HOW DO MACAU AND BRAZIL USE "ELETRONIC PAYMENT" TO IMPROVE CHINESE-LUSOPHONE BUSINESS RELATIONS? - China-Brazil Relations and Macau

Claudia Ribeiro Pereira Nunes
Chinese-Lusophone Relations

China and Brazil

Edited By
Yanan Song and David Ritchie
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The Platform role of Macao fits the political and economic development need of Macao, the Chinese mainland and Lusophone countries. In addition, it carries very important political and economic meaning especially for China, thus getting positive support and coordination from different parties. Of course, the establishment of the Platform of Economic and Trade Services is still in the early stages of development. The development needs a process, and the establishment of defined roles needs to be addressed. It cannot be built in one day. However, in this process, Macao needs to continuously strengthen the existing advantageous conditions, optimize the construction of the software and hardware environment, so that it can really serve the functions of the Services Platform.

How do Brazil and Macau Use “Electronic Payment” to Improve Chinese-Lusophone Business Relations?

Claudia Ribeiro Pereira Nunes

Abstract: Macau’s position as a privileged place in the connection between the People’s Republic of China and the Portuguese-speaking countries opens a space for the creation of entities in these countries as a way to facilitate, and even encourage international financial relations, particularly among Brazil, the Pearl River Delta (Macau and Hong Kong) and the People’s Republic of China. This paper highlights the various challenges of electronic payment, also known as payment by securities receivables, and examines the comparative perspective of Brazil-Macau. It is necessary to investigate two research subjects: (i) Brazilian Law’s use of electronic payment from

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Brazilians to China; and (ii) Macanese Law of e-payment, in order to understand if Lusophone Relations help international business. The research approaches are theoretical and secondary data is based on Brazil, Macau and United States official websites.

**Keywords:** Electronic Payment; Lusophone Relations; International Business.

**I Introduction**

Technological developments are reflected sharply in all aspects of today's world. Their impact is extraordinary in the fields of economics, finance activities, and trade. Presently, financial transactions require electronic data interchange documents. The economic actors, particularly enterprises and governments, seek technological innovative professionals with a view to improving their efficiency and reducing operating costs, particularly in international sales, which is the focus of this work.

However, traditional legal devices are incapable of properly framing developments in the international area, and are often a source of doubt and constraint in such decisive issues. The validity and legal recognition of contracts made by electronic means, and their probative strength, are able to solve such queries and constraints, as well as to remove barriers to the development of international e-payments.

The general goal of this work is to examine the comparative perspective on Brazilian-Macanese law, and to study electronic payments or payments by securities receivables.

The special goals of this work are to: (i) present the historical economic relationship between Brazil and China in the twenty-first century; (ii) provide the epistemological foundations of Brazilian law concerning electronic payment by securities receivables doctrine between Brazil and China; and (iii) analyze the Macanese law of e-payment in order to understand if Lusophone relations support international business.

The analysis methodology shall be given by the approaches employed which are: (i) the theory, by bibliographic reviews and frameworks established in the course of the presented research; and (ii) secondary data, from official Brazilian, Macanese and United States websites, to achieve the proposed aims.

**II Brazil and China: General Aspects of Bilateral Trade History in the 21st Century**

B. S. Santos explained that globalization not only has economic, but also social, political, cultural, religious and legal dimensions, all articulated in complex ways. In this context, trade negotiations between Brazil and China have had an increased bilateral relationship in recent years due to differentiated economic policy, and have become major exporters while basing their growth on an economy of scale in most of their industries. Furthermore, Lusophone relations between Brazil and Macau have helped to remove language barriers to trade.

The leverage began in 2008, when Brazilian imports of Chinese goods (including manufactured goods produced in the Pearl River Delta) grew 56.9% compared to 2007, and reached $20 billion dollars according to data from the Ministry of Development, Industry and Foreign Trade of Brazil. Due to this expansion, between May 25 and June 3 of 2008, a delegation from Macau met with business leaders under the direction of the Brazilian Federation of Banks – FEBRABAN, which represents the financial sector.

