2008

Annual Report of the Commission Against Corruption of Macao





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The CCAC Commissioner Cheong U submits to the Chief Executive, Mr. Ho Hau Wah, the Annual Report of the CCAC 2008

CHAPTER I INTRODUCTION



Chapter I – Introduction

In 2008, the work of the CCAC had been intensive. Apart from the huge amount of follow-up works on Ao Man Long's corruption case, the CCAC also focused on the comprehensive and systematic enhancement of corruption prevention mechanism and investigative power. For instance, the CCAC continued to promote a culture of probity in the public service in partnership with public departments and institutions under the Integrity Management Plan and fostered the examination work on systems and operations. Meanwhile, the CCAC stepped up the research on corruption prevention in the private sector in preparation for the expansion of its jurisdiction to the private sector and the integrity building to the entire society. Moreover, the CCAC modified its organization structure, increased its personnel and enhanced personnel training and facilities in order to strengthen its overall power. At the same time, the preparation for the supervision on the Legislative Assembly Election was commenced in mid-2008.

According to the Political and Economic Risk Consultancy's annual report, *Trend of Corruption in Asia 2008*, Macao remained at the 4th in ranking with a score of 3.3 among the 13 evaluated countries and regions. Though Macao stood on the same rank compared with the previous year, the score became better. According to the Corruption Perception Index (CPI) for 2008 announced by the Transparency International, Macao scored 5.4 and ranked the 8th among the Asia-Pacific countries and regions, a slight drop by 0.3 in CPI and 2 places in ranking over 2007.

In 2008, the CCAC recorded a total of 796 cases, among which 553 and 243 were reports on criminal offences and administrative complaints respectively.

Of the reported criminal cases, 88 were qualified for handling. A total of 111 cases were processed, with 31 commenced for investigation, 79 cases carried over from 2007 and one case re-opened. Moreover, the CCAC handled a total of 33 cases which were requests for assistance from counterparts outside the territory, including 12 cases commenced in 2008, 19 cases carried over from 2007 and two cases re-opened. Criminal cases handled in 2008 totalled 144 of which 46 were concluded. The concluded cases included 34 cases of which the CCAC has finished investigating, 10 cases transferred to the Public Prosecutions

Office and 2 cases re-filed after finishing reinvestigation. There were 9 cases investigated by the CCAC and then adjudicated by the court, involving 23 defendants of whom 20 were convicted. The conviction rate reached 87%.

On the front of Ombudsman, the CCAC received a total of 243 cases, a slight increase over the previous year. A majority of the cases involved the legal system governing public services, illegal construction, traffic offences and supervision of property use. Moreover, the CCAC also received 639 requests for help and consultation.

As to the examinations and researches on system and operation, the CCAC completed a project of system examination and research entitled *Analysis on Current Regulations on Use of Property and Relevant Supervisory Mechanism* and the report has been submitted to the Chief Executive. Meanwhile, regarding the examination and research on operation, the CCAC cooperated with the Labour Affairs Bureau for the first time to examine the procedures of handling the labour dispute and fight against illegal employment. Also, the CCAC continued to partner with the Identification Bureau to examine the procedure of issuing and managing residents' identification documents. At the same time, the CCAC also followed up the implementation of improvement measures taken by the Inspection Division of the Urbanization Department of the Land, Public Works and Transport Bureau and the Department of Travel Documents of the Identification Bureau.

All the 61 public departments and institutions have already joined the Integrity Management Plan – Protocol of Collaboration since the plan was launched in August 2007. Some of them have carried out further improvement based on their initial experience, while the CCAC had been providing assistance. In general, the departments have further alerted their staff to the problems concerning recusation, handling of advantages received and outside employment and have improved the mechanisms regarding procurement procedures.

In order to comply with the Policy Address of the Macao SAR Government and fulfil the objectives of the *United Nations Convention Against Corruption*, the CCAC's jurisdiction will be expanded to the private sector. Therefore, the CCAC organized a number of symposia focusing on corruption in the private sector and co-organized seminars with various business circles in order to obtain the opinions about corruption prevention in the private sector. The relevant legislative proposal was submitted to the Chief Executive in mid-2008.

In 2008, the CCAC continued to enhance its community relations in order to promote effective integrity education. With 33,500 participants, a total of 377 seminars were held.

