# Chapter 8 The Relationship between the Central Authorities and the Macao SAR

- The nature and characteristics of the relationship
- The power distribution between the Central Authorities and the Macao SAR
- The principle of exercising powers by the Central Authorities and the Macao SAR

### The Structure of the Macao Basic Law

Preamble	
Chapter I	General Principles
<b>Chapter II</b>	Relationship between the Central Authorities and the Macao Special Administrative Region
<b>Chapter III</b>	Fundamental Rights and Duties of the Residents
<b>Chapter IV</b>	Political Structure  Article 12 to 23
<b>Chapter V</b>	Economy
Chapter VI	Cultural and Social Affairs
<b>Chapter VII</b>	External Affairs
<b>Chapter VIII</b>	Interpretation and Amendment of the Basic Law
<b>Chapter IX</b>	Supplementary Provisions
Annex I	Method for the Selection of the Chief Executive of the Macao Special Administrative Region
Annex II	Method for the Formation of the Legislative Council of the Macao Special Administrative Region
Annex III	National Laws to Be Applied in the Macao Special Administrative Region

# The relationship between the Central Authorities and the Macao SAR: the nature and the characteristics

#### Article 12, the Macao Basic Law

The Macao Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government.

#### 《澳門基本法》第12條

澳門特別行政區是中華人民共和國的一個享有<mark>高度自治權的地方行政區域</mark>,直轄於中央人民政府。

The formation of the state

 The relationship between the state institutions

The distribution of state power

• The formation of the state

- The relationship between the state institutions
- The distribution of state power

- The People's Republic of China is a unitary country. The special administrative region shall be established by the National People's
   Congress, the supreme state organ that exercises the state power, according to the Constitution of the People's Republic of China.
- ➤ The SAR is a local administrative division of the state.

- The formation of the state
- The relationship between the state institutions
- The distribution of state power

- ➤ The government of the SAR is a local government, which is part of the overall system of the state institutions.
- ➤ It comes directly under the Central People's Government, and is led by the latter.
- ➤ The general principles of the formation of the SAR government and its functions and powers are regulated and adjusted by the Basic Law, which was enacted by the NPC.

The formation of the state

- The relationship between the state institutions
- The distribution of state power

➤ The high degree of autonomy of the SAR is granted by the Central Authorities.

(Attention: the power is NOT shared between the central government and the local government as it is in a federal state.)

The formation of the state

- The relationship between the state institutions
- The distribution of state power

The nature of the relationship between the Central Authorities and the Macao SAR is a relationship of leading and being led.

The Central Authorities lead the Macao SAR, while the Macao SAR is led by the Central Authorities.

#### 1. Reflecting the "One Country, Two Systems" principle

"One Country" Principle

• The Central People's Government leads the Macao SAR Government.

"Two Systems" measures

- The Macao SAR is ruled by the Macao people and it enjoys a high degree of autonomy.
- The Central Authorities govern the Macao SAR through the *Macao Basic Law*, and do not interfere any matters that are within the limits of the autonomy of the Macao SAR.

#### Compare:

The relationship between the Central Authorities and other local authorities is not the same. It is one country and one system. The Central People's Government can directly appoint personnel and local governments do not maintain or develop any external relations.

### 2. Reflecting a special type of power distribution

- The Central People's Government exercises the national sovereignty.
- The Macao SAR exercises a high degree of autonomy.



Source of picture: https://media.istockphoto.com/photos/flag-of-china-and-macau-blowing-inthe-wind-pictureid186101329?k=20&m=186101329&s=612x612&w=0&h=00v4uQWLmB4V2a9H3\_g3Oub7Pv7oQ

# Power distribution between the Central Authorities and the Macao SAR

According to Lok (2000), the power distribution between the Central Authorities and the Macao SAR can be briefly concluded as following:

The exercise of national sovereignty by the Central Authorities	The exercise of a high degree of autonomy by the Macao SAR
• Diplomatic power 外交權	• Executive power 行政管理權
• Power of national defense 國防權	• Legislative power 立法權
• Power of appointing and removing personnel 任免權	• Judiciary power, including the power of final adjudication 司法權和終審權
• Supervision power 監督權	• Power to conduct external affairs 對外事務處 理權
• Power of making decisions 決定權	
• Power of giving instructions 指示權	
• Power of approving 批准權	

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### Foreign affairs vs. external affairs

#### Article 13, the Macao Basic Law

The Central People's Government shall be responsible for the foreign affairs relating to the Macao Special Administrative Region.

The Ministry of Foreign Affairs of the People's Republic of China shall establish an office in Macao to deal with foreign affairs .

