

REPORT ON
MACAU
LAW

Manuel Trigo

Editor



澳門大學
UNIVERSIDADE DE MACAU
UNIVERSITY OF MACAU

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COMMERCIAL COMPANIES*

Augusto Teixeira Garcia

Associate Professor of the Faculty of Law of the University of Macau

1. GENERAL IDEAS

Commercial companies consist of corporate bodies with the nature of a collective person, being the operational instruments for the conduct of a commercial enterprise by various parties. In our legal system, the company is the primary organisational form for the conduct of a collective enterprise.¹

In no 1 of article 174, the Commercial Code considers:

commercial companies, irrespective of their object, unlimited partnerships [*sociedades em nome colectivo*], limited partnerships [*sociedades em comandita*], private companies [*sociedades por quotas*] and public companies [*sociedades anónimas*];

and no 2 of the same legal rule tells us that companies that have as its object the exercise of a commercial enterprise can only be created in accordance with one of those types.

Hence, the Commercial Code does not convey the notion of a company, but restricts itself to emphasise two characteristic aspects of the concept of a commercial company: the formal one, which is the choice of one of the types provisioned by law; and the material one, being the exercise of a commercial enterprise. The fact that the Code does not present the notion of a company does not mean that we are faced with an omission but merely indicates that the legislator understood that the material concept of a company should be given by civil law as the common private law. It is therefore necessary to refer to the norms of the common law, civil law, for which the basic document is the Civil Code, as dealt with in article 4.²

In the Civil Code of 1966, which remained in force in Macau until 1 November 1999, companies were regulated as a contract, in Book II, Title II, chapter III, in articles 980 to 1021. Article 980 of that Law defined the company contract as:

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1 They may also constitute a grouping of economic interests, though only in special cases (article 489 – henceforth the legal provisions mentioned, without any indication of the legal document to which they belong, will refer to the Commercial Code).

2 It should nevertheless be noted that this relationship between civil and commercial laws in the matter of companies is quite unique, since only that which concerns the concept of the company appeals to the Civil Code; as to company discipline, this is essentially to be found in the Commercial Code, as the Civil Code did not regulate companies, contrarily to the earlier Civil Code, remitting, in the matter of regulating civil corporations to the particular regulations of unlimited partnerships [*sociedades em nome colectivo*] (article 185, no. 2 of the Civil Code).