On May 4, 2011, in order to better present the latest development in the Integrated Region of the Pearl River Delta, as well as the business environment and opportunities in Hong Kong, Zhuhai and Macau, Invest HK Promotion Services and IPIM launched their first
jointly organized: “Seminar and Luncheon: Business and Investment Opportunity” in São Paulo, Brazil. In that meeting, Mrs. Echo Chan, Executive Director of IPIM, explained in her speech the peculiar role of Macau in economic and trade cooperation between China and Portuguese-speaking countries. Leaders of seven Portuguese-speaking countries, who were present at the Macau Forum, declared the creation of the “Fund of Development Cooperation between China and Portuguese Speaking Countries.” With the signing of the “Protocol for the Framework Cooperation between Guangdong and Macau,” a new direction for bilateral cooperation was clearly defined which will enhance the benefits derived from Macau as a platform for economic cooperation and trade between companies of the integrated region of the Pearl River Delta and Brazil, offering numerous business opportunities for both parties.

In 2012, the Macau Trade and Investment Promotion Institute invited Brazilian companies to participate in the Seventeenth Annual Macau International Fair which was held from October 18 – 21 at the Convention Center and the Venetian Macao Resort Hotel. With the theme “Cooperation - Key to Business Opportunities,” this exhibition aimed to provide visitors with an opportunity to foster investment and business with Brazil.

On this occasion, B2B's were planned, through a platform of online services called Contact bag, and other actions to support exhibitors, entrepreneurs and investors from various parts of the world, and to boost exchange and cooperation, particularly in the areas of e-commerce and e-payments.

The Eighteenth Annual Macau International Trade and Investment Fair – MIF – took place on the October 20, 2013, and received 116,000 visitors, with 98 protocols signed. The four-day fair witnessed a twelve percent increase in visitors. Since their evolution, developments in high speed computer technology have introduced many challenges to business law and the regulating communities. These developments have given rise to beneficial penetrations into e-commerce and e-payments; however, they have also raised various business law questions.

International trade has increased with the exporting of Brazilian and Chinese products due to competition. The investigated hypothesis surrounds the dizzying growth of the current economic reality, especially for meeting the mass economy. This work analyzes Brazil-Macao e-payment by securities receivables.

III Foundations of Epistemological Theory of Securities Receivables in the Network Society

Law is mostly dialogue. In this context, pragmatic attention is necessary to effect correct procedures which allow a balanced relationship between fact and law. The amount of information that can be sent in fractions of seconds to a given receiver is intended to transmit the data, without noticing how big or small the data packet is. M. Castells entitles the current moment in which we live as an informational society. Castells explains:

The Network Society is a society whose social beings share common interests connected by different elements and tools which facilitate communication and sharing of experiences between themselves and the Information Age with the radical substitution of conventional means of communication to store information in various, “proverbial” more modern and efficient methods. This is because present society has come to define, historically, the convergence of the new technological paradigm with the new organizational logic.

According to Castells, the revolution in information technology became
the core of the restructuring of the capitalist system itself in the Eighties, because its logic and interests had a great influence on that development, although constituting distinct processes, explaining further that “it is essential to understand the social dynamics, maintain analytical distance and empirical interrelation between modes of production.”[22]

The Brazilian and the Macanese rules are on the Official Brazilian and Macanese Databases. In addition, Brazilian Electronic Payment Support is also on the Official Database.

As a result, this work now presents the Brazilian and Macanese rules regarding electronic commerce and the legal regime of electronic documents, signatures, and securities receivables. The work first studies the Brazilian rules, and later the Macanese rules.