At the same time, due to rapid social development, the CCAC strengthened the integrity education targeting at teenagers. The moral education materials for secondary students were being developed. Apart from the Branch Office operating at Areia Preta, the Branch Office in Taipa will be launched in mid-2009.

As to personnel training, the CCAC dispatched staff in 2008 to the training courses organized by the China National School of Administration and the Guangdong Institute of Public Administration which focused on the current policies and development of the economy, diplomacy, administrative system and integrity building. Also, some staff were sent to take the investigation course co-organized by the Chinese People's Public Security University and the CCAC. The exchange training programmes held by the ICAC of Hong Kong and joined by the CCAC's staff included ICAC Investigator Induction Course, Training Programme of Application of Analysis Software and the ICAC Induction Course 2008. The CCAC also conducted a 6-month training programme for the newly recruited investigators who were expected to start working in March 2009, further strengthening the investigative power.

In 2008, the CCAC frequently engaged in exchange activities. In order to enhance the cooperation with international organizations, the CCAC actively participated in various international conferences and exchanges, including the Board of Directors' Meeting of the International Ombudsman Institute (IOI) in Hong Kong, the 3rd Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities in Ukraine, the Anti-Corruption Expertise Workshop in Singapore, the 13th International Anti-Corruption Conference in Athens, the 5th China-ASEAN Prosecutors General Conference in Manila and the 12th Steering Group Meeting of the ADB / OECD Anti-Corruption Initiative for Asia and the Pacific and Regional Conference in Singapore. The CCAC's delegates also went to the Mainland China to observe the operation of supervisory bodies. Meanwhile, the Commission has received delegations from various countries and regions, such as the delegations of the ICAC of Hong Kong, members of National Parliament of the East Timor, the Administrative School of Finland, the China University of Political Science and Law, Directors of the IOI who joined the IOI Board of Directors' Meeting and the Ministry of Supervision of China. Moreover, the CCAC visited and had meetings with many local associations and organizations.

Looking ahead to 2009, the CCAC will strive to fulfil its statutory duties to combat corruption according to the social development and citizens' expectation and will join hands with all citizens to build a clean society.



CHAPTER II CONSTITUTION & ORGANIZATION STRUCTURE

Chapter II – Constitution & Organization Structure

2.1 Constitution

Upon the founding of the Macao Special Administrative Region (Macao SAR) on 20th December 1999, and in accordance with Article 59 of the Basic Law of the Macao SAR, the CCAC was formally and officially established. The CCAC functions independently under the instructions of a Commissioner, who is accountable only to the Chief Executive.

The Commissioner of the CCAC is nominated by the Chief Executive and appointed by the Central People's Government of the People's Republic of China (PRC).

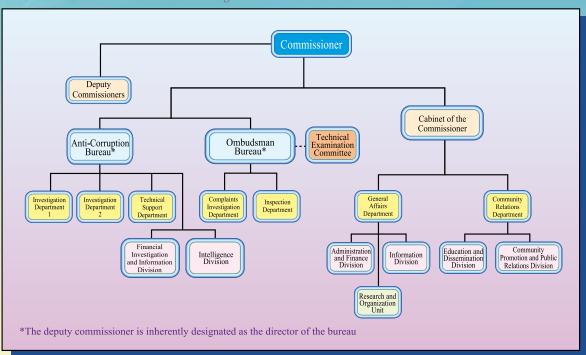
2.2 Functions and Organization Structure

In August 2000, the Legislative Assembly of the Macao SAR approved the Organizational Law of the CCAC (Law no. 10/2000), thereby vesting the CCAC with more powers, including detention, search, seizure and use of weapons. Investigators are also granted the status of criminal investigation police officers, reflecting the determination of the Macao SAR Government to eradicate corruption and ensure a clean administration.

The Organizational Law specifies that the main functions of the CCAC are to:

- Prevent acts of corruption or fraud;
- Instigate investigations and enquiries into acts of corruption and fraud committed by public servants;
- Instigate investigation and enquiries into acts of corruption and fraud relating to electoral registration and elections;
- Protect the rights, freedom and legitimate interests of individuals and safeguard the justice, legality and efficiency of the public administration.

