

澳門貿易投資促進局
Instituto de Promoção do Comércio e do Investimento de Macau

Reference Guide to Operating Macao Offshore Institutions

Introduction

Macao Decree-Law No. 58/99/M (hereinafter called “Offshore Law”) has been in effect since 1st November 1999. It aims to promote the moderate economic diversification of Macao and improve the quality and international perspective of local human resources.

Without prejudice to the local business environment, offshore institutions are offered with various tax incentives such as industrial tax and complementary tax exemption. Expatriates residing in Macao can also enjoy professional tax exemption for certain years. As such, it attracts foreign investors to operate their business in Macao, and choose Macao as the base for their business expansion.

To obtain licence and operate (non-finance) offshore services in Macao, the investor has to abide by the following rules:

- 1) To use only non-Macao currency in their activities.
- 2) To target only non-Macao residents as customers (individuals and companies).
- 3) To focus only on non-Macau markets.

To compare with general registered companies in Macao, the non-finance offshore service institutions (hereinafter called “offshore institutions”) have their own attribution. In addition to putting “offshore commercial service” or “offshore auxiliary service” as part of their company name, they have to follow other applicable laws and regulations in Macao.

Nature of Offshore Service Institution

According to the Macao Offshore Law (Art. 62), Macao Trade and Investment Promotion Institute (hereinafter called “IPIM”) is the official department that issues non-finance offshore service licences. As per Article 65 of the same law, non-finance offshore institutions are specifically forbidden to engage in any activities restricted by Decree-Law No. 32/93/M “Financial System Act” as credit institutions, investment companies and financial intermediaries, as well as to insurance companies. Therefore, offshore institutions can operate only as approved non-finance offshore business.

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The offshore activities take effective from 2017-09-19 pursuant to Chief Executive Dispatch No. 323/2017, there are nine types of offshore businesses. Investors can select from the nine businesses to apply for a new licence, effective after that day.

The current nine offshore services in force are:

1.	Hardware consultant	2.	Software consultant
3.	Data processing	4.	Database related activities
5.	Back offices activities	6.	Research and development activities
7.	Test and technical analysis activities	8.	Management and administration of ships and aircraft
9.	Trade in goods and services between China and Portuguese-speaking Countries		

Operating Requirements for Offshore Service Institutions

For commencement of business operations, investors have to register the company in Macao after obtaining approval from IPIM. That is, to complete the registration process with the Commercial and Movable Property Registry Office of Macao (hereinafter called “Commercial Registry”) according to the Commercial Code and the Registration Code, and tax commencement registration with the Macao Financial Services Bureau, before acquiring the offshore service licence from IPIM and start doing business.

Regarding daily operations, offshore institutions conform to the same obligations and duties as other commercial entities. They also have to abide by the Offshore Law and laws for “Preventive Measures regarding Anti-Money Laundering and Combating the Financing of Terrorism”.

Key Points of Offshore Law

Some Key Points on Business Operation

- ◆ Offshore institutions have to operate as per their approved business scope, as recorded in the registration certificate issued by the Commercial Registry and articles of association of the company. In practice, the offshore institutions have to

conduct business, including business scope, products or services and operating process, in accordance with the investment plan submitted during the licence application.

- ◆ Selling products or rendering services to Macao residents are not allowed. Offshore institution cannot set up a local sales office nor engage in sales contracts with any local company or individual. The Offshore Law allows transactions between two Macao offshore institutions, provided the transaction of goods or rendering of services does not violate the regulations of transaction currency, target markets and target customers as stipulated by the Offshore Law.

Requirements on Operations

- ◆ Carry out the investment plan.
- ◆ Recruit an adequate number of full-time staff as per the investment plan to carry out physical daily operations, to proceed with daily sales and purchase, accounting activities and so forth.
- ◆ Rent or purchase of independent commercial unit for office use corresponding to the size of investment.
- ◆ After obtaining the offshore licence, offshore institutions have to commence business within six months. Therefore, upon receiving the offshore licence, the investor has to complete the company set up and commence business, such as to rent or purchase of an office, complete office renovation, purchase office fixtures and supplies, and recruit full-time local employees.
- ◆ According to Item (b) of Article 41 and Article 67 of the Offshore Law, the offshore services licence will expire if the offshore institution fails to physically operate for over six months continuously and intermittently for a year. If the offshore institution suspends operations beyond the time limit, or fails to have substantial local business operations pertaining to their business transactions, the offshore licence can be cancelled.

Operating Fee for Offshore Institutions

Under Item (2) of Article 14 of the Offshore Law and Dispatch No. 237/GM/99, offshore institutions have to pay a half-yearly operating fee every January and July to IPIM. Details are listed below:

- ◆ *Operating fee payment schedule*

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The operating fee is levied half yearly in January and July. A fortnight prior to the payment month, IPIM will send out operating fee invoices by registered mail to the business office of offshore institutions.