IV Comparative Perspective Rules about Bilateral Trade, Electronic Payment and Securities Receivables

The Civil law system originates from Roman law and is based on written legislation—statutes and codes—as its main source of law. [24] It is more about the methodological approach to the laws and statutes. This concept accepts statements as rules.

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. [17] Brazilian and Macanese Law are both civil law in nature. By contrast, in the common law system, cases are the primary source of law, while statutes are only seen as incursions into common law and thus narrowly interpreted. [18]

Even though Brazil and Macau are civil law countries, the organization of the rule of law is different for each. [19] Brazil uses Federal Constitutional Complementary Law n° 95, of August, 26, 1998 [20], which provides for the development, drafting, amendment and consolidation of laws, as determined by the sole paragraph of art. 59 of the Federal Constitution, and establishes standards for the consolidation of normative acts. In addition, Macau uses Customary Law to organize its rules.

A. The Brazilian Business Law: Electronic payments

In the 1960s, the Brazilian government permitted electronic, magnetic and digital Brazilian international trade because multinational transactions required electronic data interchange.

T. Ascarelli’s work highlights the issue of the gradual and progressive evolution of business law, precisely, when considering that:

(...) the solutions that we face today would also be possible to obtain otherwise, since the real solutions are the result of experience and do not appear abruptly, and are finished with a perfect theory. [21]

Thus, in 1977, there was Brazilian acceptance of all electronic trade securities receivables are subject to “indicating protest” [22] and began with the possibility of duplicates [23]—Law of Trade—Law n. 5474 [24], of July 14, 1968 (amended by Law n. 6458, November 1, 1977) - Article 15, § 2 [25].

After some years, Law of Protest – Law n. 9492, of September 10, 1997 [26] – has allowed in its eighth article, first paragraph, “indicating protest” by magnetic media or electronic recording:

8th Article. The debt securities and documents will be received, distributed and delivered on the same date of the notary’s protest, observing the criteria of quantity and quality.

Sole Paragraph. Indications may be received for the protest of Trade and Merchant Services provided by magnetic media or electronic recording
of data, being the full responsibility of the submitters to provide the data, leaving it to the notary’s mere registration of the data. [27]

In 2002, the Brazilian Civil Code [38] modified the classical doctrine by the enactment of legislation implementing the theory, sometimes called by its electronic securities receivables or e-payment. In order to follow trade evolution in the Brazilian Civil Code, Article 889, § 3 [29], electronic, magnetic and digital securities receivables have been included, establishing that they can be created from the characters on one’s computer or other equivalent technical means, and that there must be bookkeeping of the issue.

The Brazilian Civil Code also treats the evidence of legal acts when the securities receivables are objects of procedures in Judiciary, in Article, 212, II [30], and in Article, 225 [31][32].

The main characteristic of civil law systems is not necessarily the codification. This is why the Federal Justice Council [33] has published interpretations about e-payment.

The possibility of protesting all electronic securities and using them as evidence, has led to the approval of the statement of the VI Civil Law Expert Meeting of Federal Justice Council – Interpretation n. 461 [34] of Civil Law that follows the same trend.

Also, the statement of the VI Civil Law Expert Meeting of Federal Justice Council – Interpretation n. 462 [35] of Civil Law has established that the execution of e-securities may be brought against all who participated with accepted endorsement and formed a link, with it, as solidarism-payment of credit for adhering to the essential requirements of the securities, which are: credit and trust.

The legal nature of electronic title is a kind of worldly computerized payment system, in which the foreign exchange liabilities are recorded, and subject to authorization by the Brazilian Central Bank.

The Brazilian electronic securities receivables custody is found in: (i) SELIC—Special System for Settlement and Custody [36]; or (ii) CETIP—Central Custody Private Securities [37], to operate in order to ensure safety and credibility in the business market.

Presently, the transfer of electronic securities is sustained by a flexible means based on simple instructions posted on the electronic system of registration and transfer of the securities deposited in SELIC or CETIP.