The Administrative Regulation of the CCAC – "Organization and Operation of the CCAC (no. 31/2000)" promulgated on 21st August 2000 – provided the CCAC with basic organization structure and manpower. In February 2009, the newly revised Administrative Regulation of the CCAC entered into force, providing for an enlarged organization structure and increased human resource. The CCAC now consists of the Cabinet of the Commissioner, the Anti-Corruption Bureau and the Ombudsman Bureau, with functional, administrative and financial autonomy. The two investigation departments of the Anti-Corruption Bureau are responsible for the investigation of acts of corruption and fraud within the remit of the CCAC, while the Technical Support Department provides support for combating corruption and accepts complaints and reports of corruption. The Financial Investigation and Information Division and the Intelligence Division are directly subordinated to the Director of the Anti-Corruption Bureau. The Ombudsman Bureau, which consists of the Complains Investigation Department, the Inspection Department and the Technical Examination Committee, is responsible for recording complaints, redressing illegal or unfair administrative acts, conducting studies on the improvement of administrative processes and operation of public departments and raising opinions about the legal problems concerning complaints and the operation of public departments. The Cabinet of the Commissioner consists of the General Affairs Department and the Community Relations Department, which are responsible, respectively, for the management of finance and personnel, promotion and education, and using of information facilities to improve the overall operation of the CCAC.



The Organization Structure of the CCAC

2.3 The Monitoring Committee for the Discipline of the CCAC Personnel

On 30th July 2001, the Chief Executive established the "Monitoring Committee for the Discipline of the CCAC Personnel" through Order no. 164/2001. Its main functions are to analyze and monitor the non-criminal complaints on the CCAC personnel and make suggestions to the Chief Executive. The Committee comprises of five members with a 3-year term. They are being appointed by the Chief Executive from among the prominent people in the Macao SAR. Members of the present Committee are Leong Heng Teng as the President, Paula Ling, Kwan Tsui Hang, Lei Pui Lam and Philip Xavier.

CHAPTER III GENERAL DESCRIPTION WITH STATISTICS

Chapter III – General Description with Statistics

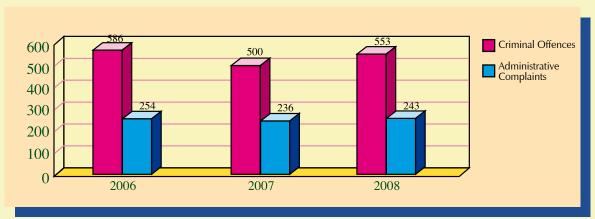
3.1 Number of Cases Recorded

In 2008, the CCAC received a total of 796 cases, registering an 8.2% year-on-year increase. 553 were criminal cases while 243 were administrative complaints. Though there was a slight growth of overall number of cases compared with 2007, the number was rather low compared with recent years.

Table 1
General trend of complaints recorded from 2000 to 2008



Table 2
Comparison of the number of complaints by type from 2006 to 2008



Among the 796 cases recorded, 742 were reports and complaints by citizens. 368 were anonymous or requested anonymity by complainants, while 374 were signed or lodged by complainants willing to provide personal data. The proportion of signed complaints increased gradually. In 2008, the number of signed complaints even exceeded that of anonymous complaints for the first time, reflecting that the citizens' trust in the CCAC was growing continuously. The number of cases transferred/reported/requested by other public bodies reached 24, similar to that of the previous year. Moreover, the CCAC also received 14 cases from law enforcement agencies outside the territory that requested assistance and 3 cases initiated for investigation by judicial agencies, while 13 cases were actively followed up by the CCAC.

Table 3
Comparison of cases recorded from 2006 to 2008 (by source)