If the offshore institution has changed its address during the above mentioned period, the institution should notify the Offshore Services Department of IPIM as soon as possible and collect the original or a copy of the invoice to avoid any delay of payment.

◆ *Payment Methods*

Operation fee only accepted in MOP:

A) Cash

B) Macao Bank Money Order or Cheque (all cheques must be made payable to “IPIM”).

(Note: If payment is made by cheque, please ensure the cheque can be honoured.)

Offshore institutions may make the payment in person at the following address. If the payment is to be posted, please ensure that it will arrive at IPIM’s offices before deadline. IPIM is not responsible for any delay caused by the Post Office. In addition, sending cash in the post is not acceptable.

◆ *Address for payment*

Address: 918, Av. Amizade, World Trade Centre Building, 4th Floor, Macao

◆ *Consequence of late payment*

According to Item (b) of Article 42 of Offshore Law, the offshore services licence can be cancelled if the operating fee is not paid within the period set for this purpose.

◆ *Operating Fees for Offshore Institutions are as follow :*

Offshore Commercial Service Institution	Operating Fee / Half Year
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
Offshore Auxiliary Service Institution	Operating Fee / Half Year
Registered Capital: MOP25,000 to MOP100,000	MOP3,000

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Registered Capital: MOP100,001 to MOP1,000,000	MOP6,500
Registered Capital: MOP1,000,001 or above	MOP10,000

Requirements for Submitting Audited Report

- ◆ The offshore institution has to follow Article 66 (Supervision of Accounts) of Decree-Law No. 58/99/M and Circular No. 01/DSO/IPIM/2002 **to submit its annual report on Compliance with Guidelines on Preventive Measures Regarding Anti-Money Laundering and Combating the Financing of Terrorism (hereinafter called “AML/CFT report”), along with its annual audited financial report to the Macao Trade and Investment Promotion Institute, within six months after the end of the financial year.**

Respective financial year-end with annual audited report submission deadlines are listed as below:

Financial Year-End	Report Submission Deadline
March 31 st	September 30 th
June 30 th	December 31 st
September 30 th	March 31 st the following year
December 31 st	June 30 th the following year

- ◆ Signatory power and specimen of signatures of the administrators or management personnel authorised to sign the audited annual financial report, should be identical to those registered with the Commercial Registry and IPIM.
- ◆ Responsible auditor of the offshore institution, according to the Commercial Code (Item (1) of Article 60) and the Statute of Auditors (Article 2), should be a registered member of Committee for the Registry of Auditors and Accountants, together with appropriate supplementary documents. Such as, for acceptance of the audited report, the offshore institution should file in advance the audit engagement of the newly appointed auditor and a professional clearance from the predecessor. List of registered auditors is available in the quarterly roll published by the Committee for the Registry of Auditors and Accountants. More details can be found at the website of Macao Financial Services Bureau (<http://www.dsf.gov.mo>).
- ◆ According to Offshore Law (Article 66, Article 70-1-d, Article 71-1) and Circular No. 01/DSO/IPIM/2002, failure to submit an audited report on schedule is subject to a penalty of MOP20,000 to MOP100,000.
- ◆ Apart from the penalty for failing to submit an audited report on schedule, the report must be submitted within specified time, namely, to submit the audited annual

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financial report with the AML/CFT report. Offshore institutions should be aware of their legal obligations.

Application and Notification of Change of Particulars

Offshore institutions should notify or apply to IPIM for any changes in company particulars.

- 1) To apply to IPIM for approval:
 - Company name
 - Scope of business
 - Shareholders / Share rights
 - Financial yearend
 - Licence Cancellation
 - Registered capital
 - Member of board of directors
 - Property transfer stamp duty exemption

- 2) To notify IPIM:
 - Office address
 - External auditor

Related guidelines can be found on our website at:

http://www.ipim.gov.mo/ipim_service_detail.php?tid=15895&type_id=229

Licence Cancellation

Apart from licence cancellation due to violation of Offshore Law, offshore institutions can terminate business as their own decision. Pursuant to Offshore Law (Article 41, 42), an offshore licence can be expired or revoked. Further to Article 3 of the same law, business has to be terminated after licence has been cancelled, and the offshore institution has to dissolve and liquidate the company according to Book 2, Title 1, Chapter 1, Section 11 of the Commercial Code. Upon deregistration with Commercial Registry and Financial Services Bureau, final filing procedure with IPIM is required to complete the process.

According to the Offshore Law (Article 66), offshore institutions should submit the final audited financial report and the AML/CFT report for each business period. Offshore institutions that have their licence being cancelled are also required to comply with the law and submit to IPIM the final audited financial report with the AML/CFT report for the previous financial year end. Apart from the reports mentioned above, the offshore institutions need to submit the following documents in order to complete the process.

