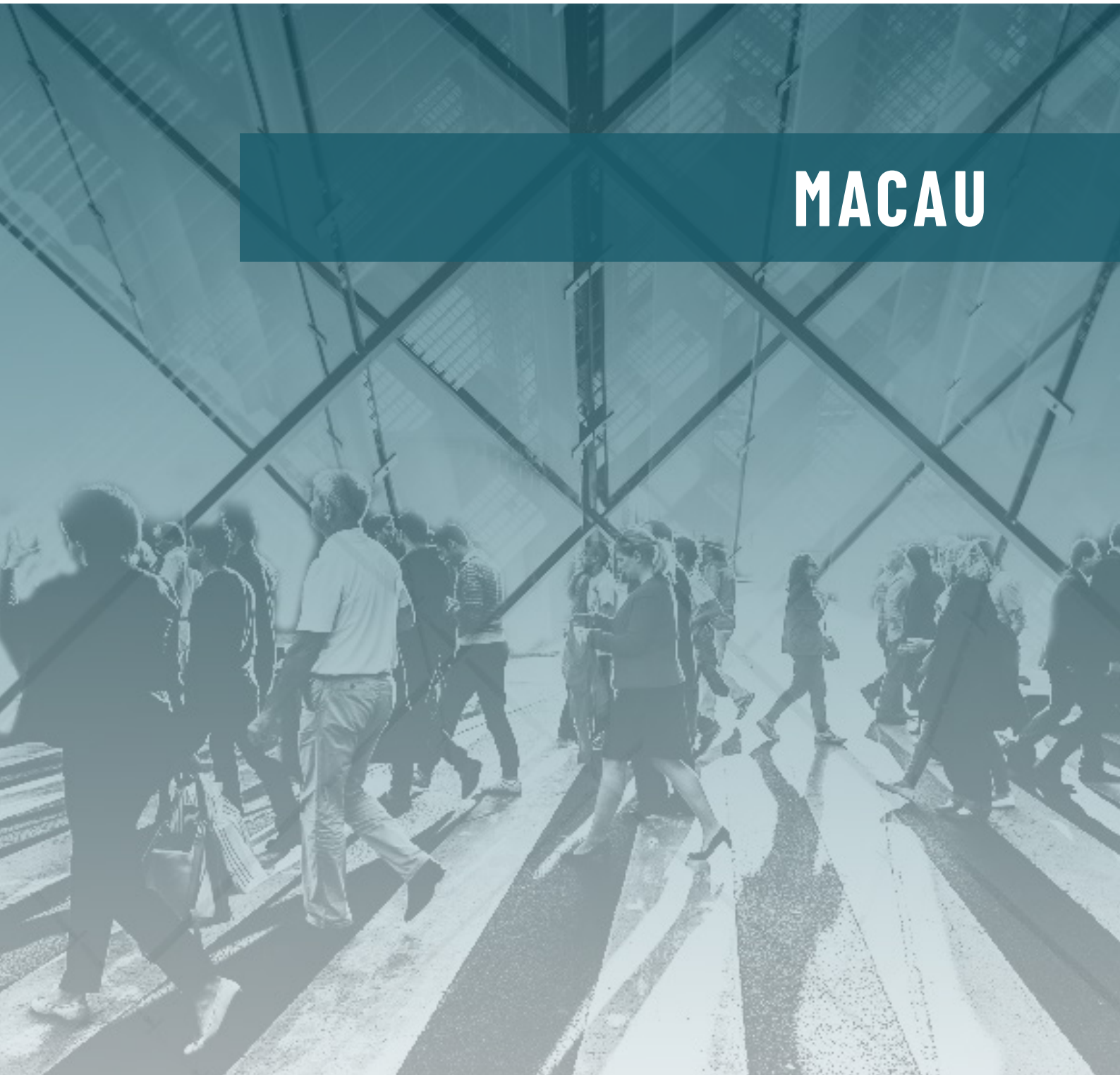


ASIAPAC BANKING GUIDE FOR NONPROFITS


*HOW TO OPEN AND MANAGE AN ORGANIZATIONAL
BANK ACCOUNT*



MACAU



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 PILnet is a global non-governmental organization that creates opportunities for social change by unlocking law's full potential. With programs in Europe & Eurasia, Asia, and at the global level, PILnet aims to reclaim and reimagine the role of law so that it works for the benefit of all. PILnet builds networks and collaborations of public interest and private lawyers who understand how law works when it serves the interests of the privileged and then it uses that knowledge to strengthen civil society and the communities they serve. PILnet not only obtains high-quality, free legal assistance for civil society organizations when they urgently need it but also helps organizations to capitalize on the full range of specialized legal expertise that can be provided by corporate lawyers, including against ongoing, or even yet-to-be-determined, challenges.

