

## **Study on “Overall Interests” in the Basic Law of the Macao SAR**

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In the Basic Law of the Macao Special Administrative Region of the People’s Republic of China (hereinafter as “the Basic Law”), the “overall interests” of the Macao Special Administrative Region (hereinafter as “the Macao SAR”) is an important concept, which has occurred 4 times respectively in Article 51, 52, 54 and 118 of the Basic Law.

Article 51 of the Basic Law stipulates that: “If the Chief Executive of the Macao Special Administrative Region considers that a bill passed by the Legislative Council is not compatible with the overall interests of the Region, he or she may give his or her reasons in writing and return it to the Legislative Council within 90 days for reconsideration.” Article 52 stipulates that: The Chief Executive of the Macao SAR may dissolve the Legislative Council under the circumstance that “The Legislative Council refuses to pass a budget introduced by the government or any other bills which he or she considers concern the overall interests of the Region, and after consultations, consensus still cannot be reached.” Article 54 is a continuation regulation of Article 52, regulating that the Chief Executive of the Macao SAR must resign under the circumstance that “When, after the Legislative Council is dissolved because it refuses to pass a budget or any other bill concerning the overall interests of the Macao Special Administrative Region, the newly elected Legislative Council still refuses to pass the original bill in dispute.” Article 118 stipulates that “The Macao Special Administrative Region shall, on its own, make policies on tourism and recreation in the light of its overall interests.”

Seeing from the above articles, Article 51, 52 and 54 are of the same nature, namely, the check and balance between the Chief Executive of the Macao SAR and the Legislative Council, especially the check and balance on the legislative power. Whereas there are great opinion differences in legislation between the Chief Executive of the Macao SAR and the Legislative Council, the “overall interests” shall be a basic basis for measurement and judgment. Article 118 is a conferring regulation providing legal basis for the Macao SAR to develop gaming industry and formulate specific policies independently, fully reflecting the spirit of “Macao people governing Macao”. It is a guiding principle and basic starting point to safeguard the “overall interests” of the SAR when formulating relevant policies and it is required to fully consider various factors, and maintain the balance of social stability, economic development and profit distribution. It follows that major issues such as the judgment and balance of “overall interests”, and those related to the legislation and economic policies are of vital significance in the implementation of the Basic Law. This concept is also mentioned several times in the Chief Executive’s Policy Addresses. Therefore,

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it is of vital significance to comprehensively understand the “overall interests” of the Macao SAR for the implementation of the “One Country, Two Systems” policy and the Basic Law.

### **I. Close relation between “overall interests” of the Macao SAR and the interests of the motherland**

The history of Macao, from separation to returning to the motherland, from economic hardship to prosperity, has already proved that the thriving and prosperity of the motherland is the foundation for the booming development of Macao. Macao’s fate is closely tied with the motherland. It would be impossible for Macao to return to the motherland peacefully and successfully without the prosperity and strength of the motherland and the revival as the strong supporting, or the great success of the reform and opening-up policy and the cause of building socialism with Chinese characteristics.

The imperfections of Macao lie in its small area and few resources. However, after the returning, Macao makes full use of the role as the important bridge and window between the mainland China and the world, takes the gaming industry as the main business, energetically develops the tourism and service industry, and has made significant progress. There are more and more chances for Macao to cooperate with Guangdong and mainland China after its returning, and its role as a bridge for cross-strait communication was further played. Chinese mainland makes full play of the function of the Macao SAR as the strong supporting, and Macao shall depend on the strong support of Chinese mainland no matter in the past, at present or in the future. With the further development of the reform and opening-up policy and modernization of Chinese mainland, more and more opportunities will be created for the development of Macao. In a word, both the history and the practice proved the truth of “Better Country, Better Macao”, and only with the strong supporting of the flourishing, peacefully rising, and great motherland can enable Macao to maintain her prosperous, sound and stable development.

