

Development of Social Security Regulated under the Macao Basic Law

CHAN Wai Tan*

I. Social Security and Social Security System

The proper degree of social security a country or region for its citizens reflects the level of progress in the standards of its social welfare and material civilization. However, different localities have their own specific understanding of social security due to varying levels of cultural, traditional, political, economic and social development. Social security's functions and roles also differ in each locality. Thus, it is quite difficult to make a unified definition.

The term of social security first originated in the *Social Security Act* enacted in the United States in 1935. The United States Social Security mainly aims to construct a social safety net with the emphasis on self-help. In the United Kingdom, the social security designed by the Beveridge Report in 1942 (*Social Insurance and Allied Services*) is intended for the government to provide the universal public welfare program sustained by personal incomes. In Germany, social security means social justice and social safety with the social security system mainly consisting of compulsory social insurance. In Japan, social security, which emphasizes income security, is composed of social insurance, welfare services and social assistance. Judging from each country's experience, social security generally has three characteristics: first of all, policy or system the state has formulated for people stuck in the state of difficulties in life, reflecting sociality and fairness; secondly, provision of benefits to protect people's stability in life and promote social stability; thirdly, public responsibility as the foundation and the state's financial backing as the economic support.¹ Social security generally includes social insurance and social assistance, with the former as the core component. The goal of social insurance is to take the precautions to preemptively deal with foreseeable demands and replace relief measures afterwards with prevention in advance. It mainly enables people to maintain basic needs in life with the compensation for loss of income for them and their families when facing specific risks and accidents, such as old age, unemployment, sickness, injury, maternity, disability and death, which could cause temporary or permanent loss of employability. This is the major difference between social insurance and social assistance.

Modern social security and its system's legitimate foundation is no longer the largesse bestowed by the government, but rather a basic human right with the highest value of preserving human dignity. Social security based on the ideas of human rights has undergone a long historical period of development. The social insurance system that Germany established and implemented in the late 19th and early 20th centuries – which emphasized the combination of rights and obligations

* Research Fellow of Lecturer Grade, One Country Two Systems Research Center, Macao Polytechnic Institute

in nature – symbolized modern social security system. When enjoying the insurance benefits, the insured no longer had to sacrifice their dignity and accept punishment as the conditions for receiving benefits. The workers' enjoyment of social security became the responsibility of the state and society. However, the system was still only a statutory right of members of the society and had a long way to go before being developed into one of the civil rights. The Weimar Constitution (*Die Verfassung des Deutschen Reichs*) in 1919 promoted the further development of the German social security system, stipulating the right to social security that German citizens should enjoy. Articles 7 and 9 stipulate that the Reich has legislative power to safeguard insurance and public welfare systems, establishing the citizens' right to social security on a constitutional level for the first time. The United Kingdom Beveridge Report in 1942 outlined the development blueprint in the founding of a welfare state in the United Kingdom, clarifying that social security must be the responsibility jointly shouldered by the state and the individuals, with the state guaranteeing the basic living standards of its citizens. The Report also pointed out that social security should follow the principle of universality, the principle of protection of the basic life, the principle of unity and the principle of reciprocity between rights and obligations.² After the Second World War, the Universal Declaration of Human Rights first proposed the right to social security as a basic human right, which was subsequently further confirmed by numerous international documents – International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of the Child – that vigorously promoted the establishment of social security system. These documents also clearly charted the development direction of social security, which should be expanded with social insurance as the core. As a result, the right to enjoy social security has gradually received increasing attention at the international level and has been regarded as an internationally recognized human right. Judging from the development trajectory of social security system, it has undergone a process of development and implementation that has turned the system into a regular, long-term and important social institution eventually recognized as fundamental human and civil rights after evolving from the charity of religious support groups and the government largesse bestowed on people. The functions and nature of social security have been incessantly evolving and deepening.

