

# A Regional Guide to Retirement Plans & Schemes

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Contributed by: **MdME Lawyers**

## 1. Does the state provide a pension, retirement income or social security program of some type?

The Macau government has a specific social security program for civil servants and a social security system for non-civil servants (“**Social Security Fund**”).

The Social Security Fund operates under the principles of social insurance and pay-as-you-go. Its financial income comes mainly from the defined contribution of the beneficiaries enrolled in this system (employees, employers, and arbitrary system contributors) and 1% appropriation from the recurrent income of the government budget and appropriation from gaming.

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The Social Security System is composed of an obligatory contribution system and an optional contribution system. Employees and employers who have employment relations are required to make obligatory contributions to the Social Security Fund, and other residents who comply with the relevant legal requirements can make contributions by enrolling in the arbitrary system.

The Social Security Fund, however, does not provide its beneficiaries with a pension or retirement income but, rather, benefits like old age pension, disability pension, unemployment allowance, funeral allowance, marriage allowance, birth allowance and compensation for respiratory occupational disease. As such, it only provides basic social security to the residents.

## **2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?**

Employers are required solely to enroll their employees in the Social Security Fund and make the monthly social security fund contribution and retention and the quarterly payments. Employers are required to make a MOP 60 monthly payment, while employees pay MOP 30 a month for the Social Security Fund.

Additional retirement plans or schemes are entirely up to the discretion of the employer, and their setting up, management and winding up is regulated under Decree Law 6/99/M, which was later revised by Law 10/2001.

According to the above regulations, private pension plans are programs that provide for the right to pecuniary payments as a result of (a) early retirement, (b) old age retirement, (c) permanent incapacity for work, or (d) death. Pension plans may also provide for the right to pecuniary payments as a result of (a) serious illness, (b) long-term unemployment, or (c) final departure from the territory of Macau.

Pension funds are autonomous assets created solely for the purpose of financing one or more pension plans.

According to the type of guarantees provided, pension plans are classified as:

- (a) *Defined benefit plans* – wherein the pecuniary payments payable to the beneficiaries (individuals entitled to the pecuniary payments provided for in the pension plans) are predefined, and the contributions made are calculated so as to guarantee the respective payments;
- (b) *Defined contribution plans* – wherein the contributions are predefined and the pecuniary payments payable to the beneficiaries are determined according to such contributions; and
- (c) *Mixed plans* – which have the features of the two plans mentioned above.



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Based on the form of financing, pension plans are classified as:

- (a) *Contributory plans* – wherein participants (individuals whose rights enshrined in the pension plans are defined according to personal and professional circumstances, regardless of whether or not they contribute to the respective financing) make contributions;
- (b) *Non-contributory plans* – wherein the financing is done exclusively by the associates (corporate entities whose pension plans are financed by pension funds).

Pension funds can be either closed or open funds:

- (a) A pension fund is regarded as closed when the respective plan concerns only one associate or, if there are several founder members, there is a link in terms of business, association, profession or of a social nature between them and their consent is necessary for new associates to be included in the plan financed by the fund. Closed pension funds are established at the initiative of a company or groups of companies, associations, namely social or professional associations, or by agreement between employer and employee associations.
- (b) A pension fund is regarded as open when there is no requirement for any link between the various members of the respective plan, and joining such fund depends only on acceptance by the management company of the relevant fund. Open pension funds are established at the initiative of any entity authorized to manage pension funds, and their total net value is divided into units of participation represented by certificates.

### **3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?**

Law 4/2010, “Social Security System”, which entered into force on January 1, 2011, sets the legal framework for the social security regime, which is executed by the Social Security Fund – the public entity in charge of the management of the social security in Macau.

Decree Law 6/99/M, which was later revised by Law 10/2001, establishes the legal framework for private pension funds and private pension funds that are managed by insurers authorized to transact life insurance in Macau and supervised by the Macau Monetary Authority.

#### Social Security System

Under Law 4/2010, the material requirements applicable to the Social Security System include the differentiation of mandatory and optional regimes, registration of employees and employers in the Social Security Fund, employers’ and employees’ mandatory and optional contributions to the Social Security Fund, and rules regarding social security benefits (requirements, amounts, attribution).





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## *Obligatory System*

The obligatory system applies to any Macau SAR resident who works under the authority and direction of an employer in return for remuneration.

All employers, who employ workers under their direction in return for remuneration, must register with the Social Security Fund in the contribution month that immediately follows the commencement of the employment. Registration is required only once, and the employer will be assigned a permanent registration number.

Any employer who establishes labor relations with an employee for the first time must enroll the employee and pay contributions for him or her in the contribution month that immediately follows the commencement of such relations. Enrollment is required only once and the enrolled person will be assigned a lifetime beneficiary number.

The contributions of the preceding calendar quarter are payable quarterly in January, April, July and October, but contributions for casual workers are paid in the month that immediately follows the working month of the employee.