The Central People's Government authorizes the Macao Special Administrative Region to conduct relevant external affairs, on its own, in accordance with this Law.

#### 《澳門基本法》第13條

中央人民政府負責管理與澳門特別行政區有關的外交事務。

中華人民共和國外交部在澳門設立機構處理外交事務。

中央人民政府授權澳門特別行政區依照本法自行處理有關的對外事務。

# Diplomacy & foreign policy: a sovereign power

According to the Encyclopedia of Britannica,

Historically, **diplomacy** meant the conduct of official relations between sovereign states. Later, the scope of diplomacy expands to cover summit meetings and other international conferences, parliamentary diplomacy, the international activities of supranational and subnational entities, unofficial diplomacy by nongovernmental elements, and the work of international civil servants.

**Foreign policy** is the general objectives that guide the activities and relationships of one state in its interactions with other states.



# Macao: the power to conduct external affairs









Bilateral investment treaties

Mutual legal assistance agreements

Civil aviation agreements

### The Structure of the Macao Basic Law

**Preamble** Chapter I General Principles **Chapter II** Relationship between the Central Authorities and the Macao Special Administrative Region **Chapter III** Fundamental Rights and Duties of the Residents **Chapter IV** Political Structure Article 135 to 142 Chapter V Economy **Chapter VI** Cultural and Social Affairs External Affairs **Chapter VII Chapter VIII** Interpretation and Amendment of the Basic Law **Chapter IX** Supplementary Provisions Annex I Method for the Selection of the Chief Executive of the Macao Special Administrative Region **Annex II** Method for the Formation of the Legislative Council of the Macao Special Administrative Region **Annex III** National Laws to Be Applied in the Macao Special Administrative Region

### The Macao SAR: the power to conduct external affairs

#### Article 136, the Macao Basic Law

The Macao Special Administrative Region may, on its own, using the name "Macao, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural, science and technology, and sports fields.

#### 《澳門基本法》第136條

澳門特別行政區可在經濟、貿易、金融、航運、通訊、旅游、文化、科技、體育等適當領域以"<mark>中國澳門</mark>"的名義,單獨地同世界各國、各地區及有關國際組織保持和發展關係,簽訂和履行有關協議。

#### Para. 1-2, Article 137, the Macao Basic Law

Representatives of the Government of the Macao Special Administrative Region may, as members of delegations of the People's Republic of China, participate in international organizations or conferences in appropriate fields limited to states and affecting the Region, or may attend in such other capacity as may be permitted by the Central People's Government and the international organizations or conference concerned, and may express their views, using the name "Macao, China". The Macao Special Administrative Region may, using the name "Macao, China", participate in international organizations and conferences not limited to states.

#### 《澳門基本法》第137條第1、2款

對以國家為單位參加的、同澳門特別行政區有關的、適當領域的國際組織和國際會議,澳門特別行政區政府可派遣代表作為中華人民共和國代表團的成員或以中央人民政府和上述有關國際組織或國際會議允許的身份參加,並以"中國澳門"的名義發表意見。

澳門特別行政區可以"中國澳門"的名義參加不以國家為單位參加的國際組織和國際會議。

### Foreign affairs vs. external affairs

#### Article 135, the Macao Basic Law

Representatives of the Government of the Macao Special Administrative Region may, as members of delegations of the Government of the People's Republic of China, participate in negotiations at the diplomatic level directly affecting the Region conducted by the Central People's Government.

#### 《澳門基本法》第135條

<mark>澳門特別行政區政府的代表</mark>,可作為中華人民共和國政府代表團的成員,<mark>參加</mark>由中央人民政府進行的同澳門特別行政區直接 有關的外交談判。

Article 138: the application of international agreements in the Macao SAR (decided or authorized by the Central Authorities)

Article 139: the issuing of MSAR Passports and MSAR travel documents (authorized by the Central Authorities)

**Article 140:** visa abolition (authorized by the Central Authorities)

Article 141: the establishment of official or semi-official economic and trade missions of the Macao SAR in foreign countries (report for record)

**Article 139:** the establishment of foreign consular and other official or semi-official missions in the MSAR (approved by the Central Authorities)

According to Lok (2000), the power distribution between the Central Authorities and the Macao SAR can be briefly concluded as following:

The exercise of national sovereignty by the Central Authorities	The exercise of a high degree of autonomy by the Macao SAR
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• Power of national defense 國防權	• Legislative power 立法權
• Power of appointing and removing personnel 任免權	• Judiciary power, including the power of final adjudication 司法權和終審權
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• Power of making decisions 決定權	
• Power of giving instructions 指示權	
• Power of approving 批准權	

# National defense vs. public order

#### Article 14, the Macao Basic Law

The Central People's Government shall be responsible for the defense of the Macao Special Administrative Region.

