JORGE AF GODINHO

PhD (European University Institute, Florence)
LLM (University of Macau)
Lic Law (University of Lisbon)

Assistant Professor of Law, University of Macau

THE MACAU PENAL CODE
A PARTIAL ENGLISH TRANSLATION

INCLUDING LAW 2/2006, ON MONEY LAUNDERING

[draft version; please check regularly for a more updated version at SSRN: http://ssrn.com/abstract=1347185]

Macau
16 March 2009
Preliminary note

This is a partial English translation of the Penal Code of the Macau Special Administrative Region of the People’s Republic of China, approved by Decree-Law no. 58/95/M, of November 14.

In terms of geneology, the 1995 Code is in essence an updated, improved and ‘localized’ version of the 1982 Portuguese Penal Code, as revised in 1995, which in turn is heavily influenced by the German Penal Code (StGB).

One feature of the legal tradition in which the Penal Code fits is the extensive use of very abstract and technical concepts, which are intended to be precise, logical and consistent, almost ‘scientific’. This conceptual refinement is typical of civil law legal systems and flows from the German tradition that produced the StGB.

An attempt was made to produce an accurate and consistent translation, employing a modern and elegant style of English writing, consistent with the translations of the Commercial Code (completed) and Civil Code (now underway). This is obviously a rather difficult task, both in quantitative and qualitative terms. More than a translation, it is, in fact, a highly specialized work of legal research, given that the search for the appropriate equivalent terms and expressions involves considerable comparative law research.

The translation also includes some provisions of Law no. 2/2006, of Abril 3, which criminalizes money laundering.

The author gladly welcomes all comments or suggestions by e-mail to jgodinho@umac.mo or jg.macau@gmail.com.

Macau, 16 March 2009.

Jorge A. F. Godinho
MACAU PENAL CODE

BOOK I
General Part

Title I
General principles of criminal laws

Article 1
(Principle of legality)
1. Only a fact that has been described and declared as susceptible of penalty, by means of a law passed prior to the moment when it was committed, may be criminally punished.

2. Security measures can only be applied to a state of dangerousness the requirements of which were set in a law passed prior to the moment in which they are met.

3. It is not allowed to use analogy in order to construe a fact as a crime or to define a state of dangerousness, nor to determine the penalty or the security measure that shall apply to them.

Article 2
(Temporal applicability)
1. The penalties and security measures shall be determined by the law which is in force at the time of the fact or of the occurrence of the respective requirements.

2. A fact which is punishable under a law in force at the time of the fact shall cease to be punishable if a new law eliminates it from the list of offences; in such case, and if there has been a conviction, the respective execution and the penal effects shall end, even if an appeal is no longer possible.
3. When a law applies for a specific period of time, facts committed during such period shall continue to be punishable.

4.

Article 3
(Moment of practice of the fact)
A fact shall be deemed to have been perpetrated in the moment in which the perpetrator acted or, in the case of an omission, in which he should have acted, irrespective of the moment in which the typified outcome has been produced.

Article 4
(General principle of application in space)
Except where there is a provision to the contrary in an international agreement applicable to Macau or in a legal assistance agreement, the penal law of Macau shall apply to facts committed:
   a) in Macau, irrespective of the nationality of the perpetrator;
   b) on board a ship or an aircraft registered in Macau.

Article 5
(Facts practiced outside Macau)
1. Except where there is a provision to the contrary in an international agreement applicable to Macau or in a legal assistance agreement, the penal law of Macau shall also apply to facts committed outside of Macau:
   a) 
   b) 
   c) 
   d) 

Article 6
(Restriction to the application of Macau penal law)
Article 7
(Place of practice of the fact)

Article 8
(Subsidiary application of the Penal Code)

Title II
The fact

Chapter I
Requirements of punishment

Article 9
(Commission by action and by omission)
1. When a ..
2. The commission of a result by omission shall be punishable only if the person who has omitted has a legal duty that personally obliges him to prevent that result.
3. If there is to be a punishment under the previous paragraph, the penalty may be especially mitigated.

Article 10
(Individual nature of responsibility)

Article 11
(Acting on behalf of another)

Article 12
(Intentional and negligent conduct)
Only a fact practiced with intention is punishable or, where the law expressly provides so, with negligence.

Article 13

5
(Intention)

1. Acts in an intentional manner whoever, perceiving a fact which corresponds to a type of crime, does act with the intention to perpetrate it.

2. Also acts in an intentional manner whoever perceives the perpetration of a fact, which corresponds to a type of crime, as a necessary consequence of his conduct.