Employers are required to pay a late payment interest if the contributions are paid within 60 days after the statutory payment period. If the contributions remain unpaid after 60 days from the statutory payment period, a fine that is calculated quarterly and not exceeding half of the amount of unpaid contributions will be charged on top of the late payment interest, but the minimum fine is MOP 500.

Any employer who attempts to improperly appropriate all or part of the social security system contributions that he or she deducted according to law from the employee's wages and fails to remit the money to the FSS within 60 days after the expiration of the statutory payment period may be subject to three years' imprisonment or a fine. If the offender is a legal person, he or she may be subject to a fine of up to 360 days' pay.

Lack of registration of the employer or enrollment of the employee is punishable with a fine ranging from MOP 200 to 1000 per employee affected by the infraction.

## *Optional System*

The optional system is applicable to:

- employees who are married to their employer, or who have a de facto marital relationship with their employer, or who are a relative up to the second degree of relationship living and sharing meals with their employer; employees with relations established under a contract of apprenticeship training or through a vocational training system that aims to integrate the trainees into the employment market;



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- civil servants who are already enrolled in the government social security program; and
- other Macau SAR residents.

Applicants can enroll at any time, except for other Macau SAR residents, who can only enroll if they stayed in Macau for at least 183 days during the 12 months preceding the application for enrollment. The contribution amount is MOP 60 per month.

The contributions of the preceding calendar quarter are payable quarterly in January, April, July and October, and the full amount of contributions is to be paid by the beneficiaries themselves.

If the beneficiary fails to pay the contributions within the statutory payment period, he or she cannot rectify the default contributions unless contributions are paid with a late payment interest within two months after the expiration of the statutory payment period or if the reason for failing to pay contributions within the statutory payment period is attributable to a force majeure situation accepted by the Administrative Committee of the Social Security Fund.

There are no liabilities under the optional regime.

## Private Pension Funds

Under Decree Law 6/99/M, the material requirements applicable to pension funds and pension plans include the financing obligations, the acquired rights, the method of paying benefits, the definition of the concepts that give rise to the right to receive the benefits and the documentation necessary to support the right to receive the benefits. They also include the types, constitution, joining and leaving of pension funds; the actuarial valuation of liabilities; the duration, closure and liquidation of pension funds; the rules governing pension funds' assets; and the rules regarding management and deposit of pension funds. Private pension funds must be authorized by the Macau Monetary Authority.

Authorization to constitute closed pension funds is granted based on the joint petition from the management companies and the founder members. The petition is submitted together with a draft of the deed of constitution, an actuarial valuation of the liabilities to be guaranteed by the fund, in the case of pension plans with defined benefits or mixed plans, and the respective financing plan.

Authorization to constitute open pension funds is granted based on the petition from the management company duly accompanied by a draft of the management regulations.





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## 4. What are the key features of the tax framework that applies to retirement plans/schemes?

The Macau tax system only grants tax concessions for the benefits arising out of the governmental social security schemes, but not the contributions per se. As such, contributions to the Social Security System are taxable, but the benefits that are received by the beneficiaries as a result of the enrollment in such schemes are considered nontaxable income.

Pension plans and pension funds are exempt from all taxes, rates or duties in relation to: (i) all juridical acts inherent in their respective constitution and subscription from third parties; (ii) the initial assets that form the respective patrimony, including their applications and the income generated therefrom; (iii) the contributions made by the associates, participants and contributors; and (iv) the installments paid on its account, with the exemption applicable both to the payer and the beneficiary of such installments.

Also, the contributions made to the pension plans and pension funds are considered revenue expenses of the year.

## 5. If an employer adopts a retirement plan/scheme, are employer contributions required?

Under the Social Security System, employer contributions are mandatory and the employer must make a monthly contribution of MOP 60.

In relation to private pension schemes, although the law classifies pension plans based on the form of financing in contributory plans and non-contributory plans (see question 2 above), the law does not specify whether employer contributions are mandatory and what their amount should be. In practical terms, however, employers are always required to contribute, but the amounts are established on a case-by-case basis in accordance with the conditions of the constitution of the funds/plans.

## 6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

### *Patrimonial autonomy*

The assets of a pension fund can only be utilized for the execution of pension plans in respect of their beneficiaries. The only exceptions to this are related to the obligations arising directly from management or deposit expenses and those related to the payment of certain types of insurance.

The pension plans contained in the respective deed of constitution, management regulations or membership contract can only and exclusively be funded through the fund's assets or by its respective share in the total. The value of the said assets will be the maximum amount available to the management company, without prejudice to the liability of





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associates, participants and contributors to pay their contributions and the eventual minimum income guaranteed by the management company.

## *Excess of financing*

If, during five consecutive years, the value of the pension fund corresponding to the financing of a defined benefit plan exceeds, by more than 20%, the value of total liabilities inherent in the plan, the respective contributions may be temporarily suspended or reduced. No money shall be returned to the associate if the excess value of the fund has resulted from an alteration in the pension plan.

