

## **Introduction to the Legal Origin of Macao SAR**

Chio Heong Jeong

*This paper is based on the Basic Law of the Macao Special Administrative Region, makes a comprehensive review on the legal origin of Macao SAR. First of all, this paper defines the meaning of the legal origin based on the common understanding of the academic community in order to avoid ambiguity. This paper gives a general statement to the legal origin of Macao SAR, including the Constitution and the Basic Law as the common constitutional basis, China nationwide laws applicable to the Macao SAR and listed in annex III to the Basic Law, international agreements (conventions) applicable to the Macao SAR, the laws previously in force in Macao which were retained after the handover, and the laws enacted by the Legislative Assembly after the handover. Subsequently, the article makes a statement and analysis on each of the above items. The article points out that the Constitution, as the fundamental law of the state, has the highest legal effect in the whole country, Macao SAR is no exception. At the same time, it lists some representative opinions on how to implement the Constitution in the Hong Kong SAR and Macao SAR. The principles systems of the Macao SAR, laws and regulations must strictly abide by and enforce the constitutional standards, the Basic Law. This paper discusses the main problems of the nationwide laws and the international conventions applicable to Macao SAR. In particular, the discussion of its rank is introduced. As for the laws (and decrees) previously enforced in Macao to be retained, this paper also combs them at greater length, particularly clarifies the standards and procedures to be retained. In terms of the laws enacted by the Legislative Assembly of the Macao SAR, it is briefly mention in this paper because it is well known.*

# **Research on the Interregional Customs Legal Cooperation in Guangdong-Hong Kong-Macao Greater Bay Area**

Zhan Pengwei    Feng Zehua

*Guangdong-Hong Kong-Macao Greater Bay Area is a strategic project for the government to promote Hong Kong and Macao to integrate into national development. Promoting the in-depth cooperation between Guangdong, Hong Kong and Macao's customs is of great significance to deepen the development of South China and improve the national governance system. However, for a long time after the return of Hong Kong and Macao, Guangdong, Hong Kong and Macao customs cooperation faced with great differences in legal system, difficulties in customs law enforcement cooperation, customs information is not exchanged and other problems. Resulting in many obstacles to the circulation of production factors in Guangdong-Hong Kong-Macao Greater Bay Area. Drawing lessons from the experience of the European in customs construction, and combining with the national conditions, Guangdong-Hong Kong-Macao Greater Bay Area can proceed from optimizing the convergence mechanism of customs legislation, promoting mutual assistance in customs law enforcement, and establishing a customs information interconnection platform, and so on. Which can resolve the conflict of customs laws in the Great Bay area and promote in-depth cooperation between the Customs and Excise Department in the Great Bay Area.*

## **The Interpretation of the Article 2 of the Law 12/2003 and the Importance of the Perspective of the Court of Final Appeal**

João António Valente Torrão

*Published in 2003.08.11, and entered into force on the first day of October 2003, is controversial the interpretation of the Article 2 of the Law 12/2003.*

*Actually, the title of the law is “Changes in the Regulation of Professional Tax and in the Regulation of Supplementary Income Tax”. However, that Article 2 does not mention those taxes and seems that the aim of the legislator was extend this article to all taxes in MSAR.*

*The Court of Second Instance of MSAR decided that the aim of the Law, was only Professional Tax and Supplementary Income Tax, but The Court of Final Appeal decided (more than one time) that the Law (in these particular case the Article 2) was applicable to all the taxes of the legal system of the MSAR.*

*Recently, this Court, by judgment of 2019.10.16 – Procedure 7/2017, established mandatory jurisprudence in the same perspective, according to Article 44, Paragraph 2, Subparagraph 1) of the Law 9/1999 and Article 161, and following articles, of the Administrative Procedure Code of the MSAR. This jurisprudence is mandatory to all courts of the MSAR, according to Article 167, Paragraph 4 of the same Administrative Procedure Code.*

