

**TRADE DEVELOPMENT
THROUGH HARMONIZATION OF
COMMERCIAL LAW**

**L'HARMONISATION DU DROIT COMMERCIAL FACTEUR DE
DÉVELOPPEMENT DU COMMERCE**



MURUGA PERUMAL RAMASWAMY & JOÃO RIBEIRO
Editors

IN COLLABORATION WITH

ANTHONY ANGELO & YVES-LOUIS SAGE

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CHAPTER 19

MACAU INSOLVENCY LAW AND CROSS-BORDER INSOLVENCY ISSUES

*Augusto Teixeira Garcia**

I BANKRUPTCY PROCEDURES IN MACAU: AN OVERVIEW

Macau insolvency law is divided into bankruptcy and insolvency laws *stricto sensu*. The former applies to merchants, irrespective of the fact that they are individuals or corporations; the latter applies to non-merchant persons (eg liberal professionals and nonprofessionals). Therefore, Macau law kept the traditional division between specific proceedings considering the quality of the person involved. The main difference being the conditions that trigger the insolvency: if the debtor is a merchant, bankruptcy amounts to a situation of economic impotence, meaning that he is unable to pay his debts when they fall due; if the debtor is a non-merchant, insolvency represents a negative economic situation, that is the debtor assets are insufficient to cover his debts.¹

The rationale for the different conditions to consider an insolvency of a merchant or a non-merchant is based on the assumption that even if a merchant has more debts than assets, but is able to fulfil his obligations in due time because he can raise credit in the market. Therefore, the market understands him as a trustful debtor. That is the reason why there is no need for the intervention of public authorities that could trigger a situation, where the merchant would be put into a kind of quarantine preventing him getting credit and therefore precipitating an insolvency situation. As long as the money rolls, there is no cause for concern. Supposedly, that would not be the case with a non-merchant and therefore the law satisfies itself with a negative financial situation.² Nevertheless, the insolvency procedures are quite similar in both cases since article 1187 of the Civil Procedure

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¹ Carlos Alberto da Mota Pinto *Teoria geral do direito civil* (3rd ed, Coimbra Editora, 1986) at 246; Augusto Teixeira Garcia *Consequências da extinção dos efeitos da falência sobre a situação jurídica do falido* (BFDUM, Ano XIII, vol. 26 2008) at 329.

² Mota Pinto, above n 1.