



MANIVEST 宏傑

# Macao

## Information Manual

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## Part I. Background

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Macao is located at the entrance of China's Pearl River Delta, 60 km from Hong Kong and 145km from Guangzhou. A previous colony of Portugal in Asia, Macao is a well-known resort in Asia. On 20th December 1999, Macao became the second Special Administrative Region of China. In accordance with its Basic Law (the Mini constitution), Macao SAR will retain its economic system for a further 50 years, with its own executive, legislative and judicial authorities and systems.

Like Hong Kong, Macao is a duty free port with a low-tax policy. No import duty is imposed on most goods and there is no restriction on the transfer and repatriation of capital and profits.

Macao has a population of over 469,8001, with a GNP per capita of USD22,6202. It has an area of just 23 Square kilometers and is traditionally a small market. The strength of Macao is its proximity to the Zhuhai Special Economic Zone, which renders it a gateway to China. The Zhuhai SEZ is 5 times bigger than the Shenzhen SEZ in area.

The major advantages of using Macao as a jurisdiction for business and asset planning are as follows:-

### Infrastructure and Economy

Macao has never been considered as a tax haven. It is not on the list of OECD, FATF and other similar reports. Macao is an independent tariff region; it is a member of the World Trade Organisation and is also a beneficiary of the European Union General Scheme of Preferences scheme and WTO's Agreement on Textiles and Clothing.

WTO Secretariat's 2nd Trade Policy Review of Macao, released in March 2001, ranks Macao's economic system "among the most open in the world". With its strategic location at the entrance of Mainland China and close proximity to Taiwan, the Macao SAR serves as a regional hub for trade, finance, tourism, civil aviation, investment and communication.

The most important local industry of Macao is tourism and it is a well-known resort and gaming centre among Asians. In 2004, there were over 16 million visitors to Macao.

Currently<sup>3</sup>, there are 12 local banks, 15 branches of banks incorporated outside Macao, including 1 offshore bank, among them are well-known international institutions such as HSBC, Bank of China, Bank of America and International Bank of Taiwan. There are also 26 insurance companies.

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<sup>1</sup> March 2005

<sup>2</sup> As of year 2004, equal to 97% of Hong Kong. GDP per capita of Macao is USD15,355 in 2001, a growth rate of 14%

<sup>3</sup> Up to 31 December 2004

### **Macao – an Ideal Place for Back Office Support**

Macao's proximity to the Pearl River Delta, in particular Zhuhai and Zhongshan, has made it a regional back office for business with manufacturing plants in Zhuhai and Zhongshan. The other strength of Macao is that its living and office running cost is only about half of that of Hong Kong.

Although Macao does not have a stock market and sophisticated financial infrastructure, its proximity to Hong Kong – only 60 km from Hong Kong with 24 hours transportation and customs services – has made up for such deficiencies.

There is a local Airport designed to handle over 6 million passengers each year. There are direct flights to Asia cities and Europe. There is also a container port at Ka Ho Port on Coloane Island in Macao.

The government is pro-commerce. Additional tax and investment incentives are available to investors establishing manufacturing center in Macao.

### **Macao's Relationship with Europe**

Macao is a previous colony of Portugal. In 1992 a Trade and Co-operation Agreement was concluded between Macao and the European Union. As a result, the Euro-Info Centre of Macao, the only Euro-Info Centre in Asia and the Institute of European Studies were set up in 1992 and 1995. Due to historical reasons, there are deep links between Macao and the Portuguese-speaking countries.

### **Language**

In addition to Chinese, English and Portuguese are also used in Macao. The official languages of Macao are Chinese and Portuguese. English is used in commercial operations.

### **Double Taxation Treaty**

Macao maintains a double taxation treaty with Portugal and a double taxation agreement with Mainland China.

### **Finance, Currency and Exchange Control**

There is no exchange control. Macao currency (Pataca) is maintained at a fixed exchange rate with Hong Kong at HKD1 = MOP 1.03, which in turn is pegged with USD at USD1 = HKD7.8.

### **Law and Legal System**

Since Macao is a former Portugal colony, laws of Macao are drafted under the heavy influence of Portugal and are basically under a code law system, a system that is found to be familiar by professionals in continental Europe, mainland China and Taiwan. There are primary courts, intermediate courts and a Court of Final Appeal. The territory also has an Administrative Court, which has jurisdiction over administrative and tax cases. All judges are appointed by the Chief Executive, based on the recommendation of an independent commission.

The legislative assembly of Macao is the territory's law-making body, composed of 23 members. The head of the government of Macao is the Chief Executive.