The Government of the Macao Special Administrative Region shall be responsible for the maintenance of public order in the Region.

#### 《澳門基本法》第14條

中央人民政府負責管理澳門特別行政區的防務。 澳門特別行政區政府負責維持澳門特別行政區的 社會治安。



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Source of picture: https://www.gov.mo/zh-hant/wpcontent/uploads/sites/4/2021/02/p21br8b67n.jpeg

### Annex III National laws to be applied in the Macao SAR

The following national laws shall be applied locally with effect from 20 December 1999 by way of promulgation or legislation by the Macao Special Administrative Region:

- 1. Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China 《關於中華人民共和國國都、紀年、國歌、國旗的決議》
- 2. Resolution on the National Day of the People's Republic of China 《關於中華人民共和國國慶日的決議》
- 3. Nationality Law of the People's Republic of China 《中華人民共和國國籍法》
- 4. Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities 《中華人民共和國外交特權與豁免條例》
- 5. Regulations of the People's Republic of China Concerning Consular Privileges and Immunities 《中華人民共和國領事特權與豁免條例》
- 6. Law on the National Flag of the People's Republic of China 《中華人民共和國國旗法》
- 7. Law on the National Emblem of the People's Republic of China 《中華人民共和國國徽法》
- 8. Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone 《中華人民共和國領海及毗連區法》
- 9. Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf 《中華人民共和國專屬經濟區和大陸架法》
- 10. Law of the People's Republic of China on the Garrisoning of the Macao Special Administrative Region 《中華人民共和國澳門特別行政區駐軍法》
- Law of the People's Republic of China on Exemption from Judicial Enforcement Measures over the Properties of Foreign Central Banks 《中華人民共和國外國中央銀行財產司法強制措施豁免法》
- 12. National Anthem Law of the People's Republic of China 《中華人民共和國國歌法》

# People's Liberation Army assisting in the recovery in the Macao SAR after Typhoon Hato in 2017



Source of picture: https://cdn.hk01.com/di/media/images/791972/org/aa9144dbdf9f30378510e0f5af699bba.jpg/RouD534hNCGN aanC21115Rd dur/PW/08\_344447/OOKY2vanu1920c16\_9



Source of picture: http://military.people.com/cp/NIMediaFile/2017/0829/M & IN/201708290651000464420166054 ing

Fernando Chui Sai-on, the then Chief Executive of the Macao SAR, requested the Central People's Government to let the PLA involved in the disaster relief after the Signal 10 Typhoon Hato.

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• Supervision power 監督權	• Power to conduct external affairs 對外事務處 理權
• Power of making decisions 決定權	
• Power of giving instructions 指示權	
• Power of approving 批准權	

# Power of appointing and removing personnel

#### Article 15, the Macao Basic Law

The Central People's Government shall appoint or remove the Chief Executive, the principal officials of the government and the Procurator General of the Macao Special Administrative Region in accordance with the relevant provisions of this Law.

