

REGULATORY UPDATE - LAW NO. 6/2016 - THE ENFORCEMENT REGIME OF THE FREEZING OF ASSETS

Following the resolutions of the United Nations of the Security Council and by decision of the People's Republic of China, Law no. 6/2016 (the "Law"), which sets out the applicable legal regime for asset freezing in order to fight against terrorism and proliferation of weapons of mass destruction, has been passed in the Special Administrative Region of Macau ("Macau"), and has been effective from 30 August 2016.

1. Scope of Application

The Law applies to i) individual persons who are in Macau or on board of any ship or aircraft registered under Macau laws, ii) companies having its registered office in Macau, branches, agencies, subsidiaries or offices set up in the Macau, iii) assets located in Macau or on board a ship or aircraft registered in Macau iv) legal person or entity that is a recipient of a freezing order and v) all transactions related to property carried out by any means, directly or indirectly, wholly or in part, in Macau

2. Competent authority

The Chief Executive is the competent authority to execute any decisions regarding the freezing of assets. However, an Asset Freezing Commission (the "Commission") has been created to monitor the compliance with the Law, this Commission will create a database containing a registration of individual persons, corporate entity and any other entities (the "Persons") as well as the registration of the frozen assets, and shall communicate and provide guidelines regarding the obligations and duties to be observed in order to comply with the respective Law as well as apply any sanctions in case of non-compliance.

3. What is the scope of the Law?

This Law sets out:

- The legal regime applicable to the freezing of assets.
- The administrative sanctions to be applied in case of non-compliance with the Law.

4. Regime

In case of any suspicious activities, the Chief Executive or a competent international body shall proceed with an act of identification of the Persons, in which the suspected individual person or corporate entity is duly identified and subjected to a freezing asset order. This order is imperative and will impose the immediate freezing of the assets of such Persons by the entities that hold such assets. The act of identification is subject to publication on the Official Gazette and the assets will be immediately frozen.

The freezing of assets will cover:

- Any assets that are owned or under the control of the designated entity, directly or indirectly, and any assets derived or generated from the same;
- Assets owned or under the control, directly or indirectly, of individual persons or corporate entities which act on behalf or at the direction of the designated person or entity, and any assets that are derived or generated from the same.

The freezing of assets is a temporary prohibition aimed to prevent any movement, transfer, alteration, operation or use of funds which may result in any change in its volume, amount, location, ownership, possession, character, destination or other changes that would enable its use, including the management of securities portfolios and the use of economic resources to obtain funds, services or other economic resources by any means, including by sale, lease or mortgage.

Where the assets are held by third party entities (which may include financial institutions, insurance companies, retailers, gaming operators, etc.), the freezing order will be notified to said entity, and after the publication of the act of identification these entities will not be allowed to:

- Make available, directly or indirectly, such assets to Persons or legal entity which may be acting on behalf or at the direction of the person who is the object of the freezing decision, as well as legal persons or entities owned or controlled by them; and
- Provide financial services to the Persons and/or entities acting on their behalf or at their direction and legal persons or entities owned or controlled by it.

4.1 Specific Asset Freezing

The Commission shall notify the identified Persons stating the reasons provided by the relevant international body, particularly the portion of the claim that can be made public and the narrative summary of reasons for listing and shall inform the Persons of their rights, especially who to contact to present its defense and how request removal from the list. If any such Persons appeals the decision, the Chief Executive shall refer the appeal to the Central People's Government for the purposes of its submission to the competent international body.

4.2 General Asset Freezing

The Chief Executive may perform such an act of identification of Persons where he has grounds to believe that they may commit, attempt to commit, facilitate or participate in any acts of terrorism in accordance with Law No. 3/2006 (Prevention and suppression of terrorist crimes). The Chief Executive may also proceed to the identification of a person acting on behalf or at the direction of a Person as well as any other legal persons or entities owned or controlled directly or indirectly by Persons. This identification is subject to criteria of reasonability in assessing the facts on which it is based, taking into account the fundamental rights involved and the interests of third parties likely to be harmed.

5. Access to the freezing of assets

The Chief Executive may, at the request of any interested party, overrule the freezing of certain assets, under the conditions it deems appropriate, after having determined that such assets are necessary to cover basic expenses, including payments for rent, mortgage, medicines and medical treatment, taxes, insurance policies or public services; intended exclusively for payment of professional fees in an amount considered reasonable, and the reimbursement of incurred expenses associated with the provision of legal services; intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen assets; those necessary for extraordinary expenses and those necessary to make other payments expressly authorized in the relevant freezing order.

6. Sanctions

From an administrative perspective, the violation of the Law, regardless of intent, may entail fines ranging from MOP\$10,000.00 to MOP\$5,000,000.00, depending on the nature of the infractions and its offenders (whether it was an individual person or a corporate entity). In case of a repeated offense, these amounts will be doubled.

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