Next, this work studies Macanese business laws that follow the civil law system, which are highly systematized and structured, and also rely on declarations of broad, general principles.

B. Macanese Business Law: Electronic payments

Macanese legislation currently in force is available in the two official languages: Portuguese and Chinese. Because of its historical background, the vast majority of Macau’s statutes, in particular the major codes, such as the Commercial Code, were originally drafted in Portuguese and were based on the equivalent codes in Portugal due to colonization. [38]

The Macao Special Administrative Region of the People’s Republic of China is the most active among the Portuguese-speaking countries in Asia.

As for Portuguese-speaking countries, Brazil is the major economic and trading partner of the People’s Republic of China, followed by Angola, with the physical bases of trade being Macau [39]. This is the basis of Lusophonic relations.

Macanese and Brazilian Commercial Law concepts are very close, and both are currently in an extremely paradigmatic moment, invariably suffering from influences of the Network Society, and seek to adapt to the reality of new media, but even so, in large part, Civil Law and Civil Procedure remain attached to old dogmas of the past, due to mediocrity, to eminently declaratory and repressive vision, and the split between judgment and education; but arguably the greatest attachment to Brazilian civil procedure is still between “matters of fact” and “legal questions”
in a large part of the law. [40]

Macau has relevant technological concepts, and an electronic commerce and legal regime of documents and signatures in Law n. 05, published on August 8, 2005 [41] which Brazil does not yet have. The former has developed an expansive legal definition, especially the e-payment law. [42]

Article 4 of Law n. 05, published on August 8, 2005 establishes probative value of electronic documents and treats the evidence of legal acts:

1. The electronic document capable of representation as a written statement, to which a qualified electronic signature has been affixed, makes full proof of the statements attributed to its author, without prejudice to the complaint and proof of the falsity of the document.
2. When it is not liable to representation as a written statement, the electronic document to which a qualified electronic signature has been affixed has probative force of mechanical reproductions.
3. The evidential value of an electronic document to which a qualified electronic signature has not been affixed is assessed under the general law, unless there is a valid agreement in different directions.
4. For an electronic document to which a qualified electronic signature whose certificate is suspended, revoked or expired, or that does not comply with the conditions affixed therein, the preceding paragraph is applied. [43]

The transmission of an electronic title to which a qualified electronic signature is affixed by means of a computer system ensures the effective equivalent of receiving shipment by registered mail (Article 8, n. 1 of Law n. 05 published on August 8, 2005).

The confirmation of receipt is made or required under the terms and conditions agreed to or, failing that, across any communication accordingly addressed. When confirmation of receipt is not made in accordance with the preceding rule, the document is deemed not sent (Article 8, n. 3 of Law n. 05 published on August 8, 2005).

Following Article 26 of Law n. 05, published on August 8, 2005, the reliability of the system depends on external security auditors of recognized merit and suitability. Each auditor shall submit an annual report to the licensing authority.

In matter of fact, the legality of electronic documents is evidentiary in Brazil and Macau. The elements and reproductions of facts or things may be held in escrow.

IV Conclusion

In short, all enterprises use the internet and electronic titles. This method of negotiation has gained much popularity in the development of some evolving technologies such as electronic payment systems, money remittances and securities receivables as well as electronic money.

See the graphic below:

![Graphical representation of internet users by geographic regions](source-url)


*Figure 1: Internet Users in the World by Geographic Regions-2012 Q2*
Brazil and Macau have faced regulatory challenges in terms of national, regional, and international legislators and policy-makers as early laws were outdated.

With these challenges, a regulatory approach requires legal rules which do not favor or discriminate against a particular technology and which ensure that the regulation of technology remains flexible and relevant in the face of technological change.

Brazil and Macau are on the same level of competency regarding e-commerce, e-payments, electronic, digital and magnetic securities in conveying the information of business conducted through foreign currency bonds, as a means to make full proof of facts and titles if the party against whom they appear, does not challenge the contents and the accuracy of the evidence.