## Part 2. Macao Company

### 1 Formation and Management of Macao Corporation

A Macao corporation is a company registered under the Commercial Code of Macao which is either:-

1. An unlimited liability company
2. A mixed liability company by “Quotas”<sup>4</sup>
3. A mixed liability company by shares
4. A limited liability company by “Quotas”
5. A limited liability company by “sole owner”
6. A limited liability company by shares

As the most common forms of corporation in Macao are types 4 and 5, this document describes mainly the procedures and requirements relating to these two types of corporations

	Number of owners	Capital	Form and participation of capital	Name ending with
Limited liability company by Quotas	2 to 30 persons	Minimum MOP25,000 (USD3,125). No maximum	By subscribing to the capital of the company at a minimum of MOP1,000(USD125) or in multiples of MOP100 (USD12.5)	Limitada (Lda)
Limited liability company by sole owner	1	-same as above	-same-	Sociedade Unipessoal Limitada

#### Incorporation Procedures

Being a code law jurisdiction, the incorporation procedures in Macao are not as simple as that in common law countries. In fact, attorney (notary public) is involved in the preparation of documents and notarization throughout the process. Please note that the amount of notarization fee depends on the number of shareholders and directors and in some cases, depends on the amount of registered capital involved.

There is no restriction on foreign entities or individuals setting up corporations in Macao.

The procedures begin from the selection of a trading name and application made to the Commercial Registry Office, which will issue a name reservation document. The name may be reserved for 60 days.

After the name application is approved, one or more persons of full age and capacity, of any nationality and domicile, may sign the Memorandum and Articles of Association<sup>5</sup> (“M&A”) and various other documents required under the Commercial

<sup>4</sup> Quotas : this is the equivalent of “Stock”, a concept relative to “Share”.

<sup>5</sup> We use the term “Memorandum and Articles of Association” representing its constitutional document. In fact, this document is a very simple document containing basic information such as the company name, type, nature of

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.

We recommend that the documents are to be notarized before a private notary to save time. Unless Power of Attorney is arranged, all shareholders and directors involved must appear before the notary in Macao for notarization.

The corporation acquires legal personality upon registration with the Commercial Registry Office. However, no Certificate of Incorporation will be issued, only an “official records” can be obtained from the Commercial Registry. Within 15 days after registration, the company should apply to the Finance Services for declaration of commencement of operations, by completing Form M1 and submitting other documents.

It should be noted that

- 1 Corporate shareholders are permitted. However, additional notarization of board of director’s minutes approving the setting up of the Macao Corporation at the jurisdiction where the board of directors holds their meeting is required. Arranging for translation and notarization of company documents in certain jurisdictions can be time-consuming and cumbersome.
- 2 Note that the official languages of Macao are Chinese and Portuguese. English is a working language only and is acceptable for registration, but translation is still required during the notarization process. Manivest can arrange for translation if required.
- 3 Corporate director<sup>6</sup> is permitted under Section 234 of the Commercial Code. According to the code, if a corporate body is appointed as a director of the company, a natural person should be appointed by the said director to be its representative. However, we do not recommend the appointment of a corporate director since more documents are required to be notarized. When the representative is changed, the whole set of documents have to be notarized and re-submitted.

The time frame of the whole process is about 20 days.

### **Power of the Corporation**

According to section 177 of the Commercial Code, a corporation may perform all lawful acts and exercise all powers pertaining to the necessary performance and attainment of its objectives as provided for in its M&A.

### **Share Capital**

The minimum capital required is MOP25,000 (USD3,125). According to Section 201 to section 204 and Section 358 to Section 363 of the Commercial Code, the following restrictions apply:

- 1 “Quotas” should be denominated in MOP. The minimum value is MOP1,000 and should be denominated in multiples of MOP100.
- 2 Capital injection can be in the form of cash or non-cash contributions.
- 3 In case capital injection is in the form of non-cash contribution, a valuation report certified by a qualified auditor must be attached to the incorporation document. The report must be prepared within 60 days of the incorporation

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business, registered office, capital, term of payment, and the formation of its administration and supervisory body.

<sup>6</sup> The governing body of a corporation named under the Commercial Code is known as “Administration Body”.

- 4 Capital injection in respect of the first MOP25,000 must be paid immediately upon incorporation. For capital injection beyond MOP25,000, delayed payment is allowed. The delayed amount should not be more than 50% the total amount of quotas as agreed to be contributed by any one owner. The maximum delayed period is three years.
- 5 If the original owner of the quotas defaults in payment, other quotas holders are required by law to take up his quotas, in proportion to their quotas.

### **Quotas-holders**

Minimum one owner (in case of Sociedade Unipessoal Lda) or two owners, who can either be individuals or corporations, are required for a corporation. Shareholders need not be residents but since certain documents have to be notarized by a Notary Public in Macao, unless Power of Attorney is arranged, they have to visit Macao to perform the notarization process at least once.

There are provisions in the Commercial Codes governing the increase and reduction of capital.

Since Macao is not a common law jurisdiction, it may not recognize nominee or trust ownership of equity interest in a company. Please consult your lawyer.

### **Directors**

The Commercial Code provides for the establishment of a “Governing Body” which is similar to the Board of Directors in a common law jurisdiction. For simplicity, we refer this body as Board of Directors and its members Directors.

The minimum number of director required is one, who may or may not be a quotas-holder. Directors should be elected by quotas-holders and shall hold office indefinitely unless specified in the M&A.

There is also no residency requirement for directors. Directors may be removed by resolution of quotas-holders

## 2 Company Secretary

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Do Macao companies need a company secretary?

