Macau law - why so different?

Julia Brockman explains why Macau law is fundamentally different to that found in common law jurisdictions such as Hong Kong, England & Wales and Australia.

One of the many challenges facing construction companies operating in Macau is the need for sound and commercial legal advice. Due to Macau’s unprecedented economic boom, an increasing number of Hong Kong based companies are doing business in Macau, in many cases setting up a subsidiary or branch, and needing advice on Macau laws and regulations.

For most construction companies, coming in touch with Macau laws and regulations is sometimes a perplexing and difficult experience. They wonder why a contract for a complicated commercial deal or a large construction project is much shorter compared to contracts drafted under common law systems (such as Hong Kong, England & Wales and Australia), or why the Articles of Association for a company are thin documents of little more than five pages.

The main reasons for such confusion are the fundamentally different origins of the respective legal systems, and the languages in which Macau’s laws have been drafted. Due to the presence of the Portuguese for nearly 500 years, Macau’s legal system has Portuguese law as its main reference, and belongs therefore to the civil law tradition originated in continental Europe.

Civil law system

The civil law system originates from Roman law and is based on written legislation - statutes and codes - as its main source of law. The main characteristic of the civil law systems is not necessarily the codification (among the jurisdictions belonging to the civil law systems, some remain mostly uncodified, such as those of Scandinavian countries). It is more the methodological approach to the laws and statutes. The civil law system is highly systematised and structured relying on declarations of broad, general principles. Thus, the courts base their judgments on the provisions of codes and statutes, from which solutions in particular cases are to be derived, having to reason extensively on the basis of general rules and principles of the code. By contrast, in the common law system, cases are the primary source of law, while statutes are only seen as incursions into the common law and thus interpreted narrowly.

This explains why contracts and legal documents in Macau often tend to be so much shorter, as they rely on the provisions of the applicable code or statute to govern those aspects not expressly agreed upon.

Official languages

In Macau, all legislation currently in force is available in the two official languages - Portuguese and Chinese. Due to its historical background, the vast majority of Macau’s statutes, in particular the major codes (Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, and Commercial Code) have originally been drafted in Portuguese, and are based on the equivalent codes in Portugal. Most existing doctrinal research materials also come from Portuguese academics. Therefore, for the best understanding of Macau’s legal system, Portuguese is still the main language.

However, for those who are not familiar with either Portuguese or Chinese, access to Macau laws and regulations becomes quite difficult. There are some English translations available (the Commercial Code, some banking and insurance laws and IPR legislation), in an effort to make the laws more accessible to foreign investors. But these translations are not official and were prepared by different entities, resulting in a lack of consistency regarding legal terminology. The difficulties are further exacerbated by the fact that any such translation also involves a constant crossing of the line between the civil and common law systems, where similar expressions can have very different meanings. In
addition, any piece of legislation must be read in conjunction with the underlying legal concepts and principles vested in the basic codes, namely the Civil and Criminal Codes.

Not surprisingly, understanding English translations of Macau laws can thus be quite a challenge, and specialist advice from those familiar with Macau law is essential. However the legal profession in Macau is small and has had limited exposure to large scale international projects and transactions of the type that are ongoing and planned in the region. Accordingly there is also a need for advice from international law firms who have worked on similar types of projects and are familiar with the issues and risks that arise.

**About Pinsent Masons and Julia Brockman**

In order to offer a service combining specialist knowledge of Macau law and of the law relating to construction and engineering projects, Pinsent Masons have combined forces with Julia Brockman, an experienced Macau lawyer.

Pinsent Masons is acknowledged as the leading firm in construction law both in Hong Kong and internationally. The International Who’s Who of Business Lawyers 2006, which was published at the end of March named Pinsent Masons as the Global Construction Law Firm of the Year. Pinsent Masons opened its office in Hong Kong in 1982 and over the past 20 years has been involved in most of the major infrastructure and construction projects in the region. Pinsent Masons has been the Asian Legal Business Construction Law Firm of the Year for 2004 and 2005.

Julia Brockman trained and worked as a lawyer in Portugal before moving to Macau in 1996. She was initially employed by the Macau Government as Legal Adviser, assisting in the drafting of laws and regulations. Subsequently she joined the main telecommunications service provider Companhia de Telecomunicacoes de Macau, S.A.R.L. as Legal Counsel and Company Secretary before setting up her own law practice based in Macau.

Pinsent Masons and Julia Brockman work closely together to advise on all matters relating to construction industry practice in Macau from setting up a company and/or registering as a contractor in Macau, to drafting or reviewing contracts and sub contracts and joint venture agreements, to on-going project advice and dispute resolution.

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