II. Development of Social Security Regulated under the Macao Basic Law

In Macao, social security can be differentiated by both broad and narrow senses. "The social security system in the broad sense consists of three categories of public services: social insurance, social relief and social services" whereas "social security in the narrow sense refers to the various allowances and benefits the government provides through the Social Security Fund (*Fundo de Segurança Social*), including the provision of old-age pensions to qualified contributors."³ The concept discussed in this paper refers to social security in the narrow sense, which is currently the main form of social security with social insurance as the foundation for institution-building. Its source of financial income mainly comes from the joint contributions by employers and employees and the funding support from the government's appropriation. When people face the risks of retirement, disability, old age or unemployment and as a result lose their sources of income, social insurance provides various types of benefits, including old-age pension, disability pension,

unemployment allowance, sickness allowance, birth allowance, marriage allowance and funeral allowance.

2.1 Social security as a fundamental right of Macao residents

Article 39 under Chapter III “Fundamental Rights and Duties of the Residents” of the *Basic Law of the Macao Special Administrative Region of the People’s Republic of China* (hereinafter as “the Macao Basic Law”) stipulates that Macao residents shall have the right to social welfare. Article 40 stipulates that the provisions of International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and international labor conventions as applied to Macao shall remain in force and shall be implemented through the laws of the Macao Special Administrative Region (SAR). The rights and freedoms enjoyed by Macao residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the international conventions. Thus, the provisions of the Macao Basic Law have elevated social welfare and social security to a higher status.

The Macao Basic Law stipulates that social security as part of social welfare is a fundamental right enjoyed by the residents. Macao has joined a number of international conventions that generally recognize the enjoyment of social security as a basic human right. Article 9 of the *International Covenant on Economic, Social and Cultural Rights* stipulates that “the States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.” The Committee on Economic, Social and Cultural Rights believes that the right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies. Its scope of protection coverage ensures appropriate income, health care and family support when encountering social risks. The benefits should be provided in the forms of cash benefits or actual objects.⁴ Article 5.5.(4) of *International Convention on the Elimination of All Forms of Racial Discrimination* also stipulates that everyone should enjoy the right to social security and social services without being subject to all forms of discrimination, and so on. From the perspective of the Macao Basic Law and the international conventions, Macao residents’ enjoyment of the right to social security as a fundamental right should be doubtless.

In addition to the protection of personal freedom from the crisis threatening survival, the ultimate significance in Macao residents’ enjoyment of the right to social security lies in the preservation of the most supreme value of human dignity. Its inviolability has almost become a fundamental principle of constitutional value system. *International Covenant on Economic, Social and Cultural Rights* also concurs by “recognizing that these rights derive from the inherent dignity of the human person.” What human dignity intends to protect is the status and relationship that all peoples deserve as a human being, recognizing that all peoples have the self-worth that exists as part of social community as well as the right to be integrated into the social fabric of life. Besides excluding the public authority’s infringement and interference, the enjoyment of social security as a fundamental right also requires the government to proactively provide a certain level of services or benefits and guarantee personal survival with the minimum conditions necessary for leading a dignified life. Moreover, social security system should be one of the important institutions established by the government with its consideration of maintaining “human dignity” to shield residents from risks threatening their survival and realize the right to social welfare. Judging from

this perspective, the government has the inescapable obligation of protecting individuals in terms of social security while shouldering three main obligations of respect, protection and promotion. This means that the government should enable individuals to freely or independently obtain the required income to meet their needs when encountering risks in life through the social security system. There must be no direct or indirect interference in the enjoyment of the right to social security through arbitrary or unreasonable restrictions as well as denial of equal access to appropriate social security. The government must formulate necessary and effective laws and adopt other effective measures to prevent or prohibit any third-party intervention with the enjoyment of the right to social security in any way. A request must also be made to the government to adopt legislations and formulate social security schemes and action strategies in order to actively promote, facilitate and provide the right to social security; provide everyone with social security; and realize their right to social security.⁵ The government's realization of the right to social security may bring significant impact on finance, but social security – an arrangement that can never be ignored as a safeguard for human dignity – particularly emphasizes the minimum core obligations that the government must shoulder. Through legislation, formulation and implementation of national social security strategies and action plans, it provides a minimum essential level of benefits to all individuals and families by maximizing the allocation of resources available. Within a reasonably short period of time, it should also take all appropriate and effective measures possible – the legislative approach in particular – to strive for the realization of this right. Of course, judicial remedies, as well as administrative, financial, educational and social measures are equally important. Therefore, social security stipulated by the Macao Basic Law obviously is not a largesse-styled, temporary or emergency measure provided by the government or merely dictated by moral values. Instead, the government has the obligation to formulate and implement social security policies while formulating and revising the legal institutions on social security. It is obliged to take charge of setting up agencies related to social security and provide a variety of services and benefits of social security. Moreover, the government should also formulate legal procedures favorable for its operation and provide necessary legal remedies in order to promote the realization of the residents' right.