One of the frequently asked questions is that whether a company secretary has to be appointed for a Macao corporation. Legally speaking, there is no such requirement. According to Article 214 of the Commercial Code of Macao, a company secretary must be appointed if:

- 1 The company has ten or more than ten quotas-holders or
- 2 The company has issued debentures or
- 3 The capital, total assets or turnover, exceeds an amount more than a directive from the government (the Chief Executive)

Nevertheless, a company may appoint a company secretary even though it is not statutory required to do so. There is no requirement that the company secretary must be a Macao resident, but the secretary, according to Section 237 of the Commercial Code, must be one of the members of the board of directors, or one of its staff members or a lawyer.

However, we recommend you to consider the appointment of a company secretary for your Macao Corporation, for the following reasons:

A Macao Corporate Company Secretary has power conferred by the Commercial Code, which is more “powerful” than a company secretary appointed under Companies Law of a common law jurisdiction.

Article 238 of the Commercial Code confers the following statutory authority onto a Company Secretary:-

- 1 He can certify the translation of a document required by law to be the true translation of its original;
- 2 He can certify the signature of the shareholder or director on a legal document;
- 3 He can certify an extract from the constitution, minutes book and other statutory documents of the company as a true copy.

The law even confers authority to him that his certification has the same statutory power as a certification from the Commercial Registry. Taking into consideration that the official languages of Macao are Chinese and Portuguese, the service of a Company Secretary will be indispensable when the company operates a bank account in Macao, conduct day-to-day import and export transactions, filing tax return etc.

Therefore, Manivest recommends our client to engage us as a Company Secretary to facilitate the day-to-day administration of the company. We may be engaged on a retainer basis or per deem basis.



### 3 Company Limited by Quotas and Company Limited by Shares

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Professionals from common law jurisdictions usually misunderstand the concept of a Company Limited by “Quotas” – LCQ, a common vehicle found in civil law jurisdictions, such as Macao. Company Limited by Quotas is similar to LLC – Limited Liabilities Corporation found in USA.

In Hong Kong and other common law jurisdictions, the most common form of limited liabilities vehicle is Company Limited by Shares (LCS), which is a different type of vehicle from LCQ.

In fact, the most common form of corporation set up in Macao is LCQ although LCS is also available for registration. The reason for this is that the capital requirement of LCQ is less demanding than that of LCS. The minimum capital required for LCQ is MOP 25,000 while the minimum capital required for LCS is MOP1M.

What are then the differences between these two vehicles?

In a LCS, the capital of the corporation is in terms of a certain sum of money being divided into a stated number of shares with a given par value each share. For example, if the capital is MOP200,000, the capital will be described as, say, “MOP200,000 divided into 2,000 shares of par value of MOP100 each”. The amount of capital a shareholder owns in a company, which is known as “Share Capital” is determined by the number of shares registered in his name. In buying, selling and transferring of shares, the transaction is described as X transfers N number of shares to Y.

On the other hand, in a LCQ, there is no such concept of dividing capital into a stated number of “Quotas” as described above. While “quotas” means “capital”, theoretically, there is no minimum unit or fraction of a unit that a quotas-holder may own. For example, Mr. X may own MOP12,000 of the capital of a Macao Company, whose total capital is MOP100,000. That means, Mr. X owns 12% of the company. It should be noted that the Commercial Code of Macao stipulates that the minimum value that each Quotas- holder may own in a LCQ is MOP1,000. The value may increase in multiples of MOP100, and the minimum capital of a LCQ is MOP25,000.

The amount of capital a quotas-holder owns in a LCQ, which is known as “capital”, is determined by the percentage of the capital registered in his name. In buying, selling and transferring of shares, the transaction is described as X transfers N% of the capital in the Company to Y.

The differences in the concepts of “Quotas” and “Shares” also mean that the respective rights and obligations of quotas-holders and shareholders are different.

## 4 Setting up Credit Companies in Macao

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One popular enquiry about business operation in Macao is the establishment of credit companies in Macao; that is, **banks, asset management companies and investment funds**. There are now 27 banks in Macao, of which 4 are established locally and 23 are established overseas. Two forms of entity are available which can be established as credit companies and are operated under the supervision of Monetary Authority of Macao (AMCM):

### Local Credit Companies incorporated in Macao

Credit companies incorporated in Macao shall take the form of Limited Company by Shares. Shares shall either be registered shares or bearer shares held under custodian. The minimum requirement of share capital is MOP 100 million and must be subscribed and fully paid up in accordance with the regulation of the Article 21, Decree-Law no. 32/39/M – Macao Financial System Act.

To establish a credit company in Macao, a business plan is required to submit to AMCM including the reasons of establishment, feasibility studies and operation plan to ensure there no conflict with the economic and financial policy of Macao government. AMCM will conduct investigation on the background and financial status of the applicant.

### Branches of Credit Companies Incorporated Overseas

Credit companies incorporated outside Macao wishing to open branches in Macao should obtain authorization from AMCM. The minimum capital to be invested in the branch is MOP 50 million. Authorized representative has to be appointed to execute the application. A business plan, due diligence documents of the parent company, background information of the shareholders, including the ultimate beneficial owners and directors of the proposed credit company are also required when registering the branch.

