau (which has six forms, the most common type being LDA, limited liabilities company) or incorporated elsewhere can apply to become offshore institution. The minimum number of shareholder is one and there is no maximum number of shareholders for an Offshore Subsidiary.<sup>6</sup>
3. **Scope of Business** The Offshore Law regulates companies involved in offshore commercial services (import / export), back-office supporting services, offshore finance, offshore banking, offshore insurance and re-insurance, offshore trust services.
4. **Authorizing Body** The authorizing body for non-financial sector is Macau Trade and Investment Promotion Institute (Instituto de Promocao do Comercio e Investimento de Macau “IPIM”). The authorizing body for financial sector is Macau Monetary Authority (Autoridade Monetaria de Macau).

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<sup>4</sup> Ibid, Article 3 – Prior authorization : “Access to offshore activity requires prior authorization under the terms of this law.”

<sup>5</sup> Ibid, Article 5(1) – Form of the offshore institution

<sup>6</sup> Ibid, Article 5(2) – Form of the offshore institution : “Offshore institutions in the form of a company can be incorporated and subsist with any number of shareholders.”

5. Taxation Once the approval to establish an Offshore Institution is granted, the applicant will register a Macau company or set up an overseas branch and open an office in Macau. It will operate without paying any tax provided that the OI satisfies certain conditions. (See below)

## Application Procedures

The application procedures are authorized under Article 69 that referred to Article 38 and 39 with necessary adaptations to OCSI and OASI.

Article 38 provides that IPIM requires only the following information:-

1. Applications must be submitted to IPIM accompanied by:
  - a) Complete identification of the applicants;
  - b) A declaration from the auditor or auditing company that certify or intend to certify the accounts of the company or branch;
  - c) Draft of the company partnership agreement (M&A), when applicable.
2. IPIM may request any additional information that it deems necessary for assessing the application, from the applicants or from other public bodies, namely in terms of the suitability and technical capacity of the applicants.

Being a code law jurisdiction, the incorporation procedures in Macau are not as simple as that in common law countries. In fact, attorney's (notary) involvement in the preparation and notarization of documents is required throughout the process. Please note that the amount of notarization fee depends on the place of incorporation of the parent company applying for the Offshore Institution.

There is no restriction on foreign entities or individuals applying for operating an Offshore Institution in Macau.

The below procedures assume that the company uses a foreign corporation as the parent company to register a local Macau company and is a non-financial corporation.<sup>7</sup>

The procedures begin from the selection of a trading name and application made to the Commercial Registry Office. The company name of the Offshore Institute must include the word "Macao Commercial Offshore" or "Macao Auxiliary Offshore". A name reservation document will

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<sup>7</sup> See, for example, the web site of IPIM ([www.IPIM.gov.mo](http://www.IPIM.gov.mo))

be issued by the Macau Commercial Registry and the name may be reserved for 60 days.

After the application is approved, application should be made to Macau Trade and Investment Promotion Institute (IPIM), by submitting offshore application forms, an investment plan<sup>8</sup> and certain documents, including minutes, company brochure, bank reference letters etc. Once the application is accepted and approved<sup>9</sup>, the applicant has to register the offshore institution, in form of registering a local Macau Company according to the Commercial Code of Macau. The OI has to prepare for the setting up of the office within 6 months.

The Macau Company is registered by the following procedures. One or more persons of full age and capacity, of any nationality and domicile, may sign the Memorandum and Articles of Association<sup>10</sup> and various other documents required under the Commercial Code. Notarization may be done before a public notary (government official) or a private notary (attorney). These documents so executed and notarized are then registered at the Commercial Registry Office within 15 days of signing of the memorandum.

Caution has to be placed on the jurisdictions where the parent companies are incorporated as arranging translation and notarization from certain offshore jurisdictions may be time consuming and burdensome. Using Hong Kong company can reduce hindrance, as most of the documents are already prepared in Chinese.

Note also that the official languages of Macau are Chinese and Portuguese. All documents should be prepared in either one of the two languages.

## Regulations of Chapter V Offshore Institutions

### Name

Since OI should take the form of either Corporation incorporation in Macau or a branch of a foreign company, the name of OI is also governed by the Articles 14 to 17 of the Commercial Code of Macau and Articles 30 to 31 of the Commercial Registration Code of Macau. In addition, the name of the Chapter V OI must include in their name the expression “Macao commercial offshore” or

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<sup>8</sup> See Appendix B for a general guide line issued by IPIM

<sup>9</sup> Within 30 days, as provided by Article 39 of the Offshore Law.