1. OPENING AN ORGANIZATIONAL BANK ACCOUNT

a. What are the requirements to open an organizational bank account?

i. Do organizations have to be physically present in Macau to open a bank account? I.e., can they operate in Macau but have a bank account in another jurisdiction? Is the presence of a statutory representative required or can the presence be fulfilled through an authorization?

In principle, organizations do not have to be physically present, incorporated or registered in Macau to open a bank account in Macau. A statutory representative is not required, and the bank account can be opened by an authorized representative.

ii. Are there specific requirements for CSOs to open accounts by law or asked in practice by the banks (e.g., years of operations, annual turnover, to have director or member of governing body to be national of the jurisdiction)

There are no specific legal requirements for a civil society organization (“CSO”) to open an account. Similar to other businesses, a CSO is required to complete an account application/opening form,¹ to be submitted along with relevant supporting documents. The actual documentation required by each bank may vary due to specific internal anti-money laundering (“AML”) policies and procedures, as well as the jurisdiction of incorporation of the CSO. The latest and applicable documentation requirements should be clarified with the bank

1 <https://www.business.hsbc.com.mo/-/media/library/markets/macau/pdf/corporate-account-opening-questionnaire-chi-eng-final.pdf>;

where the account will be opened, but would generally include:²

- Certificate of incorporation (and subsequent certificate of change of name, if any);
- Latest business registration certificate or license (or comparable documents);
- Memorandum and articles of association and any amending resolutions or comparable documents;
- Minutes of Board of Directors meeting authorizing the opening of the bank account;
- Tax declaration to the Department of Financial Services;
- Identification documents of directors and authorized personnel; and
- Other relevant documents, including but not limited to the Foreign Account Tax Compliance Act (“FATCA”) Declaration for Active Non-Financial Foreign Entities or W-series Form, Common Reporting Standard Form, any other relevant authorization mandate and bank signature cards.

The account application form may also require further details from the CSO in relation to its purpose and rationale of opening a bank account in Macau, financial information, as well as account transaction information, including its activities/nature of business and source of income.

iii. Who is authorized/required to open a bank account? Can this be done online, or that person needs to be present in Macau?

An individual duly authorized to act on behalf of the CSO (usually appointed by a resolution of the management body) may open a bank account for the CSO. Generally, foreign non-residents may also be authorized to open a bank account in Macau.³

Due to due diligence requirements, the opening of a business bank account generally requires the authorized personnel to be physically present at the branch.⁴ Certain banks may also require the number of members of the management body or

² http://www.bnu.com.mo/wp-content/uploads/2012/10/is10112_tc-for-account-cif-opening_eng.pdf;
<https://www.business.hsbc.com.mo/-/media/library/markets/macau/account-checklist-non-profit-organization-established-in-macau.pdf>;
[https://www.ocbcwhmac.com/file/Forms Enquiries/doc required for ac opening_en.pdf](https://www.ocbcwhmac.com/file/Forms%20Enquiries/doc%20required%20for%20ac%20opening_en.pdf)

³ <https://globalbanks.com/open-bank-account-macau/>

⁴ <https://www.hangseng.com/en-hk/business/beyond-hong-kong/macau-account-opening-services/>;
<https://www.ocbcwhmac.com/business-banking/en/accounts-and-services/integrated-account.html>

authorized signatories as appointed by the organization or the number of members of the management body as needed to bind the organization according to its by-laws to be present for the account opening.⁵

In the event where banks have waived physical presence requirements, copies of documents submitted would need to be originals or true copies certified by a certified public accountant / lawyer / notary public in accordance with the bank's requirements. Where original documents are not in Portuguese, Chinese or English, an English translation of the same should also be provided.

iv. What is the process of setting up a bank account? E.g., how long it takes, is there a practice to have an interview in the bank?

An individual duly authorized to act on behalf of the CSO to set up a bank account may make such an application. The process of setting up a bank account, including the onboarding and document verification process, normally takes up to several weeks. The length of time required will vary between banks and be determined on a case-by-case basis.

It should also be noted that, generally, banks have the sole and absolute discretion in deciding whether to accept an account opening application and may decline account opening requests without providing any reasons.

2. BANKING ACTIVITIES

a. What customer due diligence requirements are in place and what is their impact on civil society organizations' banking activities?