### Our services in application for a Macao Offshore Banking License

Our firm recently received a case about setting up an offshore bank in Macao. Manivest provides services in the application for Macao Offshore Banking License, including the drafting of business plan and submitting the necessary documents to the relevant governmental bodies. Our efforts in providing such professional services suits the specific needs to the client.

As the requirement and application procedures differ for different kinds of credit companies. If you wish to have further details in connection to the specific types of credit companies in Macao, please feel free to contact us for further details.

## Part 3. Macao Offshore Institution

### 1 Formation of Macao Offshore Institution

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On October 13 1999, just 61 days before the hand-over of Macao from Portugal to China, the then Governor, Vasco Rocha Vieira, signed and approved the “Offshore Law” of Macao, which became effective from November 1, 1999. The law provides the regulation of offshore financial business and offshore non-financial business, mainly through the creation of the Offshore Institution (“OI”) permit.

In this document, we shall describe the procedures and requirements relating to the application of OI for corporations conducting offshore services business (i.e. offshore non-financial business).

#### The Offshore Industry in Macao

Not to be confused by the name “offshore”, the Offshore Law is indeed an instrument of attracting investments to improve the onshore economy of Macao. The essential features of the Offshore Law in connection with offshore business and companies are:-

- **Licensing System** The law offers a licensing procedure to companies (known as Offshore Institutions, “OI”), which wish to operate offshore business in Macao. The authorizing body will grant a permit to the OI if it satisfies certain criteria.
- **Form of the Offshore Institution** Companies incorporated in Macao (an “offshore subsidiary”) or outside Macao (an “offshore branch”) may hold the license and become an OI. Therefore, it is quite different from those offshore jurisdictions where a new vehicle, e.g. IBC or exempted companies is required. Companies incorporated in Macao (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.
- **Scope of Business** The Offshore Law regulates companies involved in offshore commercial or auxiliary services, as well as offshore financial services including offshore banking, offshore insurance and re-insurance and offshore trust and asset management services.
- **Authorizing Body** The authorizing body for non-financial sector is Macao Trade and Investment Promotion Institute (Instituto de Promocao do Comercio e Investimento de Macao “IPIM”). The authorizing body for financial sector is Macao Monetary Authority (Autoridade Monetaria de Macao).
- **Permissible Activities** On 13th June 2005, the Macao government issued Directive 205/2005 setting out eight types of permissible activities that commercial offshore institutions and auxiliary offshore institution can carry out
  1. Management and administration of ships and aircraft
  2. Hardware consultancy,
  3. Software consultancy,
  4. Data Processing
  5. Database related activities,
  6. Research and development activities
  7. Tests and technical analysis activities,
  8. Back office activities
- **Taxation** Macao OI is not subject to any corporate tax provided that it satisfies certain conditions.

## 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.

## Application Procedures – for Setting up a Commercial or Auxiliary Offshore Institution

The procedure can be summarized as follows

1. Application of a company name
2. Submission of offshore application form, together with supporting document and investment plan to IPIM
3. Assessment by IPIM
4. Approval obtained from IPIM. A company (either a subsidiary or a branch) has to be set up in Macao within six months of the approval.

The procedures begin from application made to the Macao Trade and Investment Promotion Institute (“IPIM”), as well as 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 be issued by the Macao Commercial Registry.

Application should be made to IPIM, by completing appropriate application forms and to submit a two years business plan as well as certain documents including minutes, company brochure, bank reference letters, etc. Once the application is accepted and approved, the applicant has to register the Offshore Institution and open an office within six month, which can be either:-

- a. A locally incorporated company (Local company) – please refer to our notes on incorporation of Macao Corporations
- b. A foreign incorporated company registered as a branch in Macao

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.

There is no restriction on foreign entities or individuals applying for an OI in Macao. There are two types of non-financial service OIs: offshore commercial services institution (also known as International Business Company) and offshore auxiliary services institution. The former can provide services to any third party, but the latter can only provide services to its parent or group companies. An OI may operate one or more of the 8 offshore activities as permitted under the law.

After the granting of approval, a Macao company or branch should be set up in accordance with the laws of Macao. Being a code law jurisdiction, the incorporation procedures in Macao 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.**

For procedure of establishment of a Macao Company, please refer to our Fact Sheet – Formation of Management of Macao Company.

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

### **Tax Incentives**

OI enjoys full exemption from various kinds of taxes, including industrial tax, property tax, and stamp duties. In addition, OI can engage non-resident managers or specialist technicians who will be exempted from professional tax (income tax) of Macao for up to three years.

### **Additional Requirements / Conditions of OI**

A business plan has to be submitted to the government to apply for a permit to operate offshore service business in Macao. The plan details the mode of operations, investment amount, local staff to be employed, size of the office, and nature of products/services to be dealt with. After the permit is granted, Macao OI has to satisfy the government that the business plan is carried out as envisioned as a condition for maintaining the status. In particular,

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

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

### **Macao’s Relationship with Europe**

The attractiveness of using a Macao OI is partly due to the special position of Macao.