3. If the the perpetration of a fact which corresponds to a type of crime is perceived as a possible consequence of the conduct, there is intention if the agent acts conforming himself with such perpetration.

Article 14
(Negligence)

Acts with negligence whoever, by not proceeding with the care to which, according to the circumstances, he is obliged and is capable of:

   a) perceives as possible the perpetration of a fact which corresponds to a type of crime but acts without conforming himself with such perpetration;

   b) does not even perceive the possibility of the perpetration of a fact which corresponds to a type of crime.

Article 15
(Mistake about circumstances of the fact)

1. A mistake about factual or legal elements of a type of crime, or about prohibitions the knowledge of which was reasonably necessary for the perpetrator to become aware of the unlawfulness of the fact, shall exclude intention.

2. The provision of the previous paragraph includes a mistake on a state of affairs which, had it existed, would exclude the unlawfulness of the fact or the fault of the perpetrator.

3.
Article 16
(Mistake on unlawfulness)
1.

Article 17
(More serious punishment due to particular results of the act)
1.

Article 18
(Lack of imputability due to age)
Persons who are less than 16 years of age cannot be held criminally liable.

Article 19
(Lack of imputability due to psychological disorder)

Chapter II
Forms of the crime

Article 20
(Preparatory acts)
Except where the law provides otherwise, preparatory acts are not punishable.

Article 21
(Attempt)

Article 22
(Punishability of attempts)
1.

Article 23
(Abandonment)

Article 24
(Abandonment in case of participation)

Article 25
(Author)

Article 26
(Accomplice)

Article 27
(Special personal characteristics)

Article 28
(Fault in participation)

Article 29
(Concurrence of crimes and continued crime)

Chapter III
Causes that exclude unlawfulness and fault

Article 30
(Exclusion of unlawfulness)

Article 31
(Legitimate defense)
Legitimate defense is a fact practiced as a necessary mean to repeal an actual and unlawful agression of legally protected intereses of the agent or of a third party.

Article 32
(Excessive legitimate defense)

Article 33
(Right of necessity)

Article 34
(Necessity as excuse)

Article 35
(Conflict of duties)

Article 36
(Overcoming of inability)

Article 37
(Consent)

Article 38
(Presumed consent)

Title III
Legal consequences of the fact

Chapter I
General provisions

Article 39
(Limits of penalties and security measures)
1. There shall not be death penalty nor perpetual penalties or security measures or of unlimited or undefined duration.
2.

Article 40
9
(Purpose of penalties and security measures)

Chapter II
Main penalties

Section I
Imprisonment and fines

Section II
Suspension of the execution of imprisonment

Section III
Conditional release

Chapter III
Accessory penalties

Chapter IV
Choice of penalty

Section I
General rules

Section II
Repeat offenders

Section III
Punishment of accumulation of crimes and continued crime

Section IV
Reduction

Chapter V
Extension of penalty

Chapter VI
Security measures

[Articles 83-95]

Chapter VII
Internment of imputable persons with psychic anomaly

[Articles 96-100]

Chapter VIII
Confiscation of things or rights related with the crime

Article 101
(Confiscation of objects)

1. The objects that served or were intended to serve for the commission of a tipified unlawful act, or that have been produced by it, shall also be confiscated in favor of the Territory, when, by their nature or by the circumstances of the case, they create a danger for the safety of persons or to public morals or order, or pose a serious risk of being used for the commitment of further tipified unlawful acts.

2. The provisions of the previous paragraph apply even if no person can be prosecuted for the fact.

3. If the law does not provide for a specific destination for the objects that have been confiscated in accordance with the previous paragraphs, the judge may order their total or partial destruction, or that they be placed out of circulation.

Article 103
(Confiscation of things, rights or proceeds)
1. All rewards given or promised to the agents of a tipifyed unlawful fact, to them or to third parties, shall be confiscated by the Territory.

2. Without prejudice to the rights of the victim or of good faith third parties, confiscation shall also include the things, rights or proceeds which have been directly acquired by the agents by means of the tipifyed unlawful fact, for themselves or for third parties.

3. The preceding paragraphs shall apply to the things or rights obtained by means of transactions or exchanges with the things or rights directly obtained by the tipifyed unlawful fact.

4. If the reward, things, rights or proceeds mentioned in the previous paragraphs cannot be appropriated in kind, the confiscation shall be replaced by the payment of the respective value to the Territory.

Book II
Special Part

Title I
Crimes against persons

Chapter I
Crimes against life

Article 128
(Homicide)

Whoever kills another person shall be punished with imprisonment from 10 to 20 years.

