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碩士研究生學位論文

題目：論澳門保密制度的刑事立法保護及其完善

(Discussion of Macau's criminal legislation protection on confidentiality system and how to perfect relevant problems)

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二〇一二年一月

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中文摘要

本文的中心任務是探討澳門保密制度的刑事立法保護及其完善問題。本文主要從保密制度的產生及發展，並從比較的視角，參考國際上及中國不同地區對保密制度的刑事立法保護、文獻和案例探討，進行整理分析。其目的是在比較和借鑒中為澳門保密制度的刑事立法保護之研究和制度建構提供理論基礎，從而凸顯統一專屬立法予以管制的必要性及迫切性，並結合澳門實際情況提出完善的立法建議。本文分四章從四個方面進行了研究。

第一章着重於基本概念的論述，筆者首先闡述秘密的涵義和分類，認為秘密必然存在於事物之中，如果離開了具體事物或問題，離開政治、軍事和經濟，離開了人與人之間、事與事之間的各種關係，秘密就失去了它本來的意義。而且，秘密是存在於許多不同類型、屬性及性質的客觀實體中，是不能公開或者在一定時間、一定範圍內不能公開的具體事物的總概念。由於隨著國家的出現而產生了國家秘密，故本章亦同時闡述國家秘密的概念、特徵及與澳門特別行政區秘密的關係。

第二章是保密制度的確立與發展。本章從追溯保密制度的開端及其法律的關係，論證了對國家秘密加以保護的必然發展趨勢，並從發展歷史最悠久及具有典型代表性的中國保密制度中，體現到保密制度從無到有，從不成文到成文，從附屬法發展到獨立部門法的趨勢。

第三章是保密制度刑事立法保護比較研究。本章一開始導出保密制度刑事立法的意義，其後再以國際上不同國家及中國不同地區，包括美國、英國、德國、法國、葡萄牙、日本、中國及中國香港及澳門作為研究對象，並透過從刑事責任的立法形式、秘密範圍的界定、確定密級、定密體制、保密期限和解密制度等方面進行比較研究。

第四章主要論述澳門保密制度之若干問題研究及刑事立法建議。筆者認為，目前澳門保密制度的體例分散內容過於籠統、定密工作無章可循、對政府資訊公開的限制、缺乏專門立法易觸法網，為此，澳門應制定統一的《保密法》，當中應明確秘密的概念和範圍、密級劃分、定密程序、保密期限及洩密等的法律責任，尤其須對各種犯罪行為做了原則的區分，區分罪與非罪、此罪與彼罪的界限，並根據不同情況相應規定應給予的刑罰等。

關鍵字：秘密，保密制度，秘密範圍，定密體制，政府資訊公開

Discussion of Macau's criminal legislation protection on confidentiality system and how to perfect relevant problems

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Abstract

The central idea of the thesis is to discuss about Macau's criminal legislation protection on confidentiality system and how to perfect relevant problems. Based on international and regional literature and cases, further analysis is collated by comparing different formation and development of the confidential legislation. The aim of the thesis is to compare and reference the research of Macau's criminal legislation protection on confidentiality system and to provide a theoretical basis for the structure. It does not only emphasize on the necessity to unify and introduce the exclusive legislation in order to ease the management, but also provide legislative proposals based on Macau's reality. This thesis is divided into 4 chapters which represents different stage of investigation.

Chapter 1 mainly talks about the theoretical concept of confidentiality and its relevant classifications. It is believed that privacy is inevitable in relationships. Privacy would be meaningless without particulars which include politics, military, economics, relationship between mankind and others. It exists in different types, properties and nature within various objective entities. It is the concept explaining that certain things cannot be disclosed or disclosed within certain period of time with specific details. State Secret is formed due to the formation of countries. Thus, the thesis also illustrates the concept and characteristics of state secrets and how it relates to Macau.

Chapter 2 is about the establishment and development of confidentiality. This

chapter trace back to the commencement of the confidentiality system and the relationship with the legislation. It does not only argue that it is the trend to safeguard the state secrets, it also demonstrates how the typical representative Chinese Security System is developed in history, like from scratch to written and from a subsidiary development to an independent development.

Chapter 3 is a comparative study about Macau's criminal legislation to protect confidentiality system. This chapter defines the significance of the criminal legislation of confidentiality system. By studying examples from different countries and regions like USA, Britain, Germany, France, Portugal, Japan, China, Hong Kong and Macau, it discusses about the legislation, the definition of privacy scope, determination of security classification and system, the period of confidentiality and decryption system.

Chapter 4 discusses about the issues related to the confidentiality system of Macau and relevant legislative proposals. Author believes that the current Macau confidentiality system is too general and is hard to proceed to confidentiality work. Lacking of exclusive legislation brings barriers to publicize governmental information. Hence, Macau should unify the Secret Act which defines clearly the concept and scope, classification, procedure, the period of confidentiality, as well as the liability of violating the Secret Act. To distinct the variety of criminal act with principles, like whether something is guilty or not, to define the boundaries of similar guilt etc. Different penalties should be given under different situations.

Keywords: privacy, secrets, confidentiality system, determination of confidentiality system, publicize governmental information

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