2.2 The fundamental principles required for the social security system

2.2.1 The principle of earnest promotion and implementation based on the existing system

The Macao Basic Law stipulates that “the government, on the basis of original social welfare system,” formulates on its own policies regarding the development and improvement of social welfare. This means that the SAR Government can no longer ignore the embryonic structure of social security system and relevant policies established prior to reunification. The government has the responsibility to maintain the continuity of the original social welfare system and safeguard the residents' enjoyment of welfare and benefits originally stipulated by the law.⁶ The social security system established in 1989 has been the valuable achievement and experience in the history of social security in Macao. It has continued to enjoy the protection of the Macao Basic Law after reunification. However, the protection guaranteed by the Macao Basic Law should not be interpreted as the original system's immunity from changes. All systems must keep abreast of the times in order to satisfy the needs of the society and people. Its true essence lies in the requirement that social security system's reform and improvement must not violate the essential spirit and

original purpose of the system's creation. There should be appropriate transitional measures even if the system's design requires vigorous reform.

2.2.2 The principle of following the basic norms of social insurance

The so-called social insurance refers to "the government-sponsored program using the centralized risk management method to resolve through institutionalized mutual assistance the economic needs caused by dangerous accidents for the insured who might expect loss."⁷ With the legally based scope, the social security (insurance) system should also be consistent with the inherent characteristics of social insurance as required by the Macao Basic Law.

The pooling of risks. Social insurance is built on the foundation in which equitable sharing of the risks of all the insured are pooled and evenly shared with mutual assistance. Its operation method using that of insurance refers to the premium payments collected in advance, which consist of a legally determined percentage of the wages of the insured, in order to achieve mutual assistance and risk pooling among members of the society. The wider the exposures, the more equilibrium it can reach by maximizing the sharing and pooling of risks. This rationale complies with the law of large numbers with its charging a small premium from the majority of the insured in order to compensate for the accidental losses of the few while effectively playing the role of social regulation. Besides risk pooling, social insurance also plays the role of sharing losses caused by the occurrence of hazards while providing a certain level of life protection to the insured experiencing economic losses under specific circumstances. However, it is unrealistic to expect social insurance's coverage of all risks or difficult situations. Generally, its goal is to guarantee the basic livelihood instead of offering excessive compensation. Most of social insurance programs mainly operate with the method of cash compensation and generally under a pay-as-you-go system.

Social adequacy. With the consciousness of social solidarity as its spirit, social insurance originates from mutual assistance and support among members of the society. In addition to risk pooling, it also plays the role of reaching social policies and consolidating social forces to maintain social security in order to achieve the purpose of social equilibrium. The embodiment of social insurance is reflected in its function of horizontal, vertical and intergenerational redistribution of income. The focus of concern for social insurance is not the level of individual risks but whether the risk-related incidents fit the insurable condition agreed in advance. All beneficiaries will receive the same benefits after the occurrence of risks and accidents. There is no emphasis on the strict consideration relationship between insurance premiums paid and benefits received. It is also expected to ensure the economic security of the disadvantaged of the society through risk pooling. This particular feature plays the role of vertical and intergenerational redistribution of income, filling it with the spirit of solidarity as well as mutual assistance and support – the most critical difference separating it from private insurance. Social insurance system is closely linked with mutual assistance and support. A higher level of socialization means a larger population under coverage with greater insurance scope and more prominent demonstration of mutual assistance. Of course, social insurance also attaches importance to the accumulation of social security fund, preservation and increase of the fund's value as well as the fund's fiscal balance in order to enable the fund to sustain itself with self-sufficiency.

