

MACAU

Macau litigation guide



By Nuno Sardinha da Mata
C&C Lawyers

Tel: +853 2837 2642 Fax: +853 2855 3098 Website: www.ccadvog.com

Macau is deeply marked by Portuguese influence in every aspect of its life yet still maintains its profound Chinese inheritance. It has managed to merge these two quite diverse cultures and has created a brand new identity that constitutes the foundation of the Macau Special Administrative Region of the People's Republic of China (PRC), which was established since the handover in 1999.

The Sino-Portuguese joint declaration, signed by both the Portuguese and PRC Governments, kept Macau's pre-handover system and way of life unchanged and shadows this uniqueness. Accordingly, since the 1999 handover, Macau's unique socio-political and economic situations are governed by the paramount guiding principle of 'one country, two systems'.

Macau's legal system is one of civil law, which was built upon the Portuguese strand of the continental tradition. However, due to its one-of-a-kind political and economic situations, this system is enhanced by the addition of some common law influenced aspects.

Regulation of the gaming industry could almost stand by itself as an autonomous branch of law, with its particulars and provisions reflected in the judiciary system

Essentially, in a civil law system, legislative enactments such as codifications and minor laws passed by the legislature are the central source of law that is recognised as authoritative. Macau's legal system has experienced several reforms over its history, more recently in the labour law area, in order to be up-to-date with reality. Alongside the codification of major branches of law and the existence of a Basic Law that sets grounds for the rule of law and securing fundamental rights, the law is enforced by a three-tier judicial system that warrants its reliability and implementation of court decisions to ultimately achieve justice.

Since it is not a unitary system, the courts are independent among themselves in order to warrant defence of the rights and interests legally secluded, repress violation of legality and settle conflicts of public and private interests.

Macau's legal system is also tailored to accommodate its particular gaming reality. In fact, regulation of the gaming industry could almost stand by itself as an autonomous branch of law, with its particulars and provisions reflected in the judiciary system.

The Courts mainly undertake dispute resolution in Macau, although arbitration is also possible and enforceable. The first tier of the court system is the First Instance Court, which is subdivided into a specialised court for administrative matters and the Judicial Base Court that carries out the assessment and trial of all other matters, with some minor exceptions. In fact, all petitions regarding labour issues, civil matters, criminal disputes and other quarrels are filed or submitted into the Judicial Base Court and, in first instance, assessed there.

The Second Instance Court has an appellate jurisdiction to hear appeals of decisions from the First Instance Court. An appeal does not mean a new trial, but instead the facts and laws of the case are appreciated again in a different court. In addition, the Second Instance Court has the original jurisdiction to hear certain matters such as crimes and misdemeanors committed by members of the Government.

The third and final layer that warrants the legality and legitimacy of the judicial system is the Last Instance Court, which is responsible for standardising case law. Moreover, this court is also the ultimate appeal court and, therefore, the final and ultimate mark in the achievement of justice and the defence of rights and interests.

In Macau, disputes can also be resolved outside the courts and by non-judicial means if fundamental rights or matters that are reserved to court advocacy are not in order. Parties to a quarrel can often agree on the terms of settlement among themselves and such agreement shall be considered valid and binding.

In addition, Macau's legal system also embraces the possibility of resolving disputes by the means of arbitration. Arbitration in Macau can take place for claims that do not exceed MOP50,000 (US\$6,242) if they are related to matters involving consumer rights and insurance. Furthermore, without a limitation of claim value, arbitration is also allowed for certain matters under civil law and commercial law.

The enforcement of arbitration awards and decisions from the courts of other jurisdictions outside Macau is also possible. This is provided that a few legal requirements are fulfilled, and only after the submission of such decisions and awards to the Second Instance Court for confirmation.

Essentially, dispute resolution in Macau is based on the principle of legality and access to the courts and the law to achieve and protect the public interest.

Corporate

RECOMMENDED FIRMS

BN Lawyers

C&C Lawyers

Gonçalves Pereira Rato Ling Vong & Cunha - Advogados

Jorge Neto Valente Advogados

Manuela Antonio Law Office

RP Macau

BN Lawyers

BN Lawyers represents an international network of clients in Macau, and in Spanish and Portuguese speaking countries. It is supported by associated law firm Zurbano & Caracas Abogados in Spain, which specialises in corporate work relating to civil, administrative, procedural, fiscal and labour laws, and Lisbon-based RCA – Colmonero & Associados, which has a strong practice in tourism, travel, transportation and hospitality law. The firm is headed up by three partners, including Bruno Nunes who is an attorney of the International Federation of Intellectual Property, real estate specialist Américo Fernandes, and André Mateus who focuses on corporate, tax, and banking and finance.

C&C Lawyers

C&C Lawyers has been establishing a solid market base for two decades. Founded by corporate and litigation specialist Rui Jose da Cunha, the firm houses 27 lawyers with a comprehensive legal capacity in areas including corporate, M&A, banking, finance, insolvency, gaming law, labour, and dispute resolution. Once a high court judge in Angola, Rui Jose da Cunha helped on the founding of the Macau Bar Association in 1991 and worked as Chairman of the General Assembly of the Bar and chaired the Superior Council of Macau Lawyers. He is also president of the Audit Committee of the Bar.

The firm enjoys a recognised intellectual property practice that is led by Zhao Lu, who represents a number of mainland Chinese clients. In addition, Zhao specialises in real estate, tourism and insolvency, and has advised on public offerings in Hong Kong, Shanghai, Shenzhen and New York. Partner Ema Rocha heads up the Ipsol Intellectual Property Agency, a member of C&C Lawyers. Other leading partners include Nuno Sardinha da Mata, a corporate lawyer who is experienced in tax, banking and project finance, insolvency specialist Alvaro Rodrigues, and Connie Kong, head of the gaming, real estate and tourism department.