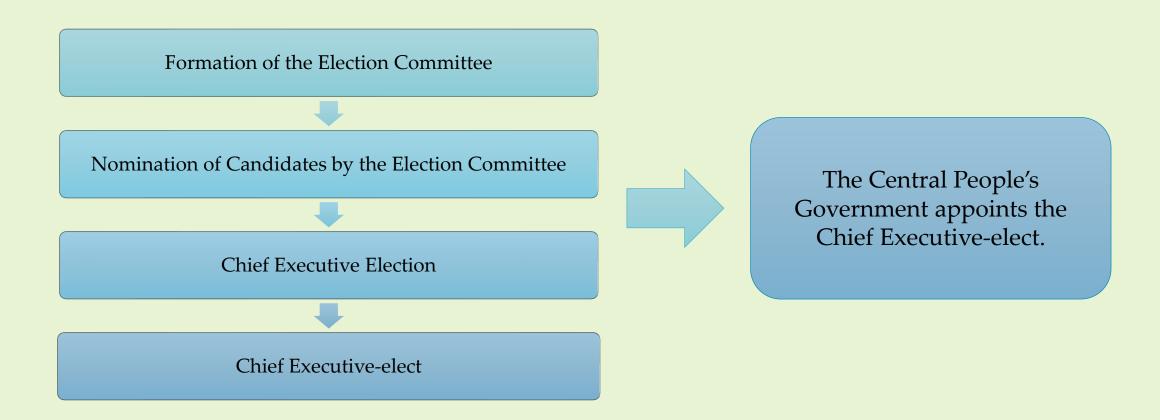
#### 《澳門基本法》第15條

中央人民政府依照本法有關規定任免澳門特別行政區行政長官、政府主要官員和檢察長。



Chapter 8 The Relationship between the Central Authorities and the Macao SAR

# The Central People's Government's de facto power of appointing and removing personnel



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• Power of appointing and removing personnel 任免權	<ul> <li>Judiciary power, including the power of final adjudication 司法權和終審權</li> </ul>
• Supervision power 監督權	• Power to conduct external affairs 對外事務處 理權
• Power of making decisions 決定權	
• Power of giving instructions 指示權	
• Power of approving 批准權	

# Macao: exercising a high degree of autonomy

#### Article 16, the Macao Basic Law

The Macao Special Administrative Region shall be vested with executive power. It shall, on its own, conduct the administrative affairs of the Region in accordance with the relevant provisions of this Law.

#### 《澳門基本法》第16條

澳門特別行政區享有行政管理權,依照本法有關規定自行處理澳門特別行政區的行政事務。

#### Para. 1, Article 17, the Macao Basic Law

The Macao Special Administrative Region shall be vested with legislative power.

#### 《澳門基本法》第17條第1款

澳門特別行政區享有立法權。

#### Para. 1, Article 19, the Macao Basic Law

The Macao Special Administrative Region shall be vested with independent judicial power, including that of final adjudication.

#### 《澳門基本法》第19條第1款

澳門特別行政區享有獨立的司法權和終審權。

# The Macao SAR: the executive power

#### Article 16, the Macao Basic Law

The Macao Special Administrative Region shall be vested with executive power. It shall, on its own, conduct the administrative affairs of the Region in accordance with the relevant provisions of this Law.

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澳門特別行政區享有行政管理權,依照本法有關規定自行處理澳門特別行政區的行政事務。

#### The Macao Basic Law

**Chapter IV** Political Structure

**Chapter V** Economy

**Chapter VI** Cultural and Social Affairs

# The Macao SAR: the legislative power The Central Authorities: the supervision power

#### Para. 1 & 2, Article 17, the Macao Basic Law

The Macao Special Administrative Region shall be vested with legislative power.

Laws enacted by the legislature of the Macao Special Administrative Region must be reported to the Standing Committee of the National People's Congress for the record. The reporting for record shall not affect the entry into force of such laws.

#### 《澳門基本法》第17條第1、2款

澳門特別行政區享有立法權。

澳門特別行政區的立法機關制定的法律須報全國人民代表大會常務委員會<mark>備案。備案</mark>不影響該法律的生效。

Attention: The NPCSC may <u>return</u> any law in question.

National laws <u>shall not be applied</u> in the Macao SAR, except for those listed in Annex III to the *Macao Basic Law*. (Article 18)

# The Macao SAR: the judicial power The Central Authorities: the power of giving instructions

#### Para. 3, Article 19, the Macao Basic Law

The courts of the Macao Special Administrative Region shall have no jurisdiction over <u>acts of state such as defense and foreign affairs</u>. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defense and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government.

#### 《澳門基本法》第19條第3款

澳門特別行政區法院<u>對國防、外交等國家行為無管轄權</u>。澳門特別行政區法院在審理案件中遇有涉及國防、外交等國家行為的事實問題,應取得行政長官就該等問題發出的證明文件,上述文件對法院有約束力。行政長官在發出證明文件前,須取得中央人民政府的證明書。

#### Case study:

Democratic Republic of the Congo and ors v. FG Hemisphere Associates LLC

(A legal case in the HKSAR related to the absolute state immunity, which is an act of state concerning foreign affairs, the Court of Final Appeal asked the NPCSC for instructions before the final adjudication.

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### The Central Authorities: the power of making decisions

The Central Authorities shall make decisions in certain circumstances, for example:

- The NPCSC may add to or delete from the list of laws in Annex III in the *Macao Basic Law*. (Para. 3, Article 18)
- The NPCSC may <u>decide</u> that the Macao SAR is in a state of emergency, and the Central People's Government may issue an order applying relevant national laws in the Macao SAR. (Para. 4, Article 18)
- The Central People's Government may <u>decide</u> if some international agreements shall be applied in the Macao SAR. (Para. 1, Article 138)

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# The Central Authorities: the power of approving

The Macao SAR shall seek approval from the Central Authorities in issues related to foreign affairs and national security, for example:

- The establishment of foreign consular and other official or semi-official missions in the Macao Special Administrative Region shall require the approval of the Central People's Government. (Para. 1, Article 142)
- Access of foreign warships into the Macao SAR requires the special permission of the Central People's Government (Article 116)

Diplomatic power of the Central Authorities

Power of national defense of the Central Authorities

# The Macao SAR: other powers and obligations

#### Article 20, the Macao Basic Law

The Macao Special Administrative Region may enjoy other powers granted to it by the National People's Congress, the Standing Committee of the National People's Congress or the Central People's Government.