- 1 Macao is a previous colony of Portugal. In 1992 a Trade and Co-operation Agreement was concluded between Macao and the European Union. Hence the Euro-Info Centre of Macao, the only Euro-Info Centre in Asia and the Institute of European Studies were set up in 1992 and 1995. Due to historical reasons, there are deep links between Macao and the Portuguese-speaking countries.
- 2 Macao maintains a double taxation treaty with Portugal.

### **Operating Office**

OIs are required to have an independent office located within Macao.

### **Accountancy and Auditing Requirements**

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

## 2 Changes to Macao Offshore Regime

### [Opportunity or Disaster – Change to Macao Offshore Regime]

On 13th June 2005, the Macao government issued Directive 205/2005 (replacing Directive 236/GM/99) setting out a list of permissible activities that commercial offshore institutions and auxiliary offshore institution can carry out in Macao under the Macao Offshore Regime. The original twenty types of business permitted were reduced to eight (Table below)

The change in the regime was made in response to the shortage of human capital and escalating rentals and purchase price of properties. Since a physical office with local residents employed is a compulsory requirement for operating the Macao Offshore Institution ("MOC"), low density of population and limited office premises in Macao are no longer able to fulfill the great demand from investors. In order to address the situation, Macao government needs to restrict the scope of the Macao's Offshore Regime. It is hoped that with the new restrictions, Macao can attract genuine businesses operations that would result in economic benefits.

It was further reported in media that the Hong Kong government, in view of the flow of business to the low-tax regime of Macao, complained to the Beijing government that Macao is attracting investment unethically ; a typical case of tax competition. A more relevant reason is that investors from Hong Kong use Macao Offshore Institution as a vehicle for regional tax planning, causing loss of tax revenue to the Hong Kong Government. If the rumor is true, the Hong Kong government has not yet learnt from Macao; who has provided a more stable and predictable tax regime for the investors.

Commercial and auxiliary services	Previously permitted activities	Permitted activities under New Directive
1. Commercial and service agencies	Yes	
2. Overseas selling activities	Yes	
3. Trade information dissemination	Yes	
<b>4. Management and administration of ships and aircraft</b>	Yes	Yes
5. Documentation Services	Yes	
6. Call centres for customer support	Yes	
7. Investigation and security	Yes	
<b>8. Hardware consultancy</b>	Yes	Yes
<b>9. Software consultancy</b>	Yes	Yes
<b>10 Data Processing</b>	Yes	Yes
<b>11 Database related activities</b>	Yes	Yes
<b>12 Research and development activities</b>	Yes	Yes
13. Legal activities	Yes	
14. Accounting, audit and fiscal consultancy	Yes	
15. Management and business consultancy	Yes	
16. Architectural, engineering and related activities	Yes	
<b>17. Tests and technical analysis activities</b>	Yes	Yes
18. Packaging	Yes	
<b>19. Back office activities</b>	Yes	Yes
20. Training programs	Yes	

According to the Macao Trade and Investment Promotion Institution ("IPIM"), existing

Macao Offshore Companies which received their offshore permits before 14th June, 2005 will not be affected. Neither would applicants for offshore permits who submitted their applications to IPIM before 14th June 2005.

#### **What's Next?**

This may be a set back to the asset and tax planners who may be using Macao Offshore Institution as a vehicle for their regional tax planning.

Further investigation into the permitted categories, the remaining eight types of business are mainly in the area of IT and data processing. The most distinguishing one is consultancy in Hardware and Software. The Back Office category is still open. Big opportunities for genuine regional assets and cost reduction planning are still open.

Furthermore, the Legislative Assembly has already approved to reduce the corporate income tax rate of Macao local companies from 15% to 12%, thus, Macao is now the jurisdiction in the region with the lowest corporate income tax rate. Together with the less restrictive tax law, Macao local company will be a good choice for companies in asset and tax planning. With proper planning, it is possible to use Macao Local Company to benefit from the lower corporate income tax rate, and to take advantage of the Hong Kong/PRC and Macao /PRC and Macao/Portugal double tax agreements/treaty.

## Part 4. Taxation

### 1 Taxation for Macao Companies

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Macao adopts a simple and low tax system. Macao taxes can be classified into direct and indirect taxes. Direct tax includes industrial tax, complementary (profits) tax, professional tax, property tax. Indirect tax includes excise tax, consumption tax, tourism tax and stamp duty.

The fiscal year in Macao is calendar year. The Director of the Macao Finance Services has responsibility for the tax administration of Macao. The most important taxes for companies in Macao are industrial tax and complementary tax.

#### **Industrial Tax**

All individuals (including corporations) who are engaged in commercial or industrial activities are liable to industrial tax. It is chargeable on the number and type of industrial or commercial activities carried out by the individual or corporation in Macao, payable yearly.

Before commencement of operations, individuals and corporations engaged in commercial or industrial activities are required to apply to the Macao Finance Department for tax registration. Thereafter the taxpayer has to pay industrial tax on every registered activity to the authority.

The “registered activities” are specified in the activities schedule annexed to the “Regulations of Industrial Tax”. There are over 300 different types of activities being classified. The present tax ranges from MOP150 (for a commercial vehicle) to MOP80,000 (for a bank licence). In most cases, activities are taxed at MOP300 annually. The Industrial Tax for the year 2005 has been exempted.