			,			
Sources		2006		2007		2008
		Percentage	Number	Percentage	Number	Percentage
Anonymous or requested anonymity	437	52.0%	333	45.3%	368	46.2%
Signed or willing to provide personal data	335	39.9%	312	42.4%	374	47.0%
Referred/reported/requested by public entities		1.4%	26	3.5%	24	3.0%
g assistance	30	3.6%	18	2.5%	14	1.8%
orted by media	0	0%	0	0%	0	0%
Initiated by judicial institutions		0.7%	4	0.5%	3	0.4%
Instigated by the CCAC		2.4%	43	5.8%	13	1.6%
ecorded cases	840	100.0%	736	100.0%	796	100%
	Anonymous or requested anonymity Signed or willing to provide personal data ported / requested by gassistance orted by media licial institutions me CCAC	Anonymous or requested anonymity Signed or willing to provide personal data orted / requested by g assistance orted by media licial institutions ne CCAC Number 437 335 122 336 12	Anonymous or requested anonymity Signed or willing to provide personal data Ported / requested by agassistance orted by media licial institutions Number Percentage 12 1.4% 335 39.9% 12 1.4% 0 0 0 0 12 1.4%	Number Percentage Number Anonymous or requested anonymity 437 52.0% 333 Signed or willing to provide personal data 335 39.9% 312 Ported / requested by assistance 12 1.4% 26 By assistance are are data institutions 0 0% 0 Bicial institutions are CCAC 20 2.4% 43	Number Percentage Number Percentage Anonymous or requested anonymity 437 52.0% 333 45.3% Signed or willing to provide personal data 335 39.9% 312 42.4% Ported / requested by assistance 12 1.4% 26 3.5% Ported by media 0 0% 0 0% Percentage Number Percentage Percentage 333 45.3% 42.4% 42.4% 30 3.6% 18 2.5% 30 0.6% 0 0% 30 0.7% 4 0.5% 30 0.7% 4 0.5% 30 0.7% 4 0.5% 30 0.24% 43 5.8%	Number Percentage Number Percentage Number Anonymous or requested anonymity 437 52.0% 333 45.3% 368 Signed or willing to provide personal data 335 39.9% 312 42.4% 374 Ported / requested by assistance 12 1.4% 26 3.5% 24 Signed or willing to provide personal data 30 3.6% 18 2.5% 14 Signed or willing to provide personal data 0 0% 0 0% 0 Signed or willing to provide personal data 12 1.4% 26 3.5% 24 Signed or willing to provide personal data 0 0 0 0 0 0 Signed or willing to provide personal data 0

Over the years, mail and telephone have been the main methods to report cases, which accounted for 66.1% of the reports. Also, there was a slight year-on-year increase in the number of cases reported by citizens in person to 152. In-person report plays an important role in obtaining information and investigation, so the CCAC encourages the citizens to try to lodge signed complaints in person in order to boost the efficiency of investigation and protect complainants' rights and interests.

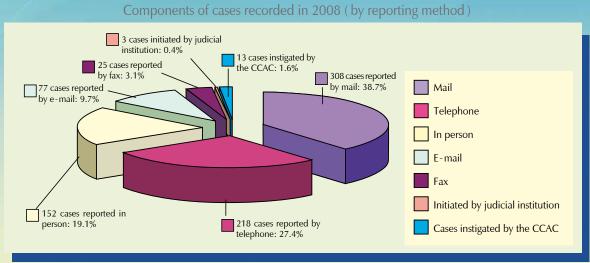


Table 4
Components of cases recorded in 2008 (by reporting method)

Table 5
Comparison of cases received from 2006 to 2008 (by reporting method)

Reporting method	2006		2007		2008	
keporting method	Number	Percentage	Number	Percentage	Number	Percentage
By mail	288	34.3%	305	41.4%	308	38.7%
By telephone	247	29.4%	135	18.4%	218	27.4%
In person	138	16.4%	125	17.0%	152	19.1%
By e-mail	119	14.2%	106	14.4%	77	9.7%
By fax	22	2.6%	18	2.5%	25	3.1%
Initiated by judicial institution	6	0.7%	4	0.5%	3	0.4%
Instigated by the CCAC	20	2.4%	43	5.8%	13	1.6%
Total cases	840	100.0%	736	100.0%	796	100.0%

3.2 Case Handling Methods

The CCAC conducts analysis, investigation and preliminary screening on the contents of the complaints upon receiving complaints. Cases qualified for follow-up will be commenced for investigation, transferred to other public agencies or followed up by informal means. In 2008, there were 331 cases qualified for handling, accounting for 42% of total cases recorded. At the same time, cases not qualified for follow-up due to the reasons that they were not related to corruption, were beyond the scope of the CCAC's powers or the information was insufficient totalled 465, accounting for about 58% of the overall cases.

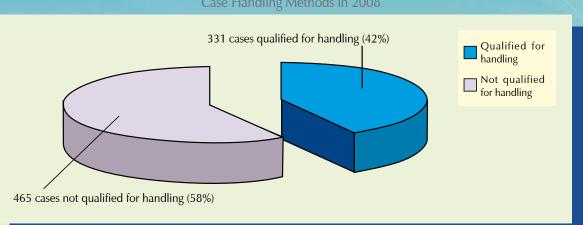


Table 6
Case Handling Methods in 2008

In 2008, there were 36 cases commenced for investigation, including 31 criminal cases and 5 cases of administrative complaints. Regardless of the fact that Ao Man Long's corruption case had brought to a significant increase of cases actively followed up by the CCAC, the number of cases commenced for investigation tended downward over years. In 2008, it even dropped to new low. On the other hand, compared with previous years, the number of cases reported by citizens who were willing to sign or provide personal data reached a new high. As signed reports facilitate CCAC's detailed investigation, the possibility to commence a case for investigation thus becomes higher.