Mandatory Participation. The compulsory insurance enrollment mainly focuses on the issues of "moral hazard" and "adverse selection" due to the less explicit consideration relationship between insurance premiums and benefits. Thus, voluntary participation from everyone cannot be expected. Those who are relatively healthier with better income-earning abilities and lower risks

may be reluctant to enroll. In contrast, people posing a higher risk are expected to be more willing to participate. Either situation will impede the normal operation of social insurance system, undermine its original purpose and weaken the effect of social solidarity. Therefore, the means of compulsory insurance enrollment must be adopted to achieve the formation of a risk pool so that individual risks can be transferred to the pool. To achieve this goal, the government has passed legislation on compulsory enrollment of the eligible persons in the society in social insurance programs, mandating regular individual and employer contributions of insurance premiums in accordance with the contribution standards required by law as an obligation to the society. Premium payments are the prerequisite to obtain the eligibility of being insured and receiving benefits.

2.2.3 The principle of gradual improvement in accordance with the socio-economic conditions

The nature and scope of "social welfare" stipulated in the Macao Basic Law will adjust according to the change of welfare concept and level of socio-economic development. Therefore, it is a dynamic concept. The establishment and improvement of social security system – including the scope of protection targets as well as categories and levels of benefits – adapts to the socio-economic development. The activation and development of social security as well as its size, system, structure and categories and levels of benefits require corresponding economic foundation in order to achieve the desired goal. This is the universal principle dictating the social security development in each country. Therefore, the scope of social security targets, the focus of categories of protection and the size of its content all have gradually improved along with the corresponding stages of socio-economic development. The sound operation of social security benefits the creation of a stable social environment so as to further promote economic development.

The Macao Basic Law's provisions on social security system indicate social security's ability to incessantly develop and improve without neither the rigidity clinging to the existing level of benefits, nor the radicalism exceeding the current level of social productivity. Instead, the system must be conducted based on Macao's economic conditions and social needs. Some commentators have expressed worries that the government's incessant improvement of social security system will ultimately cause Macao to become a "welfare society", thus repeating the previous financial crisis facing other welfare states. In fact, this concern can be eliminated after fully understanding the Macao Basic Law. Article 105 stipulates that the Macao SAR shall follow the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product. It also clearly states that the government must not support social security system with budget deficits while urging the government to carefully handle the fiscal balance of social security system. Article 106 stipulates that the Macao SAR shall practice the low-tax policy and the government must not sustain the operation of social security system by dramatically increasing tax rates. Thus, this concern should not become a reality as long as there is the correct understanding of the Macao Basic Law with the social security system improving under the framework it has stipulated.

2.2.4 The principle of the system's adherence to legal protection as a public policy

The Macao Basic Law stipulates that the SAR Government can formulate on its own relevant policies on social welfare in order to create the conditions for protecting the rights and freedoms of the residents. Social security as a public policy indicates an action plan that should have been designed and demonstrated with a clear goal and choice of value. It must be organized, planned and

targeted while constantly linking aspects of policy planning, formulation, implementation and evaluation. It is a continuous process rather than just a single decision. The concrete embodiment of public policies is decree law, strategy and measures. Social security policy is largely affected by the government's use and allocation of social resources. Therefore, the government plays a very important role in the development and improvement of social security system. The government should also have a clear and long-term strategic plan for social security, rather than just piecemeal administrative measures. Moreover, the policy formulation should be based on the principle of fairness and efficiency, adjusting policy arrangements and action plans in a timely fashion according to the actual situation of social development and the consensus of the society.