- Final audited accounts (original)
- Commercial registration certificate issued by the Commercial Registry, which shows the completion of deregistration (Copy)

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- M/1 Commencement / Alteration Certificate issued by the Financial Services Bureau, which shows the completion of tax cancellation. (Copy)

Please note that, in the case of company being closed by a shareholders resolution, the company will have to apply for a licence cancellation with IPIM before processing the dissolution and liquidation. (See “Application and Notification to Change of Particulars” for application procedures.)

Feature of Laws of Anti-Money Laundering and Combating Financing of Terrorism (“AML/CFT”)

Legislation on the Prevention and Suppression of Crimes Related to Money Laundering and Financing Terrorism

Offshore institutions are to abide by Article 7 Paragraph 1 item 1) to item 6) of Law No. 2/2006, amended by Law No. 3/2017, and Article 2 Paragraph 1 item 6) and Paragraph 2 of Administrative Regulation No. 7/2006, amended by the Administrative Regulation No. 17/2017, the above institutions should fulfil all stipulated obligations stated in Article 3 to Article 8 of Administrative Regulation No. 7/2006, amended by Administrative Regulation No. 17/2017. Being the monitoring authority of offshore institutions and pursuant to the above laws, IPIM has issued a revised guideline on Preventive Measures on Anti-Money Laundering and Combating the Financing of Terrorism, hereinafter called “AML/CFT Guidelines”- Circular No. 01/DSO/IPIM/2018. Offshore institutions have the duty and obligation to comply with the guidelines and co-operate with IPIM.

Guidelines on Preventive Measures on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT Guidelines)

Offshore institutions have to follow the AML/CFT Guidelines and fulfil the following eleven duties:

(1) Duty to identify the clients and the operations

Identification consists of two aspects, which are to verify the identification of the clients and beneficial owners, and to further identify the nature of business and the operations thereof. When establishing business relationship or when there are signs suggesting the commission of the crimes of money laundering or financing of terrorism, especially when the total transaction amount of one or plural transactions exceeds what has been stated in the guidelines, or being in doubt of the authenticity or appropriateness of the identification information previously provided by the clients, the concerned offshore institutions should verify the identification of the party to the commercial agreement, their clients or the beneficial owners of the business, by using documents, data or information that come from independent and credible sources. Besides, under the circumstance when the party to agreement or client is a legal person or an entity without legal personality, appropriate measures must be taken to obtain the identification information of the person(s) who is acting on behalf of such person or entity in the company.

(2) Appropriate measures for investigating suspicious activities

Appropriate measures refer to the taking of detailed records of purpose(s) of activities, the involved amount of money, the payment methods and related information; risk management protocol for maintaining the control over the quantity, nature and capital amount of the activities; risk management standards for evaluating the risk of clients and beneficiaries, especially their background, nationality, nature of transaction, nature of service and occupation. Higher standard of monitoring measures should be adopted for cases with higher risks, in order to facilitate management and mitigate risk.

The most common evaluation subjects are the risk of the country or the jurisdiction in which the service is operated or originated from, the payment made to non-local client, authorised shareholder representative or company with bearer shares, anonymously operated company or enterprise without business establishment, anonymous individual or irrelevant third party. Countries or regions subject to sanctions, embargoes, or similar punishments imposed by international organisations such as the United Nations are also considered high risk jurisdictions.

(3) Obligatory measures to prevent the misuse of new products, new business practices and new technologies

Offshore institutions should set up policies and procedures to perform the due diligence when establishing business relations with clients or beneficial owners, and continuously during the business operation, in order to avoid specific risks associated with operations without physical presence.

(4) Development of internal control system

Commercial and auxiliary offshore services institutions must develop programs against money laundering and terrorist financing, as well as to perform the due diligence on clients

(5) Request assistance from a third party

Commercial and auxiliary offshore services institution should ensure that the third party has performed AML/CFT customer due diligence and has taken adequate risk control for their business in any country/jurisdiction.

(6) Duty of refusing to perform operations

When offshore institution has yet to obtain the identification document of client or beneficial owner, or when the information needed for the related commercial activity, or client or beneficial owner does trade anonymously or with false identity, offshore institution should refuse to undertake any business activities, or terminate the service provision to the concerned client.

(7) Duty of keeping the evidentiary documents

The verifiable identification documents of clients, beneficial owner and the related business operations should be retained for at least five years after the identification verification procedure or the cessation of service provider-client relationship.

(8) Duty to adopt higher standard of monitoring measures

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In addition to general monitoring procedures, monitoring measures with higher standards should be adopted when providing services to politically exposed persons (PEP) or clients/beneficial owners from risk jurisdictions.