Table 7
Comparison of cases commenced for investigation from 2000 to 2008

The majority of the administrative complaints does not involve criminal offences but is mainly related to administrative improprieties or misunderstandings about law or related matters. In order to help the complainants solve the problems effectively, most of the cases were not commenced for formal investigation but were transferred to other public departments or handled by informal means in order to avoid time-consuming formal investigation. Only the cases concerning significant problems were commenced for formal investigation. Moreover, the CCAC received a total of 639 requests for help or consultation.

Table 8
Types of case handling methods

Handling methods	Criminal cases	Administrative complaints	Total
Cases commenced for investigation	31	5	36
Cases handled by informal methods	57	238	295
Cases qualified for handling	88	243	331

Table 9
Comparison of cases commenced for investigation from 2006 to 2008 (by source)

Courses		2006		2007		2008	
	Sources		Percentage	Number	Percentage	Number	Percentage
Reports from	Anonymous or requested anonymity	26	45.6%	19	25.3%	9	25%
citizens	Signed or willing to provide personal data	16	28.1%	11	14.7%	15	41.7%
Referred/reported/requested by public bodies		2	3.5%	7	9.3%	3	8.3%
Referred / rep	orted by media	0	0%	0	0%	0	0%
Initiated by ju	Initiated by judicial institutions		10.5%	4	5.3%	3	8.3%
Instigated by the CCAC		7	12.3%	34	45.4%	6	16.7%
Total recorded cases			57		75		36

The cases that qualified for handling by the CCAC in 2008 comprised those re-opened and those carried over from 2007 totaled 495, of which 121 were commenced cases, while 374 were handled by informal means.

Table 10
Cases handled in 2008

Types of case	Qua	ntity	
	Commenced in 2008	36	
Cases commenced for investigation	Re-opened in 2008	1	121
	Transferred from 2007	84	
Cases not commoned for investigation	Recorded in 2008	295	374
Cases not commenced for investigation	Transferred from 2007	79	3/4
Total	49	95	

3.3 Handling Progress of Cases

In 2008, the CCAC concluded 50 commenced cases and 297 non-commenced cases – some 347 cases in all – with 10 referred to the Public Prosecutions Office. 148 cases should be forwarded to 2009, registering a slight decrease of cases carried forward to the following year compared with 2007.

Table 11 Handling progress of cases in 2008

Types of cases	Cases handled in 2008	Cases concluded in 2008	Cases carried over into 2009
Commenced cases	121	50	71
Non-commenced cases	374	297	77
Total	495	347	148

3.4 Cases handled by the Monitoring Committee for the Discipline of the CCAC Personnel

In 2008, the Monitoring Committee for the Discipline of the CCAC Personnel received one complaint, which is being processed.

In April 2008, the committee took a studying trip to Singapore, visiting 4 public bodies including the Public Service Division, the Corrupt Practices Investigation Bureau, the Police Force and the Urban Redevelopment Authority in order to understand the public servants' code of conduct and disciplinary procedures and the corruption prevention mechanism adopted for construction projects in Singapore.



CHAPTER IV ANTI-CORRUPTION

Chapter IV – Anti-Corruption

In 2008, the reports related to criminal cases saw a year-on-year increase, but the cases commenced for investigation decreased significantly. The criminal cases uncovered mainly involved public servants' alleged acceptance of bribe, embezzlement, power abuse and fraud. The follow-up on the corruption case of former Secretary for Transport and Public Works and the recovery of the bribe money are still ongoing while part of it has been recouped. As to the supervision on the Legislative Assembly Election 2009, the CCAC has established the Task Force to Fight Against Electoral Corruption and the preventive works have been commenced. In compliance with the government's policies, the CCAC has commenced the study on corruption in the private sector and has submitted the legislative proposal. Apart from investigating into corruption cases, the CCAC also upgraded its resources and increased its investigative power by submitting proposal for the amendment of the Organizational Law, recruiting more investigators, continuing to strengthen personnel training, enhancing the exchange and cooperation with other law enforcement agencies and expanding the Centre for Declaration of Incomes and Properties.