On the other hand, we have to realize that the development of Macao shall not be based on impairing the interests of the motherland. Otherwise, this kind of development mode will be a fruitless approach. In the Speech on the 1<sup>st</sup> Anniversary of Macao’s Return to Motherland, Jiang Zemin, former President of the People’s Republic of China (PRC), pointed out that the Central People’s Government would not intervene in the affairs within the autonomous scope of the Macao SAR, which shall be consistently adhered to; the Macao SAR shall earnestly safeguard the authority of the Central People’s Government and the state interests, and never would the minority take any activities that directing against the central government and separating the country, which shall also be consistently adhered to.<sup>1</sup> The good news is that all social walks and citizens of Macao have sufficient consensus on this, which has good reflection in the legislation process of the *Lei Relative à Defesa da Segurança do Estado* (“National Security Act”) of Macao.

### **II. System guarantee for maintaining Macao’s “overall interests” to follow “One Country, Two Systems” and the Basic Law**

The long-term stable development of Macao is the basis for guaranteeing Macao’s overall

interests, and the realization of the long-term stable development of Macao shall stick to the policy of "One Country, Two Systems". There is no doubt that the long-term prosperous and stable development of Macao shall be the symbol for inspecting the success of the "One Country, Two Systems" policy. It is the important premise of sticking to the policy of "One Country, Two Systems" to correctly understand and fully grasp the connotation of "One Country, Two Systems", and the key is to correctly understand the relationship between "One Country" and "Two Systems". "One Country" refers to sticking to one country, and safeguarding the state's sovereignty, unity and territorial integrity; "Two Systems" means that, despite the practice of socialism in Mainland China, special administrative regions can retain the capitalist system under a high degree of autonomy after reunification. The relationship between "One Country" and "Two Systems" is relationship of dialectical unification, is one after another, and is like source and flow. Without "One Country", there will not be "Two Systems". Implementing the "Two Systems" only, a high degree of autonomy will be like the water without source and the tree without roots.<sup>2</sup> Only precisely grasping the basic connotation of "One Country, Two Systems" can we correctly implement the policy when handling and settling various problems and contradictions, so as to safeguard the overall interests of Macao from damage.

The Basic Law is the legal reflection of the "One Country, Two Systems" policy. It is the fundamental way for practicing "One Country, Two Systems" and the important guarantee for Macao's long-term prosperity, stability and development to strictly follow the regulations of the Basic Law. The Basic Law is the legal basis for Macao to run affairs according to law, regulating the basic system of Macao's politics, economy, law and social life, and providing the basis for running affairs according to law; it specifies the relationship between the central government and the Macao SAR, which reflects the independence and unity of the state sovereignty, and gives the Macao SAR a high degree of autonomy; it confirms the democratic rights of the compatriots in Macao as the master, and guarantees the wide basic rights and freedom of the residents in Macao; it confirms the administrative political system with independent administration of justice, and administration and legislation with mutual checks, balances and coordination; it stipulates the systems and policies in such aspects as economy, education, science, culture, sports, religion, labor and social services of the Macao SAR; and it grants the Macao SAR the power to deal with foreign affairs under the principle that the diplomatic right belongs to the central government. It turns out that, the *Basic Law* has made stipulations on the basic system of the Macao SAR and main aspects of Macao society, providing solid legal guarantee for the overall interests of Macao. The key lies in its implementation in practice.

We shall notice that, with the economic and social development of Macao, there are some new inevitable situations and problems occurred during the implementation of the Basic Law. There are some limitations and hysteresis in any laws, so it is with the Basic Law. Although the Basic Law is a law solidifying the collective intelligence, foresight and sagacity, it is impossible to foresee all the development changes. In case that there are no specific stipulations in the Basic Law, or there are some differences in the understanding of the stipulations of the Basic Law, it is required to start from the standpoint of "One Country, Two Systems" policy, handle and settle the problems during the implementation of the Basic Law based on the practical and realistic principle and the spirit of keeping pace with the times, which is not only the fundamental way to implement and enrich the Basic Law, but also the best way to realize the overall interests of Macao.