<sup>10</sup> We use the term “Memorandum and Articles of Association” representing its constitutional document. In fact, this document is a very simple ‘one-page’ document containing basic information such as the company name, type, nature of business, registered office, capital, term of payment, and the formation of its administration and supervisory body.



“Macao auxiliary offshore”.<sup>11</sup> The name must be displayed on their premises and on all documents and correspondence.

In addition, OI may adopt in their documents the expression “International Business Company”, or “IBC”<sup>12</sup>. This does not seem to be a favorite selection by the user, noting the negative effect brought in by the term “IBC”.

## Special Provisions as to Offshore Branches

Liabilities : Article 7 provides that

*“Institutions licensed to establish offshore branches are jointly responsible for the transactions engaged in by the latter.”*<sup>13</sup>

That is to say, the parent company shall assume the liabilities of the Offshore Branch incurred.

Power and Authority : Article 8 provides that the manager of the Branch (or in whatsoever title they are named) must have powers to make decision and to direct the activities of the Branch towards the Macau Government and/or other third parties. This power

*“must compulsorily include those of receiving summonses and also of confessing, withdrawing from and participating in any litigation.”*<sup>14</sup>

## Basic Requirements for Operating Offshore Business

- The OI can only use non-Macao currency in their transactions
- The OI can only target at non-Macao residents as customers
- The OI can only focus on non-Macao markets.

## Tax Incentives

OI enjoys full exemption from various kinds of taxes, including Complimentary Tax, Industrial Tax, Property tax and Stamp Duties<sup>15</sup>. However, certain limitations do apply. In my opinion the limitations do not affect the attractiveness of the OI.

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<sup>11</sup> Offshore Law, Article 64(1) - Name

<sup>12</sup> Ibid Article 64(2)

<sup>13</sup> Ibid, Article 7 – Guarantee of transactions made

<sup>14</sup> Ibid, Article 8(2) – Management powers

<sup>15</sup> Ibid, Article 12(1) – Fiscal Regime

It can be safely reasoned that the tax exemption granted to OI are only an extension of the basic concept of taxation in Macau. That is, only “income or profits arising in or derived from Macao”<sup>16</sup> are subject to tax. An examination of the exceptions to the exemptions also reflect these points:-

- a. The exemption from complementary tax only “when the income is generated through the engagement in offshore business”<sup>17</sup> but not otherwise.
- b. The exemption from Property Transfer Tax only “on properties affected, exclusively, to the offshore activity.”<sup>18</sup>
- c. The exemptions from Gift and Inheritance Tax and Property Transfer Tax shall be “with no effect and the respective taxes shall be paid, whenever the property will no longer be exclusively affected to the offshore business, within 5 years after the exemption was granted.”<sup>19</sup>. Note that these two categories of taxes have been abolished.

In addition, OI can engage non-resident managers or specialist technicians who may be exempted from Professional Tax (income tax) of Macau for up to 31<sup>st</sup> of December of the third year after the beginning of the activity in Macau<sup>20</sup> (Which is less than three years).

### Permitted and Forbidden Activities

The permitted activities of a Chapter V OI is contained in a table approved by the Chief Executive and published in the Official Gazette. Currently there are 20 different activities approved:-

1.Commercial and service agents	2. Overseas selling activities
3.Trade information dissemination	4. Management and administration of ships and aircraft
5.Documentation services	6. Call centers for customer support
7.Investigation and security	8. Hardware consultant
9.Software consultant	10. Data processing
11.Data base related activities	12. Research and development activities
13.Legal activities	14. Accounting, audit and fiscal consultant
15.Management and business consultant	16. Architectural, engineering and related activities
17.Tests and technical analysis	18. Packaging
19.Back offices	20. Training programs

<sup>16</sup> HO Mei Va, Louisa, “Macao Taxation” UNSECO Macau Centre

<sup>17</sup> Offshore Law, Article 12(1)(a)

<sup>18</sup> Ibid, Article 12(1)(d)

<sup>19</sup> Ibid Article 12(4)

<sup>20</sup> Ibid Article 12(5)

The only different between an Offshore Commercial Services Institution (OCSI) and an Offshore Auxiliary Services Institution (OASI) is that Offshore Auxiliary Services Institution is allowed to provide services to its parent company and not to third parties<sup>21</sup>. Note that it is forbidden by law to provide services even to its fellow subsidiaries. I personally think that this is a very difficult condition to be observed, or to be supervised by the authorities.

In accordance with Article 65 of the Offshore Law, OCSI and OASI are forbidden to engage in any activities which is restricted by law and can only be provided by credit institutions, investment companies, financial intermediaries and insurance companies<sup>22</sup>.