Article 129
(Aggravated homicide)
1. If the death was produced in circumstances that reveal a special blamworthiness or perversity of the perpetrator, he shall be punished with imprisonment from 15 to 25 years.

2.

*** ** ***
Law no. 2/2006

Prevention and repression of the crime of money laundering

CHAPTER I
General provisions

Article 1
Object
This Law establishes measures aimed at the prevention and repression of the crime of money laundering.

Article 2
Subsidiary provisions
The provisions of the Penal Code shall apply subsidiarily to the crime foreseen in this Law.

CHAPTER II
Penal provisions

Article 3
Money laundering
1. For the purpose of this law, proceeds shall be deemed as the property arising from the commission, under any form of participation, of a typified unlawful fact punishable with a penalty of imprisonment the maximum length of which exceeds 3 years, as well as any property that may have been obtained with such property.

2. Whoever converts or transfers proceeds, or aids or facilitates any of such operations, with the purpose of concealing their unlawful source or of preventing an agent or participant in the crimes which gave rise to them from being criminally prosecuted or subjected to a
criminal penalty, shall be punished with a penalty of imprisonment from 2 to 8 years.

3. The same penalty shall apply to whoever conceals or disguises the true nature, source, location, disposition, movement or ownership of proceeds.

4. The punishment for the crimes foreseen in paragraphs 2 and 3 shall apply even if the typified unlawful fact from which the proceeds arise has been committed outside of the Macau Special Administrative Region, henceforth MSAR for brevity’s sake, provided that it is also punishable by the laws of the State or Region with jurisdiction over the fact.

5. The fact is not punishable if the criminal proceedings relating to the typified unlawful facts from which the proceeds arise depend upon a complaint and such complaint has not been timely presented, except if the proceeds arise from typified unlawful facts mentioned in articles 166 and 167 of the Penal Code.

6. The penalty applied in accordance with the previous paragraphs shall not exceed the maximum limit of the penalty foreseen for the typified unlawful fact from which the proceeds arise.

7. For the purpose of the previous paragraph, in case the proceeds arise from typified unlawful facts of two or more kinds, the penalty with the higher maximum limit shall be taken into account.

Article 4

Aggravated penalty

1. The penalty stated in the previous article shall be increased by half in its minimum and maximum limits, with the limits mentioned in paragraphs 6 and 7 of that article, if:

1) the crime of money laundering has been committed by a criminal association or secret society, or by whoever makes part of or supports them;

2) the typified unlawful act from where the proceeds arise is terrorism, unlawful traffic in narcotic products or psychotropic
substances, international traffic of persons or forbidden weapons and explosive substances;

3) the perpetrator practices the crime of money laundering in a repeated manner.

Article 5

Criminal liability of collective persons

1. Collective persons, even if irregularly incorporated, and associations without legal personality, are liable for the crime of money laundering whenever it has been committed, in its name and in the collective interest:

   1) by its organs or representatives; or

   2) by a person under their authority, if the perpetration of the crime has been rendered possible as a result of an intentional breach of oversight or control duties which are within their competence.

2. The liability of the entities mentioned in the previous paragraph does not exclude the individual liability of the respective perpetrators.

3. The following penalties are applicable for the crime stated in paragraph 1 to the entities there mentioned:

   1) fine;

   2) judicial dissolution;

4. The penalty of a fine shall be set in days between a minimum of 100 and a maximum of 1000.

5. Each day of fine corresponds to an amount between MOP$100,00 (one hundred) and MOP$20,000,00 (twenty thousand).

6. If the penalty is applied to an association without legal personality, the common patrimony shall be answerable and, in its lack or insufficiency, jointly, the patrimony of each of the associates.

7. The penalty of judicial dissolution shall only be imposed if the founders of the entities mentioned in paragraph 1 have had the exclusive or predominant intention of practicing the crime there mentioned through such entity, or when the repeated perpetration of
such crime shows that the entity is being exclusively or predominantly used for such purpose, either by its members or by the persons exercising the respective administration.

8. The following accessory penalties are applicable to the entities mentioned in paragraph 1:
   1) prohibition of exercising certain activities for a period of 1 to 10 years;
   2) withdrawal of the right to subsidies or financial support granted by public departments and entities;
   3) closure of business premises for a period of 1 month to 1 year;
   4) permanent closure of business premises;
   5) judicial injunction;
   6) Advertising of the sentencing decision, to be paid for by the convicted, in Chinese and in Portuguese language newspapers among the most widely read in the MSAR, as well as by means of notices, drafted in the said languages, posted for a period of no less than 15 days, in the place where the activity is exercised, in a manner clearly visible to the public.

9. Accessory penalties may be applied cumulatively.

10.