#### **Complementary Tax**

As the name suggests, complementary tax is regarded as a complement to the industrial tax, professional tax and property tax. Complementary tax is levied on all income derived by a company in Macao. Only income or profits arising in or derived from Macao is subject to tax. There is no distinction between residents and non-residents.

#### **Ascertainment of Taxable Income**

Assessable income includes all income from the operation of a company, including dividend, interest and royalty, whether of a recurrent or exceptional, principal or accessory nature.

Taxable income is arrived at after the deduction of allowable deductions from the assessable income. It should be noted that there is no distinction between revenue and capital profits. Expense incurred for the production of exempted income is not allowable.

Income from rent is subject to property tax and is exempted from complementary tax. Allowable deductions for a business include normal running expenses wholly and



exclusively for the production of chargeable profits. Certain expenses, if excessive, will be disallowed for example, entertainment and traveling expenses.

Depreciation allowances are provided for in respect of capital expenditure, from 10% to 33%. Provision for bad debts and stock loss are allowable, but is restricted to 2% and 3% respectively.

### **Tax Return and Payment of Tax**

Taxpayers are classified into two groups, group A and group B.

**Group A** Companies with a capital of over MOP1,000,000 or an average annual profit over the last three years of more than MOP500,000 and certain types of corporations (e.g. financial institutions) are obliged to submit audited financial statements and tax returns annually.

**Group B** For companies which do not meet the above criteria, tax is levied by the tax authorities on deemed profits basis, averaging about a few thousand MOP per year. Audited accounts and certificates are not required.

### **Tax Rates**

Complementary tax is levied on the net profit derived from any commercial or industrial business on a sliding scale. For income below MOP32,000 (USD 4,000), tax is exempted. For income beyond MOP32,000, tax is calculated by progressive rate from 3% to 12%

### **Dividends**

Dividends distributed to shareholders are taxed in the hands of recipients. It should be noted that dividends distributed from a Macao Company can be deductible from the assessable profits of the company, thus avoiding the income from being double taxed.

### **Capital Gains Tax**

There is no capital gains tax in Macao. There is no distinction between revenue and capital gains in Macao. All capital gains are included under assessable profits of complementary tax.

### **Losses**

Losses for tax purposes can be carried forward for three years.

### **Property Tax**

Property tax is payable by the owner or occupier of property in Macao at the rate of 10% on the rental value of the property assessed by the Macao Finance Services or at the rate of 16% on the rental income received. A deduction of up to 10% is allowed to cover repairs and maintenance.

## 2 The Lowest Corporate Tax Rate In the Region – 12%!

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The Legislative Assembly of Macao SAR has on 15 June 2005, passed the amendments to the Complimentary Tax (Profits Tax) Law (所得補充稅) ("CTPTL") in principle and subsequently passed the amendments "in detail" on 7 July 2005. There are three important amendments to the CTPTL Tax allowance available to company is increased from MOP12,000 to MOP32,000. That means, there is no tax for a company having assessable profits below MOP32,000.

- ✓ Tax rates applicable to assessable profits are changed from
  - The original 16-level rates to a 6-level progressive rates.
  - The maximum rate applicable to income over MOP300,000 is reduced from 15% to 12%.
- ✓ The stamp duty payable on the tax assessment note (5%) is abolished.

As one of the columnists in Macao rightly observed, Macao has become the jurisdiction having the lowest corporate tax rate in the region. The impact on the economy is enormous. So far, the Macao government estimates that about one-third of its taxpayers will escape the tax net<sup>7</sup>.

Starting from 2000, Macao government has been actively refining the tax regime of Macao to make it more reactive and competitive. Among those measures is the introduction of the Macao Offshore Institution regime. In fact, the number of double tax treaties / agreements that Macao has concluded is more than that of Hong Kong<sup>8</sup>. Macao no doubt is engaged in "tax competition" Jurisdictions nearby - Hong Kong, China, Taiwan are all beefing up their own tax policies:

Hong Kong has abolished estate duties; China begins to implement estate duties or inheritance tax, has reduced various types of agricultural taxes; Taiwan is exploring the possibility of increasing its "effective tax rate" from 13% to 15%.

The various tax reduction policies implemented in the years up to 2005 by Macao include the waiving of professional tax (salaries tax) by 25% across the board, exemption of industrial tax<sup>9</sup>, tourism tax, various types of license fee, special allowance to property tax payer<sup>10</sup>, and exemption of various types of stamp duties. These policies have reduced the revenue of Macao government by MOP300 million. However, the Macao government is confident that this reduction of revenue will be compensated by the growth of its economy.

Macao is likely to become a very attractive jurisdiction in establishing a regional business base.

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<sup>7</sup> In 2003, there were 30,340 registered tax payers. It is estimated about 10,000 tax payers will pay nil tax under the new regime.

<sup>8</sup> Macao has a Double tax treaty on income and capital with Portugal and Mainland China, while Hong Kong has only one DTT on income and capital with Belgium.

<sup>9</sup> Industrial tax is a fixed amount assessed based on the type of business the company is engaged in, which is similar to the business registration tax in Hong Kong.

<sup>10</sup> MOP500 each.