Enterprises require online reliability in the electronic channels of their financial institutions when Brazil and Macau negotiate internationally.

The lack of enterprise reliability in the financial services provided by online banks has been argued to be one of the most important barriers to developing the potential of trade with electronic banking. [44]

Currently, the competence of companies is also measured through the perceptions of the enterprises. [45] Brazil and Macau assess whether the company has the skills, abilities and characteristics by use of the internet.

Notwithstanding, electronic documents sent by electronic means shall be considered received by the addressee at the time the email address is entered, set by agreement of the parties or specified by the recipient.

Failing an agreement or statement by the recipient, checks are received at the time the recipient accesses the document. Unless or otherwise agreed, or when the certificate result is otherwise specified, electronic documents transmitted by electronic means are assured:

(1) are sent from the sender’s address or, in the case of business, the place where the business is located;

(2) are received in the office of the consignee or, in the case of business, the place where the company is located. [46]

In particular, this paper presents a contribution: it presents general aspects about the comparative perspective of Brazil and Macau when highlighting challenges of electronic payment.

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References

[2] In the export of Brazilian products to China (including the Region of the Delta Pearl River) access also by almost the same proportion (50.8%) to $ 16.4 billion dollars. FIESP-São Paulo Industries Federation Data Base, 2012. Available at: <http://www. fiesp. com. br/agenda/17a-mif-feira-internacional-de-Macao/>. Research accessed on: March 16th 2014.
Macanese Law. From now on, this symbol will be displayed in the body of the article. The Legislature has “§1 = first paragraph,” “§2 = second paragraph” et al., when the rule explains more than one exception, assumption or requirement in Brazilian Law. Furthermore, the Legislature has “sole paragraph” when there is only one exception, assumption or requirement to understand the scope of the legal provision.


[22] Indicating protest explaining—The Brazilian government has established the legal possibility that a creditor’s business owner of typically Brazilian securities, such as duplicates, has the right to assign the debt to Notaries. Assigning a title of a debtor means that the registration will be included in a list of debtors – Traders Club Leaders—making it impossible to regulate the exercise of trade, particularly in relation to obtaining credit.

[23] Duplicates explaining - Typically, Brazilian securities function only if the enterprise sells goods or provides service to another company.


[25] In English: Article 15 § 2º – The Process will also be in the same manner as the execution of the duplicate or triplicate not accepted and not returned, since it has been "protested by indications" of the lender or the securities receivables of the submitter, in accordance with art. 14, fulfilled by the conditions of section II of this article. In Portuguese of Brazil: Artigo 15 § 2º—Processar-se-á também da mesma maneira a execução de duplicata ou triplicata não aceita e não devolvida, desde que haja sido protestada mediante indicações do credor ou do apresentante do título, nos termos do art.14, preenchidas as condições do inciso II deste artigo (Op. Cit. BRASIL, Database).


[27] In Portuguese of Brazil: Artigo 8º da Lei nº 9402 de 10 de setembro de, 1997 - Os títulos e documentos de dívida serão recepcionados, distribuídos e entregues na mesma data aos Tabelionatos de Protesto, obedecidos os critérios de quantidade e qualidade. E o Parágrafo único da Lei nº 9402 de 10 de setembro de, 1997 - Poderão ser recepcionadas...
as indicações a protestos das Duplicatas Mercantil e de Prestação de Serviços, por meio magnético ou de gravação eletrônica de dados, sendo de inteira responsabilidade do apresentante os dados fornecidos, ficando a cargo dos Tabellionatos a mera instrumentalização das mesmas (BRASIL, idem Database).


[29] In English: Brazilian Civil Code: Article. 889 § 3rd: The securities receivables may be issued from the characters created on a computer or equivalent technical means which appear in the bookkeeping of the issuer, subject to the minimum requirements set out in this article. In Portuguese of Brazil: Art. 889. § 3º, do CC. O título poderá ser emitido a partir dos caracteres criados em computador ou meio técnico equivalente e que constem da escrituração do emissor, observados os requisitos mínimos previstos neste artigo (Op. Cit. BRASIL Database).