4.1 Numbers of Reports and Cases Commenced for Investigation

In 2008, the CCAC received a total of 553 reports involving criminal cases, registering an increase of 11% over 2007 (500 reports). Including 88 cases qualified for handling and those carried over from 2007 and re-opened in 2008, the CCAC handled a total of 197 criminal cases in 2008.

The CCAC commenced a total of 111 criminal cases for investigation in 2008 with 31 cases commenced in 2008, 79 cases carried over from 2007 and one case re-opened. Moreover, the CCAC handled 33 cases that required assistance requested by counterparts outside the territory, including 12 received in 2008, 19 carried over from 2007 and 2 re-opened.

Table 12
Cases received by the Anti-Corruption Bureau compared with 2007

Statistics	2007	2008	Difference
Total number of cases recorded	736	796	+8%
Criminal reports	500	553	+11%
Criminal cases qualified for handling	133	88	-34%
Total number of criminal cases qualified for handling (Including cases carried over from 2007 and re-opened in 2008)	207	197	-5%
Commenced cases	66	31	-53%

4.2 Summary of Cases Concluded and Transferred to Public Prosecutions Office

The cases concluded in 2008 totalled 46, including 10 cases transferred to the Public Prosecutions Office, 34 cases of which the investigations were completed and 2 cases re-filed following re-investigation. Compared with 2007, there were a 35% increase in criminal cases concluded and a 9% decrease in cases transferred to the Public Prosecutions Office, while the number of cases of which the investigations were completed increased by 70%.

Table 13
Cases completed by the Anti-Corruption Bureau compared with 2007

Statistics	2007	2008	Difference
Cases transferred to Public Prosecutions Office	11	10	- 9%
Cases investigated completely	20	34	+70%
Cases re-opened and re-filed	1	2	
Combined cases	2	0	
Total number of concluded criminal cases	34	46	+35%

The summaries of cases transferred to the Public Prosecutions Office are listed below:

The CCAC discovered 3 cases involving prison guards who received bribe in 2008.

In January 2008, a prison guard surnamed Sou was suspected to accept bribe in exchange for smuggling mobile phones into the prison for inmates. On 16th January, he was caught by the CCAC investigators while bringing 3 brand new mobile phones with accessories to the prison after taking them from 2 different places in Macao in the evening. It was discovered that he charged MOP7,000 to MOP8,000 for each phone he smuggled. In the course of the investigation, someone confessed that he had requested other people to smuggle mobile phones for him. It was suspected that someone was engaged in illegal football betting and had owed a large debt and hence took the risk. Co-operating with the Macao Prison, the CCAC launched a raid immediately and seized 7 mobile phones and some accessories believed to be related to the case. The prison guard and an inmate surnamed Lei allegedly accepted bribe and offered bribe respectively. The case was referred to the Public Prosecutions Office on 17th January.

Guarda prisional suspeito de corrupção passiva

Um guarda prisional no activo é suspeito da prática de corrupção passiva, por alegadamente ter aceite vantagens ilícitas e transportado telemóveis para um recluso de forma ilegal

O guarda, de apelido Sou, foi interceptado por investigadores do Comissariado contra a Corrupção (CCAC) na quartafeira, ao anoitecer, quando levantou, em dois locais, três telemóveis novos e respectivos acessórios, para levar para o estabelecimento prisional, indica uma nota do organismo de combate à corrupção.

No caso está envolvido um recluso, de apelido Lei, suspeito de corrupção activa, esclarece o CCAC, adiantando que o guarda foi ontem encaminhado para o Ministério Público por alegada corrupção passiva.

De acordo com as informações de que dispõe, o CCAC suspeita que, desde o ano passado, Sou tenha aceite dinheiro oferecido por um recluso e transportado clandestinamente telemóveis, carregadores e cartões pré-pagos para o estabelecimento prisional. "Estes actos ilícitos não mostram indícios de parar ainda que, no ano passado, o CCAC tenha detido vários guardas prisionais suspeitos de aceitarem vantagens llícitas para entregar telemóveis e outros objectos a reclusos", frisa o Comissariado.

