

MACAU

Macau litigation guide



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In recent years, Macau has become a premier gaming and tourist destination for travelers from all over the world. With the liberalisation of the gaming sector in 2004, the economy of Macau became a magnet for substantial foreign direct investment. The principal sectors to benefit were the real estate, tourism, hospitality and gaming industries, as well as all the attendant and related support services. Being a UNESCO World Heritage Site, Macau also attracts a very significant number of tourists looking to explore its rich mixture of history and culture.

Portugal ruled Macau for almost 500 years, until sovereignty was handed over to the PRC on December 19 1999. Under its Basic Law, Macau has retained its continental law system and enjoys a high degree of legislative, political and judicial autonomy, being established as a separate jurisdiction from the PRC.

Litigation in Macau is undertaken by lawyers. During the last few years, the court system has been expanded and remodeled so as to accommodate the needs of a rapidly growing population and increasingly complex economy.

Macau has a three-tier judicial system. Firstly there is the First Instance Court, which is comprised of one specialised tribunal (for matters related to administrative law), one small claims tribunal (to hear civil claims of up to 50,000 *patacas* (approximately US\$6,250)) and a further six tribunals divided into two groups of three (one group handling civil cases and the other criminal proceedings).

Secondly there is the Second Instance Court and thirdly the Last Instance Court (these act as courts of appeal, handling all types of cases). Under the law these courts of appeal can also act as courts of first instance to hear some types of litigation, such as appeals brought against administrative decisions taken by members of the Government.

During 2009 and 2010, the number of judges in the courts of first and second instance will be increased. It is also predicted that new specialised tribunals will be created within the First Instance Court to deal with litigation involving labour disputes and family matters.

Court judgments and arbitration awards issued in foreign jurisdictions are enforceable in Macau after confirmation by the Second Instance Court. In March 2006, Macau and the Central Government of the PRC agreed on a protocol. This established a mechanism for mutual confirmation of court judgments on civil and commercial matters, including civil claims filed in criminal cases. In November 2007, a similar agreement was reached in respect of arbitration awards. Given the absence of a similar mechanism for court judgments or arbitration

awards issued in Hong Kong, these are treated by the courts in Macau as if issued by a foreign jurisdiction.

Regardless of where they originate, the confirmation of court judgments and arbitration awards issued outside of Macau is always subject to the satisfaction of some prerequisites. These include:

- that there is no doubt as to the authenticity of the documents containing the foreign judgment or award,
- the courts of Macau do not have exclusive jurisdiction on the matter of the judgment or award being confirmed (such as those deciding on rights over real property located in Macau or bankruptcy of Macau-registered companies),
- the respondent or defendant was given opportunity to present a defense,
- the judgment or award is lawful, final and conclusive in the place rendered, and
- the enforcement of the judgment or award does not breach Macau rules of public policy.

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Arbitration

Arbitration in Macau is governed by an international arbitration law and a domestic arbitration law. The former follows closely the UNCITRAL Model Law. There are four authorised arbitration centres in Macau. Two are limited to claims valued at no more than 50,000 *patacas*: one organised under the Macau Consumer Council (for matters involving consumer rights) and another under the Macau Monetary Authority (to hear cases related to disputes over insurance).

Two other arbitration centres exist to resolve commercial and civil disputes without limitation on the amount claimed – one set up by the Macau World Trade Centre and another by the Macau Lawyers Association. Certification of an arbitration award issued outside of Macau is subject to Macau law allowing the same dispute to be resolved by arbitration. Matters involving inheritance, rights over real property, family and criminal felonies, among others, cannot be submitted to arbitration.

Active firms

BN Lawyers

BN Lawyers provides services across a wide range of areas such as corporate and commercial, intellectual property, tax, real estate and litigation. With offices in Macau and Portugal, the firm has partnerships with law firms Zurbano & Caracas Abogados in Spain and RCA-Colmonero & Asociados of Portugal. The firm's network also extends to Africa and South America.

Bruno Nunes and Américo Fernandes head up the team. Nunes is specialised in commercial and corporate law, administrative law, public procurement, intellectual property, tax, sports and hospitality and Américo Fernandes specialises in real estate and notary areas. Portugal-based André Mateus focuses on commercial and corporate issues, tax, banking and financial law.

C&C Lawyers

With 25 years of experience in the Pearl River Delta region, C&C Lawyers offers advice on a wide range of areas such as banking and finance, corporate and M&A and insolvency, as well as non-transactional areas including dispute resolution, gaming law, labour and employment, real estate and construction and intellectual property.

The firm recently advised on the listing of Sociedade de Jogos de madau and Cassava Asia Resources on the Hong Kong Stock Exchange. Founding partner Rui Jose da Cunha, who is specialised in corporate law and dispute resolution, heads up the five-partner, 27 lawyer team. Nuno Sardinha da Mata leads the corporate practice with its focus on real estate, construction, tourism and gaming industries. Alvaro Rodrigues specialises in insolvency,

bankruptcy and real estate. Other leading lawyers include Zhao Lu, head of intellectual property and technology, and Connie Kong who leads the gaming and tourism team.

Jorge Neto Valente Advogados

Jorge Neto Valente Advogados has a well-established practice in the region having accrued more than 30 years' experience. It represents clients across a range of areas including banking and finance, corporate and commercial advice, and real estate. It is also active in non-transactional areas such as litigation, contract law, gaming law, intellectual property and tax law.

Heading the team, name partner Jorge Neto Valente's practice covers banking, finance, insurance, gaming law and litigation. Luís Pinto is also recommended. One of the largest firms in Macau, Jorge Neto Valente also houses three notaries and attorneys with international experience in jurisdictions such as the US and Hong Kong.

RPMacau

RP Macau provides specialised services in intellectual property law. The boutique was established at the time when the law on trade mark protection took effect in Macau. The firm's practice covers contentious and non-contentious work in patents, trade marks, utility models, designs and domain names. Founding partner Luis Reigadas set up the firm in 1991, supported by five lawyers. It is also part of international networks including International Trademark Association (INTA), Asian Patent Attorneys Association (APAA), Licensing Executives Society (International and China) (LES) and American Intellectual Property Law Association (AIPLA).