[31] In English: Brazilian Civil Code: Article 225. Photographic reproductions, film, photographic records and, in general, any other mechanical or electronic reproduction of facts provide full proof of these things, if the party against whom they appear, does not challenge their accuracy. In Portuguese of Brazil: Art. 225. As reproduções fotográficas, cinematográficas, os registros fonográficos e, em geral, quaisquer outras reproduções mecânicas ou eletrônicas de fatos ou de coisas fazem prova plena destes, se a parte, contra quem forem exibidos, não lhes impugnar a exatidão (Idem BRASIL Database).


[34] In Portuguese of Brazil: Ementário nº 461 - Art. 889: As duplicatas eletrônicas podem ser protestadas por indicação e constitutório título executivo extrajudicial mediante a exibição pelo credor do instrumento de protesto, acompanhado do comprovante de entrega das mercadorias ou de prestação dos serviços. In English: Interpretation n. 461-Article 889: The electronic duplicates can be appealed and will be indicated by an extrajudicial execution by showing the creditor’s tool of protest, along with proof of the delivery of goods or of the provision of services.

[35] In Portuguese of Brazil: Ementário nº 462 - Art. 889, § 3º: Os títulos de crédito podem ser emitidos, aceitos, endossados ou avalizados eletronicamente, mediante assinatura com certificação digital, respeitadas as exceções previstas em lei. In English: Interpretation n. 462 - Article 889, § 3º: The securities may be issued, accepted, endorsed or endorsed electronically by signing with digital certification, subject to the exceptions provided by law (Op. Cit. STJ Database).


[37] Brazil Central Bank Resolution n. 1648, of October 25th, 1989 establishes that the “deposit of securities registered in the system is found in the respective issuers/acceptors platforms, or multiple bank offering corporate and commercial banking previously enabled by CETIP, which, in either case, take the action as trustees of papers under its custody.” The system can receive, for the record, those securities receivables issued or accepted from authorized to operate by the Central Bank or other financial institutions, securities institutions, when authorized by the Board of Directors of CETIP. Authorizing banks can participate in the system as account holders of record companies. (CETIP-Central Custody Private Securities. Available at: <http://www.bcb.gov.br/pre/normativas/res/1989/pdf/res_1648_v1_o.pdf>. Research accessed on: March, 16th, 2014.)

[38] In an effort to make the laws more accessible to foreign investors, there are some English translations available, but the translations are not official and were prepared by different government 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 English - S. I. YOON. “The antecedents and consequences of trust in online purchase decisions,” Journal of Interactive Marketing, Vol. 16 nº 2, 2002, pp. 47-63, 50.


a Legislação Civil e Processual Civil permanece presa a dogmas antigos do passado em função à mediocridade, à visão eminentemente declaratória e repressiva e, à cisão entre o juízo e educação, mas sem dúvida o maior aporte do processo civil brasileiro ainda está entre as ‘questões de fato’ e as ‘perguntas certas’.