### III. Basic standard for judgment of “overall interests”

As for the judgment on the overall interests of Macao, firstly, it is required to respect the will of the majority of the Macao people. The Basic Law itself is the product of fully reflecting the will of the majority of the Macao people. During the drafting and formulation period lasting for 5 years of the Basic Law, full play was given to democracy; opinions of all walks of life in Macao were widely sought; and the wills of the overwhelming majority of the Macao residents were reflected.

The Basic Law stipulates that the civil servants of Macao shall be assumed by the permanent residents of Macao, and the members of the Legislative Council shall be selected from the permanent residents of Macao. This is the specific reflection of the “Macao People Ruling Macao” policy, and an indication that when determining and judging the important policies and guidelines of Macao, we shall base on the interests and wills of the overwhelming majority of the residents. It is exciting that with the return of Macao, the subject consciousness of the Macao masses was highly enhanced. The Macao people were formally called as “the Silent Group”. Before the return, they seldom expressed their own opinions on the social affairs, especially the government operation affairs, as they felt it of no avail. Most Portuguese officials could not understand Chinese, or paid less attention to the opinions of the residents. But after the return, the implementation of the “Macao People Ruling Macao” policy enabled the overwhelming majority of the Macao residents to execute their rights as the masters. For instance, the Macao residents enthusiastically expressed their opinions on the concerned problems such as the economy, employment, the people’s livelihood, public security and government efficiency through the “Macao Forum”, a telephone hotline program of Macao Broadcasting.

Moreover, it is an important standard to judge the overall interests of Macao that whether it conforms to the fundamental interests of the overwhelming majority of the Macao citizens. For the overwhelming majority of the citizens, their fundamental interests lie in the secure and orderly society with economic development, guarantee for the people’s livelihood, peace and harmony. There is no doubt that any attempts and assertions that damaging the stable development of the Macao’s politics, economy and society are violating the fundamental interests of the overwhelming majority of the Macao citizens.

It is noticeable that the Macao government is attaching more and more emphasizes on safeguarding and promoting the people’s livelihood during the administration, which is a vivid annotation of the overall interests of Macao. For instance, in the Policy Address 2009 of the Chief Executive of the Macao SAR, the people’s livelihood and security became the priority of the government. The SAR government took intensifying various social services, enhancing the social security level, energetically supporting the disadvantaged groups, and safeguarding the living quality of the masses as the priority of the administration. Specific contents include fully promoting the construction of public buildings, further promoting the priority of the public transportation, constructing comprehensive urban public transportation system, and enhancing the cooperation of regional transportation infrastructure. In the Policy Address, the largest financial investment is the annual public investment of 10.2 billion Macao patacas including the construction of first light rail system, speeding up the construction of public buildings, promoting the street beautification project with “the Historic Centre of Macao” as the core, stimulating the economic increase, and revitalizing the small and medium-sized decoration companies.

Finally, it is another standard for judging the overall interests of Macao that whether it is

favorable for the future development of Macao. Under the circumstances that opinions vary from individual to individual, and consensus of the overwhelming majority can not be reached, it is required to make judgment according to this standard. It is absolute that it requires foresight, sagacity, wisdom and courage. Those measures and plans that can further promote the interactive cooperation between Macao and the Mainland China, further enhance the international competitiveness of Macao, further strengthen the social harmony and stability of Macao, further promote Macao to administer according to the law, and further improve the quality of the next generation of Macao are favorable for the future development as well as the overall interests of Macao.

#### **IV. Political guarantee for realizing Macao's "overall interests" to gradually and orderly develop the political system**

It is the consistent policy of the Central People's Government to support the Macao SAR to develop the democratic system suitable for the local reality according to the stipulations of the Basic Law. We have learnt from precious ancient and modern experience at home and abroad that the sound democratic development must experience a gradual process. Effective form of democracy must conform to the actual situation of the local place, and shall not imitate arbitrarily. As Wu Bangguo, the Chairman of the Standing Committee of the National People's Congress (NPC), said when participated in the NPC Delegation Discussion of Macao SAR in March 2008, every country and region has its own characteristics and the democracy can not be input or output, but shall be promoted gradually according to the characteristics of each region.

