



THE NEW FINANCIAL SYSTEM ACT:

What insurance stakeholders need to know

Introduction

The new Financial System Act, Law no. 13/2023, (“**FSAM**”) was published in the Macau Official Gazette on August 14, 2023, and will come into force on November 1, 2023. This new Act shall introduce several changes to the whole Macau financial system. In this Alert, we will focus on the key changes FSAM shall bring to the **Insurance Sector**.

Scope - FSAM Applicability to Insurance Companies

One of the most relevant changes introduced is the notable inclusion of Insurance, Reinsurance and Pension Fund Management activities within the scope of its regulation. The definition of “**Financial Institution**” has been amended to include insurers, reinsurers and pension fund management companies.

As such, save for provisions that are specifically aimed at other financial institutions (such as *Title II* regarding credit institutions), the FSAM shall be applicable to Insurance Companies in a residual manner. This means that FSAM (namely *Titles I; III and IV*) shall be applicable to Insurance Companies, unless otherwise provided for in separate legislation.

Insurance Companies shall continue to be regulated by the Macau Insurance Ordinance - Decree-Law no. 27/97/M (as amended by Law no. 21/2020 and republished by the Chief Executive Dispatch no. 229/2020)

("MIO") - for the matters specifically foreseen therein. For the matters not regulated by the MIO but regulated under FSAM, FSAM shall be applicable.

Brief overview on some of the relevant changes

Other Definitions

Introduction of new definitions such as 'subsidiary', 'local branch' and 'senior management' that are relevant to dissipate some practical doubts within insurance guidelines.

Supervisory Actions

Enhanced supervisory actions on insurers are now foreseen. Particularly, the supervised entities now extend from the Macau licensed entities to all the group entities to which they belong.

Advertisement Activities

Any entity that is not licensed to operate financial activities is prohibited from advertising financial products or services in Macau. Insurers must comply with the provisions of general law in providing information and advertising to the public and must not engage in advertising or promotional activities that contain untrue, false or misleading financial information or materials. Insurers shall also not engage in activities that may impact with a standard competition environment between insurers. AMCM is granted powers to impose changes or even stop any marketing activities.

Competition

Insurers are prohibited from seeking to obtain a controlling position over the financial market or to restrict competition, through agreements or other means.

Insurtech: temporary licenses for financial technology projects on an experimental basis

Fintech is disrupting the way financial services are planned, promoted and tendered, and insurance is no exception. To cooperate with the development of Fintech and better promote and regulate financial innovation activities, the FSAM introduces a legal framework for AMCM to grant temporary licenses for financial technology projects on an experimental basis. This will allow qualified entities to carry out FinTech projects without a financial license, but still within controllable risk parameters. Qualified entities refer to academic or scientific and technological research and development institutions, entities engaged in technological business, and financial institutions (including Insurance Companies) that conduct financial innovation projects outside the scope of licensed business.

Further clarification and regulation are expected to be enacted on this, particularly special regulatory rules on the application procedures and required documents related to temporary licenses, applicant qualifications, application conditions, risk management and approval standards. However, it seems that FSAM is dividing the innovative activities of financial institutions into two situations, "*within the scope of permitted business*" and "*outside the scope of permitted business*". We shall closely follow how AMCM shall treat these two situations and if it shall follow neighboring regimes which, when it comes to activities within the scope of permitted business (referring to any licensed insurance companies), stipulates that it is not necessary to apply for a temporary license, but rather to present an application to the regulator and obtain its non-opposed opinion after assessing that the risk is controllable.

Penalties - substantial increase to the number and amounts of applicable fines

Fines applicable under the MIO for breach of its provisions shall be largely increased. The FSAM foresees MIO amendment which includes changes to the limits for fines applicable to licensed insurers. Fines, which as of today range from MOP 10,000 to MOP 1 million, shall be substantially increased to range from MOP 20,000 up to MOP 5 million (5 times more than current law).

FSAM also foresees an extensive list of new (material) administrative infringements, some of which shall also be residually applicable to Insurance Companies (for example those on advertisement activities in breach of FSAM provisions). The fines applicable to the breach of these provisions shall range from MOP 20,000 up to MOP 10 million.

A specific fine of MOP 5 million up to MOP 10 million will be applicable to all the administrative infringements that seriously impact the financial soundness of licensed insurers and/or reinsurers, impact with the stability of the financial sector, distort the financial markets or somehow impair with AMCM global analysis on the financial or operational capability of a given supervised entity.