*The Anti-Money Laundering and Combating the Financing of Terrorism Guidelines*⁶ (the "AML/CFT Guidelines") issued by the Monetary Authority of Macau (Autoridade Monetária De Macau) set out key requirements for (among others) credit institutions and other financial institutions incorporated in Macau (the

5 <https://www.business.hsbc.com.mo/-/media/library/markets/macau/account-checklist-non-profit-organization-established-in-macau.pdf>

6 https://www.gif.gov.mo/doc/AMCM/Banking/English/1.aml_cft_gudileine_eng_2019_final.pdf

“institutions”) to fulfill the relevant AML/CFT statutory and regulatory obligations. The AML/CFT Guidelines do not specify due diligence requirements pertaining to CSOs in particular but have set out minimum due diligence information the institutions should obtain for corporate customers which could also be expected to apply to CSOs, including:

- full commercial denomination;
- date and place of incorporation;
- registration or incorporation number;
- registered office address in the place of incorporation, and, if different, address of principal place of business;
- name and habitual residential address of beneficial owners, persons authorized to act on behalf of the corporate customer, persons that regulate and bind the legal person or arrangement, as well as persons having a senior management position in the legal person or arrangement;
- name of shareholders and members of board of directors;
- details of ownership and structure of control;
- nature of business/activities; and
- purpose and intended nature of the business relationship.

In addition to the above, notably the AML/CFT Guidelines require the institutions to be vigilant when establishing a business relationship with a non-profit organization (“NPO”, i.e., a legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal reasons, or for the carrying out of other types of “good works”), and the decision for such business relationship should be subject to proper approval, as NPOs may be vulnerable to abuse by terrorists, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activities. The AML/ CFT Guidelines suggests the institutions should:

- be satisfied that the NPOs with which it intends to enter into business relationships or make transactions are not connected with any known terrorists/terrorist organizations, by searching the relevant databases and publicly available information;
- take special care for dealing with any NPOs originating from those countries/jurisdictions or areas exposed to terrorist activities;

- monitor closely any existing NPO customers rated as high risk and report to the Financial Intelligence Office (“GIF”) in respect of any suspicious transactions with source from and/or destination to countries/jurisdictions or areas exposed to terrorist activities; and
- conduct ongoing review and risk assessment of NPO customers by referring to the relevant databases and publicly available information.

Hence, if the CSOs are NPO clients by nature, the institutions may request more due diligence information from the CSOs in order to establish a business relationship. Once the business relationship is established, it is expected that the institutions will conduct ongoing due diligence on the business relationship with CSOs and scrutiny of CSOs’ banking transactions to ensure consistency with their background throughout the course of the relationship, particularly when: (i) suspicion is noted, such as appearance of unusual transactions or transactions not in line with the nature of business or profession stated by the customers, or where there are doubts about the veracity or adequacy of previously obtained customer identification data; (ii) there is material change, e.g., significant change in business or profession, or in other information, or in the way that the account is operated; (iii) significant amount of transactions takes place; and (iv) records are obsolete or insufficient, or information is irrelevant or outdated.

The institutions may adapt their due diligence requirements according to the nature and type of transaction in accordance with the AML/CFT Guidelines. Hence, we suggest checking with the bank involved to determine what due diligence requirements it has in place.

b. Which internal principles or official (central bank) “suspicious transaction” monitoring criteria are in place affecting the civil society organizations? Is it publicly available?

According to article 13 of the AML/CFT Guidelines, transactions indicating signs of money laundering and/or financing of terrorism crime, or transactions suspiciously involving converting, transferring or dissimulating illegally obtained funds or properties in order to conceal the true ownership and origin of the funds or properties to make them appear to have originated from a legitimate source, are considered suspicious money

laundering and/or terrorist financing transactions (“suspicious transactions”). Institutions are required to:

- report all suspicious transactions to the GIF within the prescribed time limit, regardless of the size/amount of the transaction;
- make a suspicious transaction report to the GIF when unable to complete the transactions (attempted transactions) or customer due diligence, regardless of whether or not the relationship has commenced or the transaction has been conducted; and
- have properly documented procedures with respect to the detection and reporting of the suspicious transactions.

The report of suspicious transactions should include all relevant information for the identification of the customers specified in the Guidelines and indicate the transactions detected as falling outside the normal pattern of activity of the customer. Reporting of suspicious transaction should be made in the standard form prescribed by the GIF. Hence, any suspicious transactions arising in CSOs’ banking activities are expected to be subject to reporting requirement.

c. Do the banks in Macau have any restrictions/ limitations to bank transactions and transfers to certain jurisdictions (such as high-risk ones).

i. If yes, is the list of jurisdictions publicly available?