The Macao Basic Law stipulates that the residents enjoy social welfare in accordance with law. The right to social security enjoyed by the residents needs to be protected through legislation. First of all, it protects the rights of residents and provides means of remedies. Secondly, it prompts the government to carry out its administration in accordance with law while preventing and controlling unfettered administration. The establishment of the legal basis for a sound social security system should be carried out through legislation that stipulates social security system and its operational mechanism. The Macao Basic Law has given lawmakers the necessary openness in legislative content and the design and selection of social security system as a whole. Therefore, lawmakers enjoy great leeway regarding the implementation scope and targets of social security system, the determination of risk incidents, funding sources, qualifications and conditions for enjoying the rights and the operational direction of social insurance fund. However, this freedom still has boundaries. The Macao Basic Law has simultaneously created a condition that prevents the lawmakers from acting arbitrarily, so that the legislative practice of social security will not deviate from the original concept of the Macao Basic Law. First of all, the Macao Basic Law stipulates that no law, decree, administrative regulations and normative acts of the Macao SAR shall contravene this Law (Article 11). The legislature must enact, amend, suspend or repeal laws in accordance with the provisions of this Law and legal procedures (Article 71.1). The legislation on social security must not violate the provisions of the Macao Basic Law, but should aim to protect the citizens' enjoyment and realization of the right to social security while allowing them to receive effective legal protection. Secondly, the choice and determination of the system hinges on only "the basis of original social welfare system," meaning that the Macao Basic Law does not allow any lawmaker to arbitrarily and completely cancel the existing system or extend the new content that completely deviates from the nature of social security system and the purpose of policy formulation, thus damaging residents' enjoyment of the right to social security. Thirdly, it requires the lawmakers' prudent discretion over issues such as the prevailing economic conditions in Macao, social needs and the government's fiscal situation in order to make reasonable decisions on social security.

III. Social Security's Further Improvement under the Macao Basic Law

3.1 The initial implementation of the social security system of the Macao SAR

3.1.1 The constant expansion of the targets of protection

The "Social Security Fund" created on 18th December 1989 in accordance of Decree-Law No. 84/89/M has established a contributory social security system to resolve the issue of local workers lacking protection. The initial targets of protection were mainly local long-term employees who

work for others, enabling them to maintain their income in case of being incapacitated due to sickness, unemployment, old age and disability. The subsequent Decree-Law No. 58/93/M stipulates the inclusion of the temporary workers in the coverage of social security benefits. Decree-Law No. 29/98/M further stipulates the extension of social security system to self-employed workers. The gradual expansion of the sectors of self-employed workers between 2001 and 2007 included the insurance agents, physicians, lawyers, engineers, accountants, and auditors, etc. in the coverage of the social security system. Entered into force on 1st January 2009, the *Labour Relations Law* included the domestic workers in its applicable scope. Employers are obliged to pay contributions for their domestic workers, both resident and non-resident workers. Under the Law, local domestic workers are also included in the coverage of social security system so that they can enjoy the same benefits as the general resident workers. Law No. 4/2010 *Regime da Segurança Social* (Social Security System) promulgated in 2011 stipulates that all qualified Macao residents can join the social security system. Therefore, it can be concluded that the scope of coverage targets has been fully and systematically expanded according to the economic and social situation of Macao.

3.1.2 The increasing adequacy of social security benefits

The initial implementation of social security system included benefits such as old-age pension, disability pension, unemployment allowance, sickness allowance and compensation for pneumoconiosis as well as claims and rights arising from labor relations (in case of the employer's closing down a business, bankruptcy, lack of ability to pay or insufficient economic capacity). Later, other categories of benefits such as birth allowance, marriage allowance and funeral allowance were also added. In accordance with By-Law No. 6/2007 in 2007, the relief payment cases formerly handled by the Social Security Fund were transferred to the Social Welfare Bureau, enabling the social security system to highlight more characteristics of social insurance and its clear distinction from "social assistance." Law No. 4/2010 *Regime da Segurança Social* further defines the social security system as being designed to provide basic social and old-age security to the residents. Regarding the sufficiency of social security programs, an appropriate reference can be made to the nine principal branches mentioned in the International Labour Organization's C102 – Social Security (Minimum Standards) Convention (1952): medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. Of course, the prerequisite must be the orderly improvement with the consideration of local economic development and social affordability.