[42] To present the Macanese relevant technological concepts Law is: (i) electronic document—means a result of electronic processing of data intended to reproduce or represent a person, thing, or event; (ii) electronic signature—a set of data in electronic form which are attached to or logically associated with an electronic document which can be used as a method of giving authorship of the same; (iii) advanced electronic signature—type of electronic signature that is uniquely linked to the person of the holder, allowing its identification, it is created using means that can be maintained under his sole control and is so attached to the document to which it was placed so that any subsequent modification thereof is detectable; (iv) qualified electronic signature—a modality advanced electronic signature based on a qualified certificate and created by a secure signature creation device, capable of ensuring effectively, in accordance with internationally recognized standards, protection against fraudulent use of signature; (v) holder—means a natural person who holds the data needed to create signatures and use them on their own behalf or on behalf of the natural or legal person or entity he represents; (vi) signature creation data—means unique data, such as codes or cryptographic keys, used to create an electronic signature; (vii) data signature verification—a data set, such as codes or cryptographic keys used to verify the electronic signature; (viii) certificate—means an electronic document that links to a particular electronic signature holder and establishes the terms of Bid validity; (ix) certification authority—means an entity which issues certificates or provides other services related to electronic signatures; (x) chronological validation — a credible association, in electronic form, including an electronic document and a specific date and time; (xi) e-mail—identifying a suitable system for receiving and storing electronic documents computer system (Article 2nd of Law n. 05 of, August, 8th 2005). In Portuguese of Macau: Para efeitos do presente diploma, entende-se por: 1) «Documento electrónico», resultado de um processamento electrónico de dados com o fim de reproduzir ou representar uma pessoa, coisa ou facto; 2) «Assinatura electrónica», conjunto de dados sob forma electrónica que, ligados ou logicamente associados a um documento electrónico, podem ser utilizados como método de dar a conhecer a autoria do mesmo; 3) «Assinatura electrónica avançadas», modalidade de assinatura electrónica que está inequivocamente associada à pessoa do seu titular, permitindo a sua identificação, é criada com meios que este pode manter sob seu controlo exclusivo e está de tal forma ligada ao documento ao qual foi aposta que qualquer alteração posterior do mesmo é detetável; 4) «Assinatura electrónica qualificada», modalidade de assinatura electrónica avançada baseada num certificado qualificado e criada mediante um dispositivo seguro de criação de assinaturas, susceptível de garantir eficazmente, de acordo com padrões internacionalmente reconhecidos, a proteção da assinatura contra utilizações fraudulentas; 5) «Titular», pessoa singular que detém os dados necessários à criação de assinaturas e os utiliza em seu próprio nome, ou em nome da pessoa singular ou colectiva ou entidade que representa; 6) «Dados de criação de assinaturas», conjunto único de dados, como códigos ou chaves criptográficas, usado para a criação de uma assinatura electrónica; 7) «Dados de verificação de assinaturas», conjunto de dados, como códigos ou chaves criptográficas, usado para verificar a assinatura electrónica; 8) «Certificado», documento electrónico que liga uma determinada assinatura electrónica ao seu titular e estabelece os termos de validade da mesma; 9) «Entidade certificadora», entidade que emite certificados e presta outros serviços relacionados com assinaturas electrónicas; 10) «Validação cronológica», associação credível, sob forma electrónica, entre um documento electrónico e uma determinada data e hora; 11) «Endereço electrónico», identificação de um sistema informático adequado para receber e arquivar documentos electrónicos. (Artigo 2 da Lei n. 05 de 8 de agosto de 2005) — Op. Cit. IORAM, Macanese Database.

[43] In Portuguese of Macau: Artigo 4. Força probatória dos documentos electrónicos. 1. O documento electrónico susceptível de representação como declaração escrita, ao qual tenha sido aposta uma assinatura electrónica qualificada, faz prova plena das declarações atribuídas ao seu autor, sem prejuízo da arguição e prova da falsidade do documento.2. Quando não seja susceptível de representação como declaração escrita, o documento electrónico ao qual tenha sido aposta uma assinatura electrónica qualificada tem a força probatória das reparações mecânicas. 3. O valor probatório de documento electrónico a que não tenha sido aposta uma assinatura electrónica qualificada é apreciado nos termos gerais de direito, salvo existência de validade convencida em sentido diverso. 4. Ao documento electrónico a que seja aposta uma assinatura electrónica qualificada cujo certificado estja suspenso, revogado ou caducado, ou que não respeite as condições dele constantes, aplica-se o disposto no número anterior (Idem IORAM, Macanese Database).