O organismo salienta ainda que tais actos começam inclusive a ser praticados por vias indirectas, para que o autor e os objectos de prova não sejam desco-



bertos no mesmo local e momento.

"Primeiro, o dinheiro deixa de ser entregue directamente. Segundo, o telemóvel é entregue ao recluso só num momento oportuno e após o recebimento do dinheiro. Terceiro, no intuito de reduzir o risco, opta-se por transportar vários telemóveis de cada vez, em lugar de um só, exigindo deste modo o pagamento de mais dinheiro", pode ler-se no comunicado.

Os telemóveis apreendidos na acção do CCAC são de modelos modernos e para o seu transporte é exigido um pagamento de sete a oito mil patacas. Segundo o CCAC, no decorrer da investigação, foi confessado um pedido a terceiro para transportar telemóveis. Neste caso, há ainda indícios de que por trás do referido acto poderão estar dívidas resultantes de apostas ilegais em jogos.

em jogos.
Durante a noite da ontem, o Estabelecimento Prisional prestou apoio ao CCAC nas buscas a celas, onde foram encontrados sete telemóveis e um conjunto de acessórios supostamente ligados ao presente caso.

In February 2008, the CCAC detected another case of prison guards' acceptance of bribe. The 19 people involved included 3 prison guards and a public servant of the Secretariat for Security, who allegedly accepted bribe to perform illicit acts, while 8 inmates and other 7 people allegedly offered bribes. The CCAC discovered this criminal syndicate after investigating for over a year. The prison guards involved in this case allegedly accepted bribe in return for smuggling prohibited items, including cash, mobile phones, wine and pornographic movies downloaded to mobile phones to the prison for inmates. Assisted by the Macao Prison in the course of investigation, the CCAC seized many mobile phones, SIM



Prohibited items found on the prison guard and seized from the prison

cards, accessories and other prohibited items from the prison according to the information provided by the Macao Prison. The case was adjudicated on 19th February 2009. The 3 prison guards were sentenced to imprisonments ranging from 2 to 3 years without probation, while 6 bribers were sentenced to 1-year imprisonment without probation.

In August 2008, a public servant surnamed Chan who worked for the prison allegedly took advantage of his position to smuggle prohibited items including SIM cards and mooncake coupons into the prison. On 20th August 2008, Chan was arrested by the CCAC investigators after receiving the prohibited items and a suspected bribe of MOP6,800 from a middleperson. He was suspected of bribe accepting and duress and the case was undergoing further inspection.

From April to June in 2008, the CCAC transferred 4 cases involving Ao Man Long's corruption case to the Public Prosecutions Office.

The first case was related to 3 businessmen surnamed Ng, Tang and Ngai of Kun Fai Construction and Engineering Company who had allegedly bribed Ao Man Long. According to the investigation, the company had many times directly given Ao bribe in cash to secure

the granting of public construction projects including the expansion and redevelopment of the Macao Stadium in Taipa and the Phase 2 of Expansion of Macao stadium – parts next to the Hockey Pitch. Ao even ordered the Land, Public Works and Transport Bureau to change the grade in order to secure the company's concession for the projects.

The second case was related to 4 people of Shun Heng Construction Company, including a man surnamed Chan. It was discovered in the investigation that Ao abused his power and instructed the DSSOPT in order to help Chan to secure the granting of public construction projects, the approval of construction plans, the granting of construction licenses and the approval of extension of time of foundation construction, and quickened the handling and relaxation of restriction on height of building or plot ratio. Chan has many times transferred the bribe money to the bank accounts allegedly controlled by Ao through his own or his relatives' bank accounts in Hong Kong.

The third case was a case separated from Ao's corruption case for independent investigation following the CCAC's analysis. It was discovered that Ao, Pedro Chiang, Chan Meng leng and some other people had allegedly committed crimes including bribe accepting and offering, taking economic advantage of legal proceeding and fraud, etc.

The fourth case was also a case separated from Ao's case and was commenced for independent investigation. It mainly involved the crimes committed by Ao due to his acceptance of bribe from Pedro Chiang, including accepting bribes for performing illegal acts, fraud and taking economic advantage of legal proceeding, etc.



Other cases:

In January 2008, a case involving a supervisory staff of the Port Authority who had allegedly embezzled public property was discovered. Based on a complaint received, the CCAC found that supervisor of the Car Maintenance Centre under the Port Authority allegedly lent the professional maintenance equipments and tools owned by the Centre to a car maintenance shop which he was familiar with many times between 2005 and 2007. The public servant and the shop owner allegedly committed the offence of embezzlement and the case has been transferred to the Public Prosecutions Office.