### 3 Tax Rate Tables

**Tax Rate Table - Complementary (Profits) Tax (From year 2004)**

Taxable Profits	Corresponding Rate
Up to \$32,000---	Nil
\$32,001-\$65,000	3
\$65,001-\$100,000	5
\$100,001-\$200,000	7
\$200,001-\$300,000	9
More than \$300,001	12

**Tax Rate Table - Complementary (Profits) Tax (up to year 2003)**

Taxable Profits between	Corresponding Rate [a]	Cumulative Rate [b]
0 to \$20,000	2	2
\$20,001-\$40,000	3	2.5
\$40,001-\$60,000	4	3
\$60,001-\$80,000	6	3.75
\$80,001-\$100,000	8	4.6
\$100,001-\$120,000	10	5.5
\$120,001-\$140,000	12	6.5
\$140,001-\$160,000	14	7.3
\$160,001-\$180,000	16	8.3
\$180,001-\$200,000	18	9.3
\$200,001-\$220,000	20	10.3
\$220,001-\$240,000	22	11.3
\$240,001-\$260,000	24	12.3
\$260,001-\$280,000	26	13.3
\$280,001-\$300,000	28	14.3
Over \$300,000	-	15

E.g. Taxable profits is MOP215,000, first 200,000 “applying rate in column [b]”  
 $200,000 \times 9.3\% = 18,600$  then balance 15,000 “apply rate in column [a]”  $15,000 \times 20\% = 3,000$ . Total tax is 21,600

## 4 Is it necessary to register a company in Macao when doing business with Macao local companies?”

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This is a frequently asked question when a non-Macao person wishes to do business with Macao local companies. It seems to them that their customers in Macao would like only to do business with Macao Companies. To answer the question, the following aspects have to be assessed:

### **Tax liabilities when doing trading business**

The tax laws of Macao is not sophisticated. Given the fact that Macao only “known” to the world from 90’s, their tax laws are not catered for international trading. Local Macao companies are often challenged by the tax authorities in Macao about the genuineness of the receipts and invoices – as some of those goods need an import license to be imported into Macao. In order to avoid any problems, those local businessmen asked their supplier to issue invoices from another local company, which can easily be traced by the Macao tax authority. This is actually passing the problem from them to their suppliers. However, there is no regulation in the laws of Macao that only invoices issued by another Macao company is allowed for deduction in tax purposes.



### **Tax liabilities when doing consultancy services**

If the supplier company is providing services to a Macao local company, for example consultancy, their ‘consultant’ may require working visa to provide such services “in” Macao, otherwise it is against immigration laws. In some cases, when the consultant is qualified as an employee (there is a thin line between a self-employed and an employee), the Macao Local Company may need to comply with the statutory requirement of filing employee return to various governmental department as well as withholding provident funds. In order to avoid legal problems, Macao local companies may ask the consultant to provide evidence of being registered as a local company in Macao, so that they do not need to worry about this legal problem.

### 3 Double Taxation Agreement between Macao and Mainland China

Macao recently concluded a DTA with Mainland China on 27 December 2003, which came into effect on 1 January 2004. The benefits of this DTA are available to entities or persons resident in Macao. At present, Company Limited by Quota is the most frequently used resident entities by planners for structuring investment within Asia and Europe.

This DTA is modeled after the OECD Treaty model, with 28 articles arranged in the same style and sequence as a full Double Tax Treaty between countries. The DTA provides that the maximum withholding tax rate for dividends shall be 10% on the gross amount of the dividends. The maximum withholding tax rate for interest shall be 7% for bank and financial institutions, and 10% for all other entities. The withholding tax rate for royalty is set at 10%. Similar to using companies of certain offshore jurisdictions which have DTAs with China, using Macao resident companies to invest into China is more beneficial than using non-treaty jurisdiction companies. The benefits are significant, as Macao may also be qualified under certain investment regulations for “preferential treatment” under the present legal framework.

This DTA is viewed as more preferential than the DTA between Hong Kong and Mainland China, as the Macao-China DTA is a “full” DTA covering all standard items, including provisions on dividends, interests, royalties, capital gains, pension, government services and covering teachers and researchers, students and trainees as well as associate enterprises. The Hong Kong counterpart does not have these provisions.

	Macao Company as investor of a China Company	Hong Kong Company as investor of a China Company
Dividend paid by the China Company	No tax	No tax
Interest paid by the China Company	Max 10% tax	20% tax
Royalty paid by the China Company	Max 10% tax	20% tax
Capital Gain on disposal of Interest in China Company	Taxed by China – 20%	Taxed by China – 20%

One may argue that Hong Kong does not need these provisions, as Hong Kong does not tax on dividend and interest received, and only levies 3.6% on royalty. However, when we look at it from the point of view of an investor investing in China, the benefits of the Macao DTA can be quite attractive

The significance of this Macao – China DTA is:-

- 1 Although at present the Mainland China does not levy any withholding tax on dividend for foreign investors including investors from Hong Kong and Macao, entering into WTO has created a need for China to change its policy towards “national treatment”. Residents in China are taxed up to 33% on dividend income and it is estimated that a rate of 20% to 25% will be introduced for foreign investors. Under the Macao-China DTA, the tax will be capped at 10%. This makes Macao Corporation a very viable vehicle in investing into China. Unless Hong Kong will amend its DTA with China, Macao Corporation is a better choice.
- 2 Royalty and interest income are now subject to a 20% withholding tax in China. Using a Macao Company can reduce the rate to 10%. There is no such advantage when using Hong Kong Company or companies in other jurisdictions without sustaining DTA with

- China.
- 3 The DTA has provided for the taxation of capital gains when disposing assets in China. Basically, if gains are accrued from (1) disposal of a real property in China, (2) disposal of shares of a company whose main asset is investment in real property, or (3) disposal of shares of a company, they are taxed in China. Gains from other types of assets are taxed in Macao.