3.1.3 The reform of the contribution systems

Macao's social security system operates in the form of social insurance. Its source of financing mainly comes from the joint contributions by employers and employees, the one-percent appropriation from the government's annual budget, and the fund's assets and return on investment. Law No. 4/2010 *Regime da Segurança Social* has promoted the development of Macao's social security, recognizing that the social security system should follow the principles of universality, sustainability, contribution and no renunciation from a legal standpoint. It has established two systems of contributions: a) obligatory system contributions, which require the contributions from all Macao residents with employment; b) arbitrary system contributions, in which the voluntary contributors and self-employed workers in the former social security system as well as other adult Macao residents can choose to participate. The Law permits the beneficiaries undertaking casual work, seasonal work and domestic work to adopt the conversion of both systems whenever the fact

inducing the enrollment of beneficiary changes. The source of financing for the system still comes from the joint contributions by employers and employees as well as the one-percent appropriation from the recurrent income of the government's annual budget. The Law also stipulates in particular that the Macao SAR has joint and several liabilities to the benefits of social security. Since some people previously not included in the social security system will join the new system, the mechanism of retrospective contributions has also been introduced.

3.1.4 The incrementally increasing level of social security's benefit amounts

According to economic and social development, the Government of the SAR has made multiple adjustments to the benefit amounts of social security. For instance, the old-age pension has been adjusted from MOP1,150 to MOP1,450, MOP1,700, MOP2,000 and MOP3,000; the disability pension has risen to MOP1,450, MOP1,700, MOP2,000, and MOP3,000 from MOP1,150; the unemployment allowance (rising from MOP70 to MOP120 per day), sickness allowance (rising from MOP55 to MOP90 per day in case of non-hospitalized illness and from MOP70 to MOP120 per day in case of hospitalization), funeral allowance (rising from MOP1,300 to MOP2,200), marriage allowance (rising from MOP1,000 to MOP1,700) and birth allowance (rising from MOP1,000 to MOP1,700) also underwent a substantial adjustment in 2013.

3.1.5 The promotion of a two-tier social security system

In 2008, the Government of the SAR began working on reforming the social security system and proposed the idea of a two-tier social security system composed of the Social Security System (first tier) and the Central Provident Fund System (second tier). The Government promulgated Law No. 4/2010 *Regime da Segurança Social* to improve the original social security system and then started with the standardization of the government funding work in 2009 through the promulgation of By-Law No. 31/2009 *Regras Gerais de Abertura e Gestão de Contas Individuais do Regime de Poupança Central (General Rules for the Opening and Management of Individual Accounts under the Central Savings System)*. The individual account of each eligible participant was injected with the preliminary funding of MOP10,000 for the first time in 2010 with additional injection of MOP6,000 in 2011. In 2012, the Provident Fund Individual Accounts came into force and replaced the Central Savings System, laying the foundation for the establishment of non-mandatory Central Provident Fund System consisting of contributions from employers and employees, which progressively moved towards the realization of the two-tier social security system.

3.2 The improvement and reform of relevant systems needing to comply with the basic principles set by the Macao Basic Law.

With the social insurance system's three basic characteristics as a starting point, the following section will examine whether the existing social security system meets the progressive development and improvement required by the Macao Basic Law.

3.2.1 Strengthening risk pooling

In 2007, the social relief payments of the social security system were separated from the Social Security Fund to enable the social security system to highlight the nature of insurance. The new social security system has introduced the standardized 30-year term of contributions. The contributor under the new system must contribute at least 30 years in order to receive a full old-age pension. Those who do not meet the requirement must have the amounts of their old-age pension adjusted based on the actual number of months of contributions. However, what is more worrying is the issue of insurance premiums. Firstly, the beneficiaries' contributions may not have a direct