### 《澳門基本法》第20條

澳門特別行政區可享有全國人民代表大會、全國人民代表大會常務委員會或中央人民政府授予的其他權力。

# The Macao SAR: other powers and obligations

#### Para. 1, Article 21, the Macao Basic Law

Chinese citizens who are residents of the Macao Special Administrative Region shall be entitled to participate in the management of state affairs according to law.

#### 《澳門基本法》第21條第1款

澳門特別行政區居民中的中國公民依法參與國家事務的管理。



Source of picture: http://www.zwxw.net/zwxw/UploadFiles/2020052477571305.jpg

# The Macao SAR: other powers and obligations

#### Article 23, the Macao Basic Law

The Macao Special Administrative Region shall enact laws, on its own, to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

#### 《澳門基本法》第23條

澳門特別行政區應自行立法禁止任何叛國、分裂國家、煽動叛亂、顛覆中央人民政府及竊取國家機密的行為,禁止外國的政治性組織或團體在澳門特別行政區進行政治活動,禁止澳門特別行政區的政治性組織或團體與外國的政治性組織或團體建立聯繫。

The *Macao National Security Law* was enacted by the Legislative Council of the Macao SAR in 2009, and it is going to be amended.



# The assurance of the high degree of autonomy of the Macao SAR

The *Macao Basic Law* is a national law that is effective nationwide. According to Article 22 of the Law, no department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Macao SAR administers, on its own, in accordance with the Law.

# The principle of exercising the powers by the Central Authorities and by the Macao SAR

# Three important principles

- The unity of power and responsibility
- The complementing relationships between the unification of the country and the development of the SAR
- The principle of mutual trust and consultation

#### **Attention:**

All the powers exercised by the Macao SAR are granted by the Central Authorities under the unitary system of the People's Republic of China.

A high degree of autonomy is not a complete autonomy.

The Central Authorities have the overall jurisdiction (全面管治權) of the SAR.

### Annex III of the Macao Basic Law

### Annex III National laws to be applied in the Macao SAR

The following national laws shall be applied locally with effect from 20 December 1999 by way of promulgation or legislation by the Macao Special Administrative Region:

- 1. Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China 《關於中華人民共和國國都、紀年、國歌、國旗的決議》
- 2. Resolution on the National Day of the People's Republic of China 《關於中華人民共和國國慶日的決議》
- 3. Nationality Law of the People's Republic of China 《中華人民共和國國籍法》
- 4. Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities 《中華人民共和國外交特權與豁免條例》
- 5. Regulations of the People's Republic of China Concerning Consular Privileges and Immunities 《中華人民共和國領事特權與豁免條例》
- 6. Law on the National Flag of the People's Republic of China 《中華人民共和國國旗法》
- 7. Law on the National Emblem of the People's Republic of China 《中華人民共和國國徽法》
- 8. Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone 《中華人民共和國領海及毗連區法》
- 9. Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf 《中華人民共和國專屬經濟區和大陸架法》
- 10. Law of the People's Republic of China on the Garrisoning of the Macao Special Administrative Region 《中華人民共和國澳門特別行政區駐軍法》
- Law of the People's Republic of China on Exemption from Judicial Enforcement Measures over the Properties of Foreign Central Banks 《中華人民共和國外國中央銀行財產司法強制措施豁免法》
- 12. National Anthem Law of the People's Republic of China 《中華人民共和國國歌法》

Matters related to national sovereignty

# Important knowledge points:

- The relationship between the Central Authorities and the SAR is one under the unitary system.
- The way of power distribution is through authorization by the central government to the local government. It is NOT a way of sharing power.
- The Central Authorities exercise the power related to national sovereignty, such as the diplomatic power (power related to foreign affairs) and the power of national defense.
- The Macao SAR exercise the high degree of autonomy granted by the Central Authorities and is responsible for local issues of the region. The Central Authorities do not interfere into issues within the range of autonomy.
- The high degree of autonomy is granted by the Central Authorities to the Macao SAR. The Central Authorities have the overall jurisdiction over the Macao SAR.

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