Yes. In general, the institutions’ customer acceptance policies should determine proper procedures to prevent the bank from establishing a business relationship or conducting transactions with those entities designated as terrorists by the United Nations Security Council,⁷ Macau SAR Government (by announcement published in the Official Gazette of Macau SAR Government from time to time) and other organizations or entities under interregional and international legal instruments, or those who are subject to sanctions announced locally or abroad, and to avoid establishing a business relationship or conducting transactions with those from countries/jurisdictions covered in the list or statement published by the Financial Action Task Force (“FATF”)⁸ or in other sanction lists with international implications.

⁷ www.un.org/Docs/sc/

⁸ www.fatf-gafi.org

ii. What would be the procedures the bank would follow in this case for their CSO clients?

According to the AML/CFT Guidelines, the institution should first develop clear customer acceptance policies and procedures to assess the money laundering or financing of terrorism risks and acceptability of customers. The policies shall set up basic due diligence requirements for those customers with low risks and stringent requirements with enhanced due diligence for those with high risk. The policies should also establish that, if it is unable to obtain the required customer information on a timely basis, accounts should not be opened, business relations should not be commenced, and transactions should not be performed. Institutions should adjust the risk rating of customers from time to time based on the information from reliable sources, and review the relevant customer due diligence performed. In principle, high-risk customers should be subject to periodic review on a priority basis, while review of low-risk customers should be triggered by some pre-established criteria (e.g., unusual transactions, transactions in large amounts or transaction patterns not commensurate with customer background). These are general procedures, but it is expected that institutions will apply them to CSO clients as well. We suggest checking with the bank involved to determine what specific procedure it has in place.

3. OBLIGATIONS AND REPORTING REQUIREMENTS

a. Are banks required to provide CSO clients' financial information to CSO regulatory authorities or public officials? If yes, under what circumstances must banks do so, and what types of information must they provide?

Banks in Macau may be required to provide CSO clients' financial information to regulatory authorities or public official under specific circumstances such as when there is a suspicion of money laundering or terrorist financing.⁹ Banking secrecy duties are also exempted by court order in case of criminal

⁹ https://www.dsaj.gov.mo/download/dadidir/laws/Revised_Law_2_2006_Final_En.pdf

proceedings.¹⁰ The types of information to be provided may vary on a case-by-case basis and may include information such as original of funds or purpose of transactions.

b. What obligations do banks have to protect the privacy of clients' information?

The personal data provided by the clients to banks in Macau are protected by banking secrecy¹¹ and by the personal data protection legislation (currently, *Law No. 8/2005*)¹². The processing of personal data is subject to principles such as transparency, compliance with individuals' privacy and other rights, freedoms and guarantees set out in the *Basic Law of Macau*, and collection limited to specific purposes, among others.

Banks should not disclose or use (share, sell or transmit) information about facts or details of their clients (personal information or business activities and transactions) unless when required by law or when expressly authorized by such client.

c. Are there specific reporting obligations for banks to inform governments on civil society banking in certain circumstances?

Yes, there are specific reporting obligations for banks to inform governments on CSO banking when there is a suspicion of money laundering or terrorist financing.¹³ General disclosure regulations such as FATCA/CRS also apply.¹⁴

d. Are you aware of any change in regulation/practice due to the Russian sanctions?

There are no restrictions on doing business with foreign countries or jurisdictions, except where the relevant UN

10 See Article 80 (Exemption from Secrecy) of the Financial System Act https://bo.io.gov.mo/bo/i/93/27/declei32_en.asp

11 See Article 87 (Duty to Maintain Secrecy) https://bo.io.gov.mo/bo/i/93/27/declei32_en.asp

12 https://www.gpdp.gov.mo/file/Laws%20and%20Regulations/%E5%80%8B%E4%BA%E8%B3%87%E6%96%99%E4%B-F%9D%E8%AD%B7%E6%B3%95_EN.pdf

13 https://www.gif.gov.mo/doc/AMCM/Banking/English/1.aml_cft_gudileine_eng_2019_final.pdf

14 More information about FATCA and CRS can be found here: https://www.bnu.com.mo/storage/documents/TCs-&-Legal/TC_General_and_123Conditions_en.pdf

sanctions that have been adopted in Macau. Further details on the sanctions list of individuals and entities as well as the adopted UN sanctions can be found online.¹⁵

Among others, resolution 2462 (2019) (adopted by the Security Council at its 8496th meeting, on 28 March 2019), which was promulgated on 20 March 2020:

- reaffirms its decision that all states shall prevent and suppress the financing of terrorist acts and refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- emphasizes its decision that all member states shall criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts; and
- highlights the obligation regarding the prohibition to making funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act.¹⁶

15 https://www.ccr.gov.mo/en_sanctionlists.html

16 <https://www.ccr.gov.mo/doc/sanctionlists/aviso/avce-10-2020.pdf>



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