relationship with their salaries. The defined contribution regardless of each beneficiary's income level does not embody the spirit of social insurance in the redistribution of wealth. Secondly, social insurance's main source of income should come from the insurance premiums jointly paid by employers and employees that allow self-sufficient operation while the government's financial assistance only plays a supporting role. In terms of the Social Security Fund's main source of income currently, however, the government's appropriation has accounted for nearly 90% of the fund's total revenue in recent years. The income from contributions accounts for only about 6.2%, resulting in the Social Security Fund's extreme financial dependence on the government's appropriation. Moreover, the old-age pension expenditure has topped the payments of all social security benefits in recent years, casting potential worries over social security's financial soundness and sustainability in the growing trend of an increasingly aging population. Thirdly, the defined contribution of MOP45 per month seems quite symbolic (only 0.38% of the median monthly income), highlighting the issue of disproportion between the responsibilities and rights of beneficiaries as well. Some scholars believe that the existing contributory social security system has stronger welfare feature. Therefore, the government should review the standards of insurance premiums in a timely fashion while institutionalizing a method for adjusting insurance premiums that appropriately respond to the fiscal situation of the Social Security Fund in order to cope with the social development needs. The system's sustainability and financial viability must also be ensured.

3.2.2 Expanding social adequacy

This aspect is concerns with whether the social security system in Macao can play the functions of social solidarity and social mutual assistance. During the initial implementation of the social security system, the purpose was to resolve the issues of welfare benefits and retirement security facing local workers. The implementation scope and targets were limited to only "local long-term employees working for others", enabling them to maintain their income when incapacitated due to conditions such as sickness, unemployment, old age and disability. Subsequently, the scope of coverage was expanded to include workers under short-term, part-time, and temporary work arrangements and gradually expanded to include self-employed workers after reunification. The expansion basically incorporated the labor groups, consolidated them into risk pools and formed mutual assistance and support among laborers. The new social security system has further strengthened the social security coverage of workers and resolved the old system's issue of inadequate scope of coverage. The law stipulates that the targets of social security should be the entire community of workers, gradually resolving the situation in which casual workers of certain industries, domestic workers, fishermen and the self-employed were deemed unqualified for social security benefits under the old system due to failure of contributions. It has also included non-economically active persons originally excluded by the system, such as the disabled, housewives and other persons unable to participate in the system. Under the old system, whenever the risk situation emerged that plunged these people into poverty, they could only try to apply for relief payments – normally carrying very harsh application requirements – to maintain their basic living needs. To address these increasingly significant issues and respond to new demands of the society, the new social security system has included all residents in the scope of protection under the circumstance of the SAR Government having relatively abundant financial resources. There has been the trend of gradual coverage for the entire population from the previous social solidarity basis merely focusing on the change of occupational status to that of residents. All Macao residents meeting the statutory qualifications shall have the right to equal participation in the social security

system, realizing the provisions of Articles 25 and 39 of the Macao Basic Law in order to gradually form a joint relationship between all members of the society, further embody the social adequacy and mutual assistance of the social insurance system and demonstrate an ideal of social unity and social solidarity spirit.

Article 4.3 of Law No. 4/2010 on “principle of sustainability” also stipulates that “the Macao SAR has joint and several liabilities to the benefits of social security”, indicating that the Government of the SAR is one of the main providers of the Social Security Fund. This provision is also seen as one of the “miscellaneous provisions” providing a fallback. As the social security system faces financial difficulties without a fiscal balance for its benefit payments, the government has the obligation to maintain the financial sustainability of the social security system and protect the interests of residents from being compromised. However, the issue worth noting here is whether the government will intervene excessively based on this provision. It will also be worth pondering how to fill the pension fund shortfall with the tax revenue in case of an economic downturn that causes a sharp drop in the government’s fiscal revenue. Therefore, the government still must live within its means and practice prudent financial management in strict compliance with the Macao Basic Law’s provisions, while striving to “at least maintain a balance between the financial resources allocated to the social security system according to law and the social welfare provided.” For the long-term solution, the government’s provision of funding should be used to cover the shortfall, if it occurs, through the balance between the reasonably defined contributions and benefit amounts. More importantly, the issue is likely to hinder the functioning of social solidarity relations, weaken social insurance’s nature of mutual assistance and support and cause a gradually disappearing sense of responsibility among members of the society. This kind of nearly one-way security benefits underwritten by the government’s tax revenues will not allow members of the society to experience the sense of participation achieved through mutual contribution to realize risk pooling.⁸ It is also likely to cause the residents’ distorted perception of the social insurance’s nature as well as their misunderstanding and excessive expectations for the system. Therefore, it requires the cautious handling of the government’s role in the social security system. The recent discussion on premium adjustments has also stalled. While consideration for affordability of contributions of both workers and employers is important, it is undeniable that the excessive dependence on the government is one of the reasons for the stalled discussion, which has also been caused by the inadequate social solidarity consciousness. As a result, there has been not enough force driving the discussion on premium adjustments, causing numerous obstacles and difficulties blocking the discussion. In the short run, this also prompts the government to still choose to alleviate the financial problems of the Social Security Fund through tax revenues instead of seeking a possible and reasonable increase in premiums. This will make the government face tremendous financial pressure in the future.