### Additional Requirements / Conditions of OI

An investment plan have to be submitted to the Government to apply for operating offshore services business. The plan details the mode of operations, investment amount, local staff to be employed, size of the office, and the nature of product / services to be deal with. Macau OI has to satisfy the Government that their plan has been carried out as envisioned as a condition of renewal of the OI status and, in particular,

- The OI must engage resident staff in Macau.
- The OI must occupy an independent office in Macau.
- The OI should have substantial activities, demonstrated by the magnitude of its turnover or assets, in the field of the declared offshore activities.

The audience should note that employers have different obligations under various law of Macau. OI and employees working for OI are also subject to the social security regime currently in force.<sup>23</sup> and have to join the Social Security Fund<sup>24</sup>

This is a very important part of the offshore operation in Macau. The OI has to be physically present in Macau and cannot operate “on paper “ only. It can therefore be said that Offshore Institutions in Macau have a permanent establishment in Macau.

### Operating Office

OI are required to have an independent office located within Macau. The law also provides that the OI must operate through “a single branch” and “opening of agencies and other identical forms of

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<sup>21</sup> Ibid, Article 65(2)

<sup>22</sup> Ibid, Article 65(1)

<sup>23</sup> Ibid, Article 11 – Social security regime.

<sup>24</sup> (1) Employers have to fill in the M2 form and submit to the authorities within 15 days of the employment (DL2/78M). (2) Employers should notify and contribute to the “Social Securities Fund” within 15 days of any commencement or termination of employment (DL 58/93M) (3) Employers should maintain employees’ record every month in office for the inspection of “Labour and Employment Bureau” (DL50/85M)

representation are not allowed”<sup>25</sup>

## Official Language

As I have indicated above, the official language of Macau is Chinese and Portuguese. English can only be used as a “working language”. Officially, it was provided in the Offshore Law that statutory records must be kept in one of the official language. Likewise, applications to the Governors have to be addressed in one of the official language.

However, other request and information included in the applications and recorded can be written in English.<sup>26</sup> Moreover, if you undertakes to pay to the addressed authorities a translation fee, the application / records can be submitted in English.<sup>27</sup>

## Annual Commitment, Accountancy and Auditing Requirements

Article 6 provides that “Offshore institutions must keep their accounts organized according to generally accepted accounting principles and, when applicable, in conformance with the plan set for their respective business sector.”<sup>28</sup>

In addition, although some of the OI does not need to appoint statutory auditors, they have to cause their account to be audited and send their annual financial statements to IPIM<sup>29</sup>

That is to say, if the investment plans states that the OI account have to be prepared according to US GAAP, it must do so. From the latest information available to me, the accountants and auditors associations<sup>30</sup> of Macau are discussing the issuance of the Statement of Macau Standard Accounting Practice.

Annual audits are required to be performed by a Macau registered auditing company. The audit report has to be submitted to the IPIM.

## Termination – Expiration and Revocation of Authorisation

Article 67 stipulates that the authorisation for an OI shall be effected in cases similar to Article 41.

Article 41 deals with the expiration of authorisation of offshore trust. Although the cases can not be directly applicable to OCSI and OASI, these cases under with an OCSI or OASI authorisation being expired can be interpreted as follows:-

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<sup>25</sup> Offshore Law, Article 9 – Place of business

<sup>26</sup> Ibid, Article 10 – Official language

<sup>27</sup> Ibid.

<sup>28</sup> Ibid, Article 6

<sup>29</sup> Ibid, Article 66 – Supervision of accounts

<sup>30</sup> There are four Certified/ authorized Accountants and Auditors Associations in Macau

- 1 the applicants expressly renounce it ;
- 2 or if the Institution:
  - a) Is not formally incorporated or installed within 6 months counted from the date of notification of authorisation;
  - b) Fails to have any operations for over six months continued or interpolated in a row of 1 year;
  - c) Is evicted from its premises due to a court judgement, unless it moves to new premises within three months from the eviction;
  - d) Is dissolved.

Conditions (b) is the most stringent one as the supervising authority (IPIM) undertakes the supervision duties tightly. Besides examination of annual financial reports of the OI and comparing with the Investment Plan submitted, they conduct surprises visit to the office premises of the OI to ascertain the substance of activities being conducted by the OI.

(Revocation of authorisation)

In addition, authorisation granted to operate offshore commercial and auxiliary institutions will be revoked in the cases described in certain cases in Article 42, which is also deal with Offshore Trust, as follows:-

- a. The authorisation has been obtained on the basis of false statements or other illegal means;
- b. The operating fee is not paid within the period set for this purpose;
- c. There are repeated breaches of the duties stipulated in this law or the rules of conduct referred to in Article 15; (Code of Conducts issued by IPIM and respective trade associations.)<sup>31</sup>
- d. The requirements established for minimum share capital are not observed; (MOP25000)
- e. There are no organised accounting records;
- f. Any of the facts referred to in Article 31 is proven to have occurred;

Revocation for any reason shall imply the dissolution and winding up of the institution<sup>32</sup>.