(9) Duty to report suspicious activity

When there are signs suggesting commission of crimes of money laundering or financing of terrorism, especially activities involving abnormal amount and frequency of trade, offshore institutions must report to the Office of Financial Intelligence (GIF) within 2 working days.

(10) Obligation of disclosure and confidentiality

Directors, officers and employees, or representatives must not disclose that a suspicious activity related to money laundering or terrorism financing is to be reported to GIF, or any elements of such operation or denunciation.

(11) Duty to co-operate

The above institutions are required to fully co-operate with authorities for the prevention and suppression of crimes related to money laundering and financing terrorism, specially the Court, Public Prosecution Department, Judiciary Police, the GIF and Macao Trade and Investment Promotion Institute, particularly in the provision of relevant data and documents.

To fulfil the obligations, offshore institutions should set up and maintain a sophisticated client verification system, and pay special attention to huge amounts of cash or non-cash transactions. The offshore institutions should submit a report to IPIM annually and provide relevant information to confirm the completion of such duties.

Non-compliance with AML/CFT Guidelines is liable to a penalty from MOP10,000 to MOP500,000 for offender as natural person; MOP100,000 to MOP5,000,000 for offender as legal person.

See our website for details on Guidelines on Preventive Measures regarding Anti-Money Laundering and Combating the Financing of Terrorism for Macao Commercial Offshore Services and Auxiliary Offshore Service Institutions.

http://www.ipim.gov.mo/ipim_service_detail.php?tid=182&

Complying Applicable Local Laws

In addition to the Offshore Laws, offshore institutions have to abide by other applicable laws and procedures for all companies registered in Macao. Some details are listed below. As a kind of commercial entity, offshore institutions have to be aware of and follow the legal obligations of companies in Macao.

Record Keeping

As per the Commercial Code (Decree-Law No. 40/99/M), preservation of books and

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correspondence, transaction records and documents, accounting books are requested.

- Under Article 49 Paragraph 1 (Obligation to keep books, correspondence and documents), without prejudice to special provisions, a commercial entrepreneur shall keep the books, correspondence, documentation and other items recording the

exercise of the enterprise, duly ordered, for five years from the last entry in the books.

- Under Article 46 Paragraph 2 (External requirements of bookkeeping), commercial bookkeeping can be prepared in a language other than the official languages of Macao, if there is a serious interest in doing so; value amounts can be in any currency, provided that they are also detailed in Patacas (Macao currency).
- Under Article 39, Paragraph 1 and 2 (Compulsory Books), a commercial entrepreneur is obliged to keep the balance sheets, as well as other books as determined by means of the executive order. Collective person commercial entrepreneurs shall keep other books for minutes of meetings.

For details, please refer to Government Printing Bureau's website for Commercial Code.

<http://bo.io.gov.mo/bo/i/99/31/codcomcn/codcom0001.asp>

Tax Filing

Under Offshore Law, offshore institutions are exempted from complementary tax. Yet, other form of taxes such as industrial tax, professional tax, stamp duties, have to be filed accordingly.

- Exemption of property transfer stamp duty can be applied as per “Application and Notification on Change of Particulars” mentioned in the guidelines.
- For professional tax filing, just as all local companies, offshore institutions should be aware of the following:

(1) When recruiting new employees, an M/2 Form should be filed with the Financial Services Bureau within 15 days.

(2) Quarterly professional tax provision of employees and casual workers, along with an M/B Form, should be filed with Financial Services Bureau.

(3) In January and February every year, an M3/M4 Form should be filed with Financial Services Bureau to report salaries, wages or other compensation paid to employees or casual workers for the preceding year.

(Decree-Law No. 2/78/M – Professional Tax)

<http://images.io.gov.mo/bo/i/2003/48/despce-267-2003.pdf>

Social Security Fund

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Offshore institutions are responsible for filing social security payments for their staff. Provision should be filed with Society Security Fund each year in January, April, July and October for the previous quarter.

(Law 4/2010 - Social Security System)

<http://images.io.gov.mo/bo/i/2010/34/lei-4-2010.pdf>

Employee of Offshore Institutions Providing Labour

Offshore institutions have to maintain a monthly staff record within the office for random checks by inspectors of Macao Labour Affairs Bureau. (Decree-Law No. 50/85/M)

<http://images.io.gov.mo/bo/i/85/25/dl-50-85-cn.pdf>

****Remarks:**

These reference guides are established for providing general resources regarding inquiries on operations of Macao offshore institutions. The materials of this article do not completely express related laws and administrative procedures.

Since the contents of these reference guides involve information from other government departments, our department will make every effort to ensure update of the material from time to time. If any procedure is unclear, please feel free to enquire with the Offshore Services Department of IPIM,(Tel: 853 87989240, Email: offshore@ipim.gov.mo).