"The political system development of Macao" is the overall adjustment of the set up and selection method for the authorities of the whole SAR, but has special connotation. The specific method for selecting the Chief Executive is prescribed in Annex I of the Basic Law with Article 7 regulating that "If there is a need to amend the method for selecting the Chief Executive for the terms subsequent to the year 2009, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval." The method for forming the Legislative Council is prescribed in Annex II with Article 3 regulating that "If there is a need to change the method for forming the Legislative Council of the Macao Special Administrative Region in and after 2009, such amendments must be made with the endorsement of two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record." Therefore, the political system development of the Macao SAR refers to the question whether it is necessary to amend or how to amend the stipulations of Annex I and Annex II of the Basic Law on the premise of confirming and sticking to the political system in force. The method for forming the Chief Executive and the Legislative Council involves in the democratic political life of Macao, and shall be a part of the political system. Based on this meaning, it is called as the political development by the people.

The Basic Law has not provided the final target and specific route chart for the political system development of Macao, and reserves space for the future development of Macao. But it does not mean that we can do everything arbitrarily, instead, we shall follow some specific

principles. As for this problem, there have been some scholars making profound explanations, and pointing out that we shall adhere to the basic principles of “One Country, Two Systems”, “Macao People Ruling Macao” and a high degree of autonomy. Specific contents included are as follows: respecting the leading function of the central government in the political system design and development of Macao; ensuring the political system with the administration as the leading factor; conforming to the actual situation of Macao; balanced participation and gradual improvement are favorable for the economic development, prosperity and stability of Macao.<sup>3</sup> Only in this way can it be favorable for the social prosperity and stability of Macao and better conform to the fundamental interests of the Macao residents.

## **V. Important approach for realizing Macao’s “overall interests” to explore the development of economic diversification**

It is an unarguable reality that the gaming industry outshines others in the present economic structure of Macao. But there are tremendous risks in this kind of single economic pattern with high external dependence and vulnerable to the influences and impacts of the external changes. For instance, During the SARS outbreak in 2003, the tourism of Macao suffered great losses, and present international financial crisis has serious impacts on the gaming industry of Macao. It turns out that, with the single economic pattern of “putting all eggs in one basket”, it is difficult to resist the unexpected risks in economy, laws, policies and society, which is unfavorable for the realization of the Macao’s overall interests. The “one dominate industry” of the gaming industry also resulted in the “black-hole effect”, which made the comparatively poor resources such as human resources and lands accumulated in the gaming industry, the land price surge, the speculation in real estates arise, the costs such as rent expenses and salaries increase sharply, and the production and operation of other small and medium-sized enterprises become unsustainable. Moreover, in the long run, the over development of the gaming industry will destroy the whole framework of society, sway the social traditional value, and affect the growth of the next generation. It turns out that the “one dominate industry” of the gaming industry is the potential threat to the long-term and overall interests of Macao. There is no doubt that Macao has small area and limited populations, and it is impossible to give mature consideration to all aspects with the miniature economy. Therefore, it is an important way to explore moderate and diversified economic development for realizing the overall interests of Macao.

The central government has fully perceived this problem. In the Speech on the 5<sup>th</sup> Anniversary of Macao’s Return to the Motherland, President Hu Jintao pointed out that the economic development of Macao was fast, but there were some deep-seated problems and contradictions. We shall make long-term plans, strive to foster new growth areas in the economy while consolidating existing strengths, and enhance the potential for economic development. We shall continue to strengthen and improve the management of the gaming industry, and promote the development of relevant industries such as tourism. We shall take the opportunities for implementing the arrangement with closer economic relations between the Chinese mainland and Macao, enhance the cooperation with the Chinese mainland, especially the cooperation with the Pan-PRD, and constantly increase the practical results of cooperation. We shall expand the economic links of Macao with the international market, and blaze larger space for development.<sup>4</sup>

The Outline of 11<sup>th</sup> Five-Year Plan for National Economic and Social Development, passed on the Fourth Session of the Tenth NPC in March 2006, laid out that “supporting Macao to develop the service industry such as the tourism, and boosting the moderate and diversified economic development of Macao”. This is the first time for the state to bring Macao into the promotion development plan of the state, which reflects the great attention of the central government paid to Macao’s development, and provides an important orientation for the development direction of Macao in the future.