At present, Macao has two DTAs in effect, including a DTA with Portugal ratified in 1999. For more information or a copy of the DTAs, please contact us for details.

## Part 5 Management Topics

### 1 Immigration To Macao

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Following the increase in prosperity and the expansion of the economy in Macao, there is a growing demand from all over the world for residency in the Special Administrative Region. There are 4 categories for Macao Residency Application, including:

- Foreign investors currently engaged in manufacturing, services, hotels or similar industries
- Potential foreign investors who plan to invest in industrial units, service industries, hotel industries or similar industries
- Investment in fixed assets or other tangible productive assets - most notably is investment in real estate property
- Technical / "talent" immigrants - Management staff and professional technicians

Among the above, the third type is the most commonly used. The criteria for investment in fixed assets is that, the investment should not be less than MOP1 million (about USD125,000). The most popular form of investment in Macao is the acquisition of real estate of not less than MOP1 million. This investment should be by way of fund transferred from a country outside Macao and the relative bank loan, if any, should not be obtained in Macao or from a bank in Macao and that the real estate is free from any mortgage or charge.

According to the Investment Residency Law of Macao, such application may be extended to include the spouse of applicant, applicant's and his/ her spouse's parents and applicant's and his/ her spouse's minors. Therefore, a total of three families may be qualified under this scheme together with the main applicant. An interesting note to the definition of "spouse" under Macao law is that the term includes those who are legally declared by the court as separated couples and those who have "lived" with the applicant for more than two years. Therefore, co-inhabitants are also qualified!

If the application is approved by the relevant government body in Macao, a "Temporary Residency Card" will be issued to the applicant. This Temporary Residency Card will be valid for a maximum period of 18 months, if the application is under the category of investment project; or 3 years for other types of applications. They are renewable only if the above criteria are fulfilled. The residency will become permanent after seven years of temporary residency in Macao.

However, the Macao government will not accept any application from applicants who are holding passports issued from Mainland China.

## 2 Importation of Non-Resident Labour

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After establishing a company in Macao, the first thing of concern for the company's management is to employ suitable staff to set the company into real motion. Unfortunately, the recent economic growth of Macao has created a shortage of labour in the market, both skilled and unskilled. For many, the importation of non-resident labour seems to be the most viable means to engage appropriate staff. Importation of non-resident labour in Macao is governed by the following decrees:

<b>Skilled Labour</b>	Decree 49/GM/88, May, 9 (B.) No. 20, May 16, 88)
<b>Unskilled Labour</b>	Decree 12/GM/88, January 26 (G.G. No. 5, Feb. 1, 1988)

Upon the consent of the Chief Executive of Macao, Mr. Edmund Ho Hau Wah, companies may be authorised to import non-resident labour when such labour cannot be recruited locally.

### **Skilled Labour**

Once the importation of skilled labour is authorised, contract can be executed directly between the employer and the employee. The employer is responsible for the repatriation of the employee when the relevant authorization is cancelled.

### **Unskilled Labour**

Contract has to be signed between the Macao company and a recognised labour agent, which is officially recognized as a supplier of non-resident labour.

The contract should state that the employer is responsible for proper accommodation and if the worker is not suitable for the job, he or she must be repatriated (even when he or she is terminated by the employer).

### **Application Procedures**

The applicants should submit a standard application petition together with a statement duly justifying the need of importation, addressed to the Labour and Employment Bureau.

The application will then be submitted to Economic Services and other Departments. Based on the advice of these departments, the Secretary of Economy and Finance will make a final decision. Once these legal requirements are met, the contract would be approved. (the Final Order). The documents will then be forwarded to the Migration Services.



The Migration Services will decide whether the recruited non-resident workers are allowed to enter and stay in Macao and the Public Security Police will then issue the identification papers for the Non-resident workers.



## Part 6 How Manivest Can Help You

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The directors and management of Manivest are professionals in the offshore industry having served the Asia markets for over twenty years. Through our offices in Hong Kong, Shanghai and Macao as well as our associates in other Asia cities, we offer a full range of comprehensive value-added services to professional advisors and their clients.

Manivest offers the following services:

- Incorporation of Macao and other offshore/onshore companies and structures
- Full corporate management services
- Registered office, business office, mail redirection and business centre (available in selected locations only)
- Accounting services
- Re-invoicing services
- Asset protection and preservation advisory services
- Business establishment services
- Market exploration services

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