

LEGAL ALERT

MACAU BOND MARKET: NEW GUIDELINES

Macau financial market is undergoing significant changes that entail the creation of a new local bond market, which in turn is expected to generate a source of funding for foreign companies as well as new array of attractive investment opportunities.

In this regard, the Macau Monetary Authority has recently circulated two new guidelines (Circular No.: **009/B/2019-DSB/AMCM**), effective as of June 28, 2019 - regarding the issuance and underwriting of bonds in Macau.

These guidelines aim to provide for the rules and procedures for the issuance of bonds by companies in Macau, be it by locally incorporated companies or by foreign entities.

The first set of guidelines regulates the general principles and rules for the issuance of bonds and its management services.

The second set of guidelines regulates the general principles and rules applicable to underwriters and custodian companies.

I. Guidelines regarding the issuance of bonds and its management services

A. Issuance of bonds for Public Subscription

- Prior authorization from the Chief Executive – subject to the Macau Monetary Authority’s advice – is required;
- Risk factors that may adversely affect the solvency of the bonds;
- Specific financial and accounting information of the issuer must be provided;
- General credit and solvency situation of the issuer must be provided;

- General information about the issuer such as corporate information regarding the shareholding structure and others must be provided;
- Guarantees and reinforcement of guarantees must be provided;
- General information of the custodian companies must be provided;
- List of documents to be provided: financial and auditing report of the past three years, legal opinion, rating report etc.

B. Issuance of bonds for Private Placement

- Offering Memorandum: to include all sufficient elements that may enable the investor to make a full assessment of the related investment risks (financial situation of the company, information about the bonds, listing details etc.).

C. Conditions and requirements for the issuance of bonds

Public subscription to professional investors:

- Financial situation: the audited accounts of the issuer must evidence *(i)* positive net profits after tax in the past three financial years, *(ii)* positive net cash inflow in the recent financial year, *(iii)* capacity to pay interest, that the net profit after tax in the past three financial years reaches 100% of the annual interest payable of the issued bonds and *(iv)* net assets in the recent period over MOP100 million (exclusive of intangible assets);
- Sound internal control and risk management;
- No debt default or failure to pay interest in the past three financial years by the issuer;
- An appropriate bond issuing plan (issuance size, purpose of fund raising, channel for sales of bonds etc.);
- For foreign issuers, prior authorization from its local regulator may be required pursuant to the regulation of the respective jurisdiction.

If the issuer does not comply with the first two requirements set out above, the issuer can become a qualified issuer through credit enhancement provider.

Additional requirements for Public Subscription to public:

- Satisfactory credit rating of the issuer and the bonds;
- No debt default or failure to pay interest in the past five financial years;
- Average net profits of the past three financial years equivalent to 150% of the total annual interest amount to be paid under the bond issuance;
- Companies are not entitled to issue bonds (*i*) if the bonds were not entirely subscribed in its last issuance and (*ii*) in case of inconsistencies in the balance sheet and financial report.

II. Guideline regarding the underwriting and custody of bonds

A. General duties of the underwriters

Underwriters must establish internal risk management procedures to ensure that the issuance of bonds complies with the applicable laws and regulations in force in Macau.

Underwriters shall conduct a due diligence process on the issuer regarding, among others, the following matters:

- General situation of the issuer: shareholding structure, internal control, operational situation etc.;
- Financial and accounting information;
- General credit and solvency situation of the issuer;
- Application of the proceeds;
- Remedies in case of contractual breach by the issuer;
- Major risk involved and related measures of the issuer.

The members of the board of directors of the underwriter are the ultimate responsible for the authenticity of the information resulting from the due diligence process.

B. Promotional roadshows (only applicable to public subscription)

The underwriter shall, among others:

- Ensure that the information provided during road shows to promote the subscription of bonds by the public are authentic and accurate;
- Suspend the issuance of bonds if information provided by the issuer during roadshows does not comply with its obligation of information disclosure;
- Ensure that the main relevant information about the bonds is disclosed to the investors (payment terms, rating and other potential risks);
- Make an assessment on the type of investors such as to determine whether they can be considered professional investors.

C. Price determination and allotment of bonds

- Public subscription

The Underwriters must establish an independent commission to decide on the pricing and listing of the bonds.

The price and interest rate can be determined by using marketing procedures based on price consultation or public tender.

The price and interest rate together with the calculation method must be publicized.

- Private placement

The price and interest rate can be determined by consultation of prices or negotiation between the underwriter and the issuer.

The underwriters must ensure that the investor meets the requirements for being considered as professional investor.

D. Custodian services

The custodian entity shall, among others:

- Establish procedures to ensure the monitoring of the issuer and the full compliance of the offering circular/offering memorandum;
- Prepare and publicise, each year until 30 June, the “Report of the Custodian Matters”, containing information such as: operational and financial situation of the issuer, implementation of guarantees, fulfilment of contractual obligations etc.;

- Prepare and publicize the “Preliminary Report of Custodian Matters” within five days from the occurrence of one of the following events: *(i)* conflict of interest, *(ii)* discrepancy on the application of proceeds, *(iii)* significant changes on the internal and external mechanism of credit reinforcement and any other cases that may affect the position of the investors.

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