3.2.3 Adhering to mandatory participation

In addition to the provisions of the obligatory system contributions, the new social security system has also designed the arbitrary system contributions, which allows residents to become the beneficiaries of the social security system, to be incorporated into the risk pool and to participate in social insurance as long as they meet the statutory qualifications. On the surface, there seems to be the issue of weakening the social insurance’s mandatory participation. However, its essence is to get residents previously not protected by social insurance enrolled in the system and provide basic social security for them. This is one of the major initiatives to strengthen the social security of

Macao residents, which should still be commended. Currently, there are 252,846 beneficiaries in the obligatory system contributions while those of the arbitrary system contributions have reached 76,756 people.⁹

IV. Conclusion

The reform and improvement of both the social security system and social welfare system is endless. In recent years, the Macao SAR Government has increased efforts to formulate social security policies as well as continued to improve the social security system in response to the rapidly changing economic and social environment. Currently, the social security system has incessantly advanced and improved in accordance with the system's planned design and development principle envisioned by the Macao Basic Law, proceeding in the development direction of containing better risk pooling, more social adequacy and further mandatory participation with gradual improvement on top of the original social security system. Even though it is still insufficient and imperfect and distance still remains from the system's ideal envisioned by the Macao Basic Law, one cannot simply hold the notion that the current system is not good and thus negate the significant efforts that the SAR Government and the society have made on social security system. While institution-building is a long-term process, the ultimate goal is to better the social security system's development under the guidance of the ideal blueprint for social welfare outlined by the Macao Basic Law, gradually increase the well-being of the residents and promote and realize the residents' rights to social welfare affirmed by the Macao Basic Law.

Notes:

- ¹ Shen Chen-Hsiung. (2011). *Administrative Law Analysis of Social Security Benefits*. Taiwan: Angle Publishing Co. 121; Zheng, Gongcheng. (2009). *Social Security – Philosophy, System, Practice and Logic*. Beijing: The Commercial Press. 10.
- ² Sir Beveridge, W. (2004). *Beveridge Report – Social Insurance and Allied Services*. Beijing: China Labor and Social Security Publishing House.
- ³ *The Social Security and Old-age Pension System Reform Program*.
- ⁴ The Committee on Economic, Social and Cultural Rights. (2007). *General Comment No. 19 – The Right to Social Security (Article 9)*.
- ⁵ *Ibid.*
- ⁶ Jeong Wan Chong. (2011). *Annotation to the Basic Law of the Macao SAR*. Macao: Associação de Divulgação da Lei Básica de Macao. 168
- ⁷ Liang Hsien-Chu and Jan Yung-Ping. (1997). *Social Insurance*. Taiwan: Wu-Nan Book Inc. 3.
- ⁸ Sun Nai-Yi. (2006). The Interpretations of the Constitutional Court and the Construction of Social Insurance Systems – A Study on the Reciprocity of Social Insurance Systems. *National Taiwan University Law Journal*. Volume 35, Issue 6. 241-288.
- ⁹ *2011 Relatório Anual do Fundo de Segurança Social*. In the website of Fundo de Segurança Social: http://www.fss.gov.mo/uploads/wizdownload/201209/994_ormse.pdf.