Gonçalves Pereira Rato Ling Vong & Cunha - Advogados

The long-standing law firm Gonçalves Pereira Rato Ling Vong & Cunha – Advogados has carved out a sizable presence since its inception in 1985. The five-partner firm has been frequently called upon by foreign investors, and is engaged in public listings and banking and finance transactions.

For example, China Metal Recycling appointed the team, led by heads of the finance department Frederico Rato and Pedro Cortés, to advise its Macau subsidiary on its public offering of 300 million shares on the Hong Kong Stock Exchange. In July 2010, the two worked for the issuer and additional guarantor on the subsidiary's operations in the offering of guaranteed notes, totalling US\$200 million.

In addition working on a US\$200 million term loan facility, where the firm assisted the facility agent, security agent and lead arranger, it also provided advice on the HK\$300 million (US\$38 million) banking facilities for a development project in Macau.

Examples of corporate transactions saw the firm act on the acquisition of two Macau companies, one of which own a construction site and the other engaging in the conception, production and trading in integrated electronic systems. It also helped on a joint venture project between a Macau-based company and a Japanese company on the development of a natural gas business.

The firm serves an international client base of companies from a broad spectrum of industries. Core lawyers at the firm include Vong Hin Fai, Paula Ling and Lei Wun Kong.

Jorge Neto Valente Advogados

In terms of team size and coverage of practice areas, Jorge Neto Valente Advogados is one of the largest law firms in Macau, and has enjoyed a staunch market presence for over 30 years. As a client notes, the firm found its reputation by offering a “strategy-based and problem solving approach”. The extensive practice ranges from corporate, banking and finance, real estate and intellectual property to tax, gaming and litigation. The firm is also a member of Miranda Alliance, an international association of independent law firms in regions such as Angola, Cape Verde, Guinea Bissau, Mozambique and Portugal. Home to three in-house notaries, the firm is led by name partner Jorge Neto Valente, who is also a member of the Hong Kong Institute of Arbitrators. Other key practitioners include Pedro Branco, Maria de Lurdes Costa, Rui Sousa and Sandra Carriho.

Manuela Antonio Law Office

Founded in 1986, Manuela Antonio Law Offices is one of the leading firms in Macau and has built up a reputation based on solid credentials. The firm consists of 30 members, including three in-house notaries, and is led by name partner Manuela Antonio. Antonio is a highly recognised lawyer in the market who, during the 1970s and 1980s, represented Portugal's Ministry of Finance in external financing agreements with the World Bank, the International Monetary Fund and the European Investment Bank. She also served as a legal consultant to the Portuguese Secretary for Treasury. Before setting up her firm, Antonio was appointed as Magistrate of the Tax Enforcement Court in Macau, and Chief of the Taxation and Excise Services.

With a branch office in Lisbon, the firm serves a number of overseas clients from the US, UK, Australia, Japan, South Korea, Singapore, mainland China and Hong Kong. Known for its "pragmatic approach", the firm offers services in all the major practice areas such as corporate and commercial law, finance, banking and insurance, gaming law, intellectual property, labour, real estate, tax and dispute resolution. The independent firm, which has language capability in English, German, French and Spanish, also maintains a network with law firms in Hong Kong, Singapore, New York and London.

RP Macau

RP Macau has established itself as a leading boutique specialising across the full spectrum of intellectual property law matters. Luis Reigadas set up the niche firm in 1996 when Macau's localised trade mark legislation took effect. He was also the founder of Reigadas & Associates in 1991, which now houses a team of 20 lawyers and professionals. The firm tackles a variety of IP management issues, and in addition to trade mark, patents, utility models and designs, it is also experienced in the topographies of semi-conductor products, appellations of origin and geographical indications and domain names. The team offers international clients a wide range of languages such as Portuguese, English, French, Spanish, Mandarin and Cantonese.

IFLR

CLEAR THINKING FOR BANKERS' COUNCIL

home advantage
in central europe

Search keywords

Advanced search

Subscribe Free trial Contact IFLR About IFLR Archive Advertising Legal Media Group Events Webinars



Covenant-lite loans
Banks consolidate as Chinese broker acquires in US
Consolidation in Greater China's financial sector picked up this week as Haining Securities became the first mainland broker to...

Basel reforms

Europe ADR ratings change could cause deal flood
Distressed M&A: case studies in realising value
What Singapore's dark pool means for banks

Username:

Password:

Remember me | Forgot password



ONLINE

EMAIL

MOBILE

IN PRINT

ARCHIVE

IFLR

INTERNATIONAL FINANCIAL LAW REVIEW

IFLR has launched the Global Practice Service

The Global Practice Service is a unique filter for legal market practice in the financial and banking sectors worldwide

The Global Practice Service provides:

- **Reports on market practice:** Personal experiences of how recent deals coped with new law
- **Deal analysis:** Explanations of how innovative transactions were put together. From covenants to diligence, it explains how the structures compare with market norms
- **Practice spotlights:** Experience, interviews and insights on the key trends to help you interpret legal developments, from the industry's best lawyers
- **Email and mobile-friendly alerts:** Throughout the week to filter developments worldwide
- **Every angle, every view:** Aggregating opinions of partners, industry associations, in-house counsel, bankers and regulators. All compared across deals and jurisdictions

IFLR is read by 19 of the biggest 20 investment banks in the world and 93 of the top 100 law firms.*

Find out more on www.iflr.com

If you are already a subscriber log on today.

Or take a **FREE 48-hour trial** visit www.iflr.com/freetrialGPS, call +44 (0)207 779 8692, or email shouse@euromoneyplc.com

* The biggest banks determined by share capital and law firms by the IFLR1000 rankings in 2010