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LEGAL WISE BY MDME | THE CURIOUS CASE OF ENTRY BAN TO MACAU

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"Welcome to Macau". Everyone, including residents, non-residents and tourists, is greeted by this sign upon arrival at the Macau airport or the maritime terminals. However, in practice, not everyone is welcome here, or rather, some people are more welcome than others.

Law no. 4/2003, which establishes the general principles of entry, right of abode and residence, contains a provision according to which entry into Macau can be denied to non-residents where there is a strong indication that a crime is being committed. Under Law no. 6/2004, the denial of entry into Macau can further evolve to an entry ban for a certain period of time, which in many cases can be at least three years.

It is not difficult to understand the rationale behind these provisions. Indeed, the statute at issue expressly refers to the concern for the security and public order of Macau. The main problem with this law is not in its wording, but its application and enforcement, which has proven to be highly controversial in practice. In fact, the entry ban is frequently applied to those suspected of criminal offences well before an actual indictment by the Public Prosecutor. In other words, entry bans are applied based on mere suspicion of criminal acts.

This is rather problematic in several ways. First, indictment does not always occur in criminal proceedings. There are frequent cases in which an indictment is not issued due to lack of evidence. Moreover, under the Macau criminal procedural law, an indictment can be brought against a suspect when there is sufficient indication that a crime is being committed. As the word clearly suggests, "sufficient" indications are very different from "strong" indications. Hence, even when an indictment is brought against an individual, it does not automatically imply that there are strong indications that a criminal offence has been committed, and this is even more so when an indictment is not even issued.

Further, the application of an entry ban to a suspect of a crime before he or she is proven guilty is hardly compatible with the principle of presumption of innocence in criminal proceedings.

All of the above suggests that the application of an entry ban based on the mere suspicion of criminal acts is clearly against the spirit and even the wording of the law at issue.

The issue of an entry ban becomes even more controversial in the context of illegal work. In fact, over recent years, a number of entry bans have been applied to non-residents who have allegedly provided their services without permit in Macau, and also to non-residents who have recruited individuals without work permits. These non-residents are usually employees with specialized skills from multinational companies who have been asked by their companies to supervise the quality of services and provide training to employees of their subsidiaries in Macau. Subject to certain conditions, under Administrative Regulation no. 17/2004, the provision of this kind of service does not require a work permit in Macau.

Regardless of whether the aforesaid Administrative Regulation has been applied correctly or rather too restrictively by the relevant authorities, the truth is that a number of non-residents have been banned from entry into Macau for several years for having allegedly provided illegal work in Macau, whilst such an administrative offense is only punishable by a fine not exceeding MOP10,000.

It is undoubtedly important to safeguard fundamental public interests such as security and public order, but it is equally important to strike a balance in this matter. Macau risks discouraging overseas companies from sending skilled professionals to provide services, and, ultimately, to continue investing in Macau, due to its very curious entry ban regime.



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