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题目：论澳门行政主导体制下的行政自制机制

Discourse on the Self-restraint in Administration of
the System of Executive-led in Macao

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摘 要

行政自制是近些年来新兴的行政法理论。与传统的分权制衡思想不同，其主张以发挥行政权力内部的自我控制能力为出发点，再配合外部的立法权与司法权的外部制约，从而实现行政权力的自我控制和自我约束。反观，澳门目前实行的行政主导体制，行政长官为代表的行政权较之于立法权和司法权拥有较为明显的优势。若要对这样的体制存在的缺陷进行完善，单单依靠传统的行政自制理论可能会显得力不从心。然而较之于传统的“三权分立”理论，行政自制更加适合澳门这样的行政主导体制，可以为完善澳门行政主导体制提供一个新的角度。

本文试图从行政自制概念内涵的五个机制入手，对应澳门行政体制中的相应制度进行分析，并对其进行完善：在权力分配自制方面看，澳门行政权力内部分权应该加强横向分权的平衡性，在纵向上扩大决策权的实际作用；在权力行使自制方面，行政机关应加强对行政裁量权的内部控制，更有效地避免行政权的滥用和由此带来的腐败风险；在行为依据自制方面，由于澳门行政机关内部，尤其在作出行政行为时，会把行政惯例作为一种常用的依据，但又缺乏相应的法律制度，因此认为应在澳门构建相应的行政惯例法律制度；在工作成效自制方面，澳门现有的行政绩效评估制度，仅仅是针对公职人员，并未有针对行政机关整体运作情况的评估，有很大的片面性，本文认为构建相应的针对行政机关整体的绩效评估制度，既可以加强行政权力的自我制约，又可以改善澳门公共行政当局存在的行政效率较低的问题；在行政监控自制的方面，本文认为澳门当前的行政内部监控主要集中在公务法人配置和澳门的行政申诉制度上，为完善这一问题，澳门应更加合理的配置公务法人，同时参考世界其他国家和地区的制度，构建一个独立的、职能丰富的行政申诉程序及行政申诉处理机构。

关键词 行政自制 行政主导 基本法 行政法

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Abstract

Self-restraint in Administration is emerging in recent years as a kind of administrative law theory. Different from traditional ideas of the separation of powers, it claims to exert the self-restraint ability in administrative power to limit the administrative power, with the help of Legislature Power and Judiciary Power. Meanwhile, the political system of executive-led in Macao, the Administrative Power led by Chief Executive lays the higher level than Legislature Power and Judiciary Power. Therefore, the self-restraint in Administration is a more suitable theory for the system of Macao. At the same time, it can offer a new view for improving the political system of executive-led in Macao.

This paper tries to analyze the political system of executive-led in Macao, based on five mechanisms in Self-restraint in Administration: Self-restraint in power distribution, the administrative power decentralization should strengthen horizontal separation of internal balance, expand the effectiveness of decision-making in longitudinal; Self-restraint on exercising of power, because Macao internal administrative authority, especially in making administrative act, the administrative practice as the basis of a common, but the lack of relevant legal system, therefore, that should build corresponding legal system of administrative practices in Macao. In terms of effectiveness of self-restraint, existing administrative performance evaluation system of Macao, is only in view of the civil servants, there is little assessment of overall operation situation for administrative authority, there is a lot of one-sided sex, this paper argues that to build the corresponding to the administrative organ of the whole system of performance evaluation, can strengthen the administrative power of self-restraint and can improve the public administration exist the problem of lower administrative efficiency; In terms of administrative monitoring of self-restraint, this paper argues that the Macao's current administrative internal control are mainly concentrated in the administrative appeal system of official business legal person configuration and Macao, in order to improve the problem, Macao should be more

reasonable configuration of official business legal person, at the same time the reference system of other countries and regions of the world, to build an independent, function rich administrative appeal procedure and administrative complaint handling mechanism.

Key words: Self-restraint in Administration, executive-led,

Basic Law, Administrative Law



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