It is undeniable that the economic development shall not only require the guiding and supporting of the government, but also require the objective choice and competition of the market itself. It is impossible for the government to run the whole show. It is an important topic for Macao to further seek Macao’s unique advantages in geography, culture, politics and tradition, and make achievements in such aspects as the cultural industry, financial services and headquarters economy in the future.

## **VI. Important principle for safeguarding Macao’s “overall interests” to deal with various affairs according to the social reality of Macao**

As both Macao and Hong Kong are special administrative regions with close geographical location and the features of Chinese and western culture intersection, people will automatically equate them, observe and think from the point of commonality, and can’t help to making simple contrast and analogy when some problems and contradictions occurred. For instance, for the problems such as the political system development, the legislation in Article 23 of the Basic Law, and the judicial review of the law, many people look at the problems from this perspective.

As a matter of fact, Macao has her own distinctiveness, and shall handle various affairs independently according to her own characteristics. In other word, Macao shall not simply take Hong Kong as the example for reference or contrast. From the legal perspective, Macao belongs to the Civil Law System, while Hong Kong belongs to the Common Law System; the legal system development of Macao is weak in foundation and short in legal talents with the level of the rule of law to be improved, while the legal system of Hong Kong is relatively complete with well-trained judges. From the economic perspective, the economic aggregate of Macao is obviously inferior to that of Hong Kong; the economic structure is relatively single; and the economic status is reduced to inferiority. From the international relation perspective, Macao maintains wide, direct and friendly relations with European Union countries and Latin languages countries including East Timor, while Hong Kong keeps close relation with Commonwealth countries. From the history perspective, Hong Kong, as the Far East Finance Centre and the trade centre, stands out conspicuously as “the Pearl of the Orient”, while Macao is worldwide famous for the gaming industry. We can see that there are many differences between the two special administrative regions, and many problems shall not be simply settled through imitation.

The two differences are also reflected in the two basic laws, especially in the aspect of political system development. The Basic Law of Hong Kong regulates in Article 45, Clause 2: “The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage

upon nomination by a broadly representative nominating committee in accordance with democratic procedures.” But there are no such regulations in the corresponding articles of the Basic Law, but only the explanations in Annex I specifying “If there is a need to amend the method for selecting the Chief Executive for the terms subsequent to the year 2009, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for approval.” Flexible and stable with leeway remained and 10 year’s stability, this kind of disposal method can better conform to the principle of developing the democracy step by step, and better reflect the actual situation and characteristics of the Macao SAR. Therefore, greater attention shall be paid to this kind of difference during the implementation process of the Basic Law.

In a word, it is an inevitable choice conforming to Macao’s overall interests to settle the problems and contradictions, and handle various affairs of Macao herself according to the special situation and specific characteristics of Macao, and take the path with the characteristics of Macao during the practice of the Basic Law.

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- <sup>1</sup> Jiang Zemin (2000). Speech at the Ceremony Celebrating 1<sup>st</sup> Anniversary of Macao’s Return to the Motherland. *People’s Daily (Overseas Edition)*. 21<sup>st</sup> December 2000..
- <sup>2</sup> Xia Yong (2004). “One Country”, Premise and Basis of “Two Systems”. *People’s Daily*. 23<sup>rd</sup> February 2004.
- <sup>3</sup> Rao Geping (2008). Promoting Macao’s Political System Development under the Framework of the Basic Law. In Jeong Wan Chong and Rao Geping (Eds.) *Correct Understanding and Implementation of the Basic Law of Macao*. Macao: Associação de Divulgação da Lei Básuca de Macau.
- <sup>4</sup> Hu Jintao (2004). Speech at the Ceremony Celebrating 5<sup>th</sup> Anniversary of Macao’s Return to the Motherland and the Inauguration of the Second-term Government the Macao SAR. *People’s Daily (Overseas Edition)*. 21<sup>st</sup> December 2004.