## *Financial, technical and actuarial management*

The assets, contributions and pension plans must at all times be balanced in accordance with actuarial systems for capitalization, which permit the establishment of equivalence between assets and expected income of the pension fund on the one hand and, on the other hand, future payments to beneficiaries and future charges for management and deposits.

Pension funds that finance defined benefit plans may effect insurance to cover the risks of death and permanent incapacity for work and insurance for lifetime income, where the same is included in the pension plans.

Funds financing defined contribution plans are obliged to have individual accounts for each participant.

The technical, actuarial and financial plan must be reviewed at least once every three years.

The management company can make payment of the installments due only if the amount accumulated in the fund is equal to or more than the total current value of such installments.

## *Actuary in charge*

At the time of submission of the request for the constitution of the fund, the management company shall indicate the actuary responsible for each closed pension fund to be so constituted.

## *Composition of assets*

The nature of the assets that make up the patrimony of pension funds and their respective percentage limits, including the general principles of congruence and valuation of these assets, is established by notice of the Macau Monetary Authority.

There are no provisions concerning the failure to satisfy the above requirements.





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## 7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

The company managing the pension fund must inform the participants of the pension plan contained in the deed of constitution or of the collective membership contract, and the said management company shall bear the burden of proof in respect of compliance with this requirement.

In the case of contributory pension plans, failure to comply with the obligation referred to in the preceding paragraph results in the associate being liable to bear the participant's share of the contribution, without any loss of guarantees for the participant, until the obligation is fulfilled.

In closed pension funds and in the case of collective membership of open pension funds, the management company must provide, at the request of the participants, all the information necessary for a complete understanding of the contract.

In closed pension funds that finance contributory plans, and in the case of individual membership of open pension funds, the contributors and the participants are entitled to receive from the management companies, at least once a year, information on the amount of contributions made by them or in their favor and in their name, and on the value of their shares in the total value of the fund.

The law does not set out any penalties for the lack of compliance with duty of information.

## 8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

Any amendment to the deed of constitution or to the pension fund management regulations, including the transfer of pension fund management between management companies, shall be subject to the Macau Monetary Authority's approval. The amendments cannot reduce the amounts of pecuniary payments already fixed, nor affect the acquired rights of the beneficiaries.

Where the amendments to the deed of constitution affect the pension plan, the respective petition for authorization must include, in addition to the new text, the actuarial valuation of the new liabilities that will be guaranteed by the pension fund and the respective financing plan, taking into account the number of participants and beneficiaries covered, the basis and method of financing utilized, and any other information that the Macau Monetary Authority deems necessary for a complete understanding of the financing plan of the respective pension plan.

## 9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

The law does not specifically establish the situations under which an employer may withdraw from or terminate a plan/scheme.





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Pension funds are wound up if: (i) there are no participants or beneficiaries; (ii) the respective object of the fund, for whatever reason, becomes redundant; (iii) the associates fail to pay the contributions to which they have committed themselves and the situation is not rectified and, within a period of one year, an adequate plan to rectify the situation is not submitted to the Macau Monetary Authority that is acceptable to this entity; and (iv) the pecuniary payments are not being duly financed.

The law is silent about eventual liabilities in connection with withdrawal or plan/scheme termination.

## 10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Yes. If the working relationship between the associate and the participant ceases for reasons other than the conditions for the formation of the right to pecuniary payments, the participants can either receive the pecuniary payments to which they are entitled (payments made to the pension plans, plus the product of the respective capitalization less management charges, according to the terms set out in the respective pension plan) or transfer the same to a new pension fund.

## 11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

As a general rule, payment to beneficiaries of the pecuniary payments provided for in the pension plans is made in the form of a lump sum payment, unless another form has been expressly indicated in the respective pension plan. As such, the eventual need and provision of adjustment/increase of benefit payments after retirement would have to be determined in the pension fund contract.

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### Note

Law 7/2017 on the Non-Mandatory Central Pension Scheme has recently been approved by the Macau Legislative Assembly but will only come into effect on January 1, 2018. This law will be regulated by other complementary legal diplomas (timing still to be confirmed as at the publication of this guide). This new regime aims to offer more protection to the elderly and will complement the existing social security regime, by creating joint pensions plans and allowing existing private pension funds to be maintained.

The new regime will only apply to permanent residents of Macau who are aged 18 or over or who are under 18 but are already registered in the Social Security Fund. Non-permanent Macau residents and blue card holders are excluded.



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It is not a mandatory regime so employers and individuals can choose whether or not to join. Contributions can be made on an individual or joint basis. If an employer decides not to join the new regime, employees who meet the relevant conditions can still do so. If an employer does join the new regime, employees remain free to choose whether or not to join. Minimum contributions to the new regime will be 5% of the employee's base salary (5% for the employee and 5% for the employer). Exemptions/conditions may apply depending on the level of the employee's salary.

The new regime is expected to be advantageous for both employers and employees and may help with the retention of talent.

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