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<sup>31</sup> Repeated breach shall be understood as 3 infractions of the same nature, or 5 infractions regardless of their specific nature, committed during a period of up to 2 years.

<sup>32</sup> Offshore Law, Article 42(5)

I would like to repeatedly remind those audience who may plan to use OI that Macau is not shelf companies like BVI IBC. Laws in Macau do not operate likes Hong Kong's laws.

### Violation of Laws

Nothing can be more important in knowing the risk of violating the law unintentionally. Chapter VI of he Offshore Law provides a detail list of violations and penalty (fines).

Article 70	Violations	Fine	Power to impose
1(a)	Engaging in Chapter V offshore activities without authorisation	MOP100,000 to MOP500,000	IPIM
1(b)	Engaging in forbidden activities	MOP75,000 to MOP300,000	IPIM
1(c)	Commencing in Chapter V offshore activities without having complied with the requirement set for this purpose	MOP50,000 TO MOP200,000	IPIM
1(d)	Breach of Duties under Article 5 (Form of OI), 9 (Place of business), 10 (Official language), 20 (Name), 64 (Name), 66 (Submission of Accounts), 15 (Rules of conducts)	MOP20,000 to MOP 100,000	IPIM

I think I have to stop my presentation for the time being and I think the audience will now obtain a brief idea of the Offshore Law in Macau. Mr. Lemos will follow me in presenting the taxation system of Macau and after tea break, Mr. Horace Ho will present the application of Macau Corporation and OI in the planning of commercial operations.

Thank you

Yvonne Fong

April 8, 2003, Hong Kong

**Reference**

- The SAR Government of Macau, Decree-Law no. 58/99M of 18th of October 1999: Offshore Law of Macau
- The SAR Government of Macau, Decree-Law no. 56/99M of 11 of January 18th of 1999 and 5/2000 of 26 April 2000; Commercial Registration Code of Macau
- Ho Mei Va, Louisa, *Macao Taxation*, UNSECO Centre of Macau
- Instituto de Promocao do Comercio e Investimento de Macau, *Investment in Macau*, Government of Macau SAR.
- Web site of the Government of Macau SAR: [www.macao.gov.mo](http://www.macao.gov.mo)
- Web site of the Instituto de Promocao do Comercio e Investimento de Macau: [www.IPIM.gov.mo](http://www.IPIM.gov.mo)
- Various Fact Sheet relating to Macau published by Maninvest Asia Limited

## Appendix A

As the official language of Macau is Chinese and English, I find the following translations into English are used by the government officially and unofficially. Some of these translations are also used in those reference sources.

Chinese	Portuguese	English (used in Offshore Law)	English (also used unofficially and other reference sources)
薪俸稅/職業稅	<i>imposto profissional</i>	Professional tax	
<a href="#">營業稅</a>	<i>Contribuição Industrial</i>	Industrial tax	
印花稅	<i>imposto de selo</i>	Stamp duty	
物業轉移稅	<i>Imposto de sisa</i>	Real estate transmission tax	Property Transfer Tax
繼承及贈與稅	<i>Imposto de sucessões e doações</i>	Inheritance and donations tax	Gift and Inheritance tax
利得稅/所得補充稅	<i>imposto complementar</i>	Income tax	Complementary Tax

## Appendix B

Guide line for compilation of the investment plan

- General Information on the investment project
- Source of Funding
- Main Market /Target Customers
- Distribution channels and market connections
- Products / Services provided
- Estimated revenue / production volume for the first two years
- Production / Operation Schemes
- Technology /Knowledge acquired
- Type of work force required (Type and Number of staff in first two year, expecting to import labor and their quantity.)
- Type and Area of work place required (e.g., Land, Office, Industrial Building, Shop, etc.)



Appendix C

Operating Fees for Offshore Institutions are as follows :

Offshore Commercial Service Institution	<i>Operating Fee</i>
Registered Capital: MOP25,000 to MOP100,000	MOP5,000
Registered Capital: MOP100,001 to MOP1,000,000	MOP10,000
Registered Capital: MOP1,000,001 or above	MOP15,000

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Offshore Auxiliary Service Institution	<i>Operating Fee</i>
Registered Capital: MOP25,000 to MOP100,000	MOP3,000
Registered Capital: MOP100,001 to MOP1,000,000	MOP6,500
Registered Capital: MOP1,000,001 or above	MOP10,000