Further amendments to the MIO

The expression “Executive Order” used in several provisions throughout the MIO shall be changed to “Chief Executive's Dispatch”.

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新金融體系法律制度:

保險業界須知

簡介

新的《**金融體系法律制度**》（第 13/2023 號法律）於 2023 年 8 月 14 日刊登於《澳門特別行政區公報》，並將於 2023 年 11 月 1 日生效。新法將為澳門整個金融體系帶來多項變化，本快訊將集中介紹當中對**保險業**影響最大的變化。

範圍 - 《**金融體系法律制度**》對保險公司的適用性

最相關的變化之一是保險、再保險和退休基金管理活動被明確納入其規管範圍。「**金融機構**」的定義在修法後現包括保險公司、再保險公司和退休基金管理公司。

因此，除了專門針對其他金融機構的規定（例如第二編關於信用機構）外，《**金融體系法律制度**》內其餘的規定皆適用於保險公司。這意味著除非專有法規另有規定，否則《**金融體系法律制度**》（即第一編、第三編和第四編）將候補適用於保險公司。

具體而言，保險公司將繼續受《**保險業務法律制度**》（經第 21/2020 號法律修改並由第 229/2020 號行政長官批示重新公佈的第 27/97/M 號法令）當中明確規定的事項規管。對於《**保險業務法律制度**》沒有規定但《**金融體系法律制度**》有規定的事項，將適用後者。

相關新變化的概述

其他定義

新增「附屬公司」、「支行」和「高級管理人員」等定義，以解決保險業指引實際操作上的一些疑問。

監管行動

新法將加強對保險公司的監管行動，特別是監管對象由原來的澳門持牌實體延伸至該等實體所屬集團的其他實體。

廣告活動

任何未獲許可經營金融業務的實體不得在澳門進行金融產品或服務的廣告宣傳。保險公司向公眾提供資訊及進行廣告宣傳須遵守一般法的規定，不得從事含不真實、虛假或引人誤解的金融資訊或資料的廣告或推廣活動，以及不得進行可影響金融機構間正常競爭關係的活動。澳門金管局可命令變更，甚至終止有關廣告宣傳。

競爭

保險公司不得透過協議或其他方法謀取金融市場的控制地位或限制競爭。

保險科技: 實驗性金融科技項目的臨時許可

金融科技正在改變金融服務的策劃、推廣和供應模式，保險業也不例外。為配合金融科技發展，更好地促進和規範金融創新活動，《金融體系法律制度》引入了金融創新的臨時許可制度，使澳門金管局可向金融科技項目給予臨時許可。這將容許在風險可控的情況下，合資格實體在沒有金融牌照的情況下開展金融科技項目。合資格實體是指學術或科技研究開發機構、從事科技業務的實體，以及在獲許可經營的業務範圍外進行金融創新項目的金融機構（包括保險公司）。

對此制度的進一步說明和規範有待出台，特別是有關臨時許可的申請程序和所需文件、申請人資格、申請條件、風險管理和審批標準等方面的規則。然而，《金融體系法律制度》似乎將金融機構的創新活動分為「獲許可經營的業務範圍內」和「獲許可經營的業務範圍外」兩種情況。我們將密切關注澳門金管局將如何處理這兩種情況，尤其是當涉及（指任何持牌保險公司）獲許可經營的業務範圍內的活動時，是否將遵循鄰近制度規定無需申請臨時許可，而只需向監管機構提出申請，並在評估風險可控後取得其不反對意見。

處罰 – 適用罰款的數量和金額大幅增加

違反《保險業務法律制度》規定的罰款將大幅增加。對《保險業務法律制度》的修改包括變更對持牌保險公司的罰款限額。目前為澳門元一萬元至一百萬元的罰款範圍將大幅增加至澳門元二萬元至五百萬元（現行規定的五倍）。

《金融體系法律制度》還列出了一系列(嚴重)行政違法行為，當中有些亦將候補適用於保險公司（例如違反《金融體系法律制度》規定的廣告活動）。違反規定時，將科澳門元二萬元至一千萬元的罰款。

對所有嚴重影響保險人或再保險人的穩健經營、干擾金融體系的穩定或擾亂金融市場的正常運作，又或嚴重影響澳門金管局對有關實體的財務或經營狀況的全面掌握或判斷的行政違法行為，將科澳門元五百萬元至一千萬元罰款。

對《保險業務法律制度》的進一步修改

《保險業務法律制度》中若干條文中「訓令」的表述改為「行政長官批示」。

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