*The purpose of this paper is agree with the perspective of the Court of Final Appeal and add some more reasons to those called in the following decisions (judgments) of the same Court.*

## **Discussion on the Scope Applicable to the Government Procurement Objects of MSAR**

Tang Tat Weng

*Various public agencies and institutions are able to execute tasks by themselves based on their own personnel and the skills of these personnel, or entrust third parties to supply goods and services or carry out construct works, in order to implement their duties. However, the present legal system of government procurement of Macao Special Administrative Region (MSAR) only stipulates the definitions of the expenses of these procurement objects or explains their meanings. In this regard, the definitions or meanings of procurement objects can merely be extracted from these laws. This paper compares these definitions*

*with the meanings of procurement objects set by government procurement laws of international organizations and Mainland China, aiming to understand clearly the scope and type of procurement objects set by the legal system of government procurement of MSAR.*

*When entrusting third parties to execute tasks, it is essential that public agencies and institutions of MSAR recognize clearly and precisely the type of procurement objects to which external projects belong, as well as being able to implement their duties accurately in accordance with the law of government procurement. However, there have been cases in the past where certain public agencies or institutions unintentionally or erroneously applied the law of government procurement to implement duties, while ignoring that their actions should comply with other applicable laws. Therefore, for legality and legitimacy in carrying out tasks related to government procurement, procuring personnel must understand the legislations applicable to the execution of working projects, and then understand what type of procurement objects can be carried out, specifically the legal meanings of goods, services and public works (constructions), as well as how this applies in practice.*

## **The Principle of Dual-criminality, exception to the Principle of Dual Punishment**

Ilda Cristina Ferreira

*This Article aims at clarifying the status of the principle of dual-criminality in Law 6/2006 that regulates mutual legal cooperation requests in criminal matters between the Macao Special Administrative Region (MSAR) of the People's Republic of China with foreign jurisdictions. Within this context, it also introduces and describes the innovative principle set up by the lawmaker – the principle of dual punishment, which is the general principle; while the principle of dual-criminality is the exception and it is limited to the institute of surrender*

*of fugitive offenders. This institute establishes a regime analogous to extradition which is generally understood as being only admissible among sovereign States. Both principles' aims, circumstances and context are explained, emphasising their conceptual differences. This Article also stresses that at the level of criminal policy-making such legal solution is quite avant garde since it is in line with the major international conventions in criminal matters, whereby States are called to afford mutual legal assistance to the widest and fullest extent possible under domestic law with respect to criminal investigations, prosecutions and judicial proceedings, in particular to offences of an international or transnational nature. Jurisdictions should be more flexible with the grounds to refuse legal cooperation in order to avoid safe haven to criminals and to facilitate the administration of justice within the current complex world. Likewise, criminals take advantage of the globalisation phenomenon, technological advance and information society to their own benefit and networks. In the end, the author concludes that the MSAR legal framework provides a balanced approach, synchronised with the contemporary trend to counter crime and to promote international legal cooperation.*

## **Legalisation of Illegal Immigrants in Macao (1982-1990) : The Course and Consequences**

Chan Chan U

*Large numbers of Mainland China residents migrated to Macao illegally in the 1980s due to significant divide in standard of living between the two territories, in addition to the inability of Mainland China's "Permit for Proceeding to Hong Kong and Macao" system to fulfil the demand for family reunions. The Portuguese-Macao authorities acknowledged the need to resolve the problem by shifting to parallel strategies of deportation and legitimisation in 1982, but indecisiveness to a thorough resolution had triggered the emergence of child*

*migrants which nearly developed into a humanitarian crisis, exacerbating the problem further. This paper reviews the process of legitimisation of illegal immigrants in Macao between 1982 and 1990, and argues that the direct and core reason for ad hoc full legitimisation was the difference in understanding on the delegation of power between the Administration and the Security Forces. After the process was over, the Portuguese-Macao authorities determined to enforce residency regulations and to complete a network of checkpoints, thus providing ample support for a unified Macao identification card system in the future.*