On 17th April 2008, a case of defrauding insurance was discovered. It originated from a case of obtaining insurance by fraud several years ago. According to a report received, it was suspected that a traffic police officer conspired with other people to fabricate false reports on traffic accidents in attempt to defraud insurance. After the investigation, the CCAC found that 4 people including Ng, Lio, Wong and Sio defrauded insurance by reporting false traffic accidents.

On 23rd April 2008, a case involving public servants who had committed fraud and forged documents was detected. The CCAC discovered in the investigation that a couple surnamed Kam and Cheok, who worked for the Public Administration and Civil Service Bureau and the Labour Affairs Bureau respectively, had allegedly forged rental receipts in attempt to defraud housing allowances. One of them had even committed the fraud for 10 years.

On 25th September 2008, a case of a public servant who had committed fraud was discovered. The CCAC found in the investigation that a judiciary clerk who worked for the Court of First Instance was suspected to have many times breached the provision that prohibited public servants from entering gaming facilities. For over 500 days in the past 4 years, the suspect had allegedly entered casinos. Among the 500 days, on 50 days he were absent from his duties. Moreover, of around 100 days of sick leave he took in the past 2 years, 74 days were allegedly taken by fraud and he was suspected to have entered casinos at that time. The total pay obtained in his sick leave was equivalent to about MOP60,000.

On 5th December 2008, a case of a public servant who had conspired with his relative to commit offences including power abuse, fraud, taking economic advantage of legal proceeding, embezzlement, forging documents and offering / accepting bribe in the process of

public procurement was revealed. The CCAC found in the investigation that the chief of an autonomous entity of the Macao government was suspected to have abused his authority to directly award a majority of the construction works and acquisition of public goods and services of the entity to a number of companies established or controlled by one of his relatives since 2004. Also, he restricted the request for quotation to those companies only. As a result, all quotations were manipulated and the prices of some of the projects were 40% higher than the actual sub-contracting costs. Moreover, his relative has allegedly forged the stamps and documents of other companies so that collusive bids were made. The total price of all construction and acquisition projects involved was about MOP6 million. The public servant has also allegedly embezzled the goods and facilities purchased by the autonomous entity. It was also discovered in the investigation that the chief was the final beneficiary of a private firm and had allegedly gained benefits worth more than MOP20,000 through his relative's acquisition of services from the private firm.

4.3 Court Verdicts

In 2008, there were 9 cases discovered by the CCAC and adjudicated by courts, involving a total of 23 defendants of whom 20 were found guilty. The conviction rate reached 87%. Ao Man Long and his wife, Chan Meng leng, were heavily sentenced by the Court of Final Appeal to imprisonments of 27 years and 23 years respectively, while Ao's younger brother, Ao Man Fu, sister-in-law, Ao Chan Wa Choi, and father, Ao Veng Kong, and the businessmen who offered bribes were also convicted.

The details of cases heard and adjudicated by courts are as below:

1. Date of Sentence: 30/01/2008

Case Summary: San Meng Fai Construction and Engineering Co. Ltd., Chon Tit (Macao) Engineering Co. Ltd. and Polymile Limited of Hong Kong offered tremendous bribes many times to former Secretary for Transport and Public Works, Ao Man Long, as rewards for Ao's assistance in securing the concession for a number of public works in Macao.

Defendant / Suspect	Status of defendant/suspect	Factors on Measurement of Penalty	Verdict
Ao Man Long	Secretary for Transport and Public Works	The defendant was one of the highest - level officials of the Macao SAR Government and the amount of bribes involved was very tremendous. The criminal facts have brought and would continue to bring extremely negative effect on the image of the Macao SAR and the public servants. Meanwhile, the number of times he accepted bribes for performing illegal acts and the related money laundering activities reflected that the defendant was really greedy and the level of wilfulness was especially serious. Also, the defendant neither confessed to the facts nor showed any signs of regret at the hearing.	11 counts of accepting bribes for performing illicit acts-7 years' imprisonment for each count; 4 counts of accepting bribes for performing illicit acts-6 years' imprisonment for each count; 5 counts of accepting bribes for performing illicit acts-5 years' imprisonment for each count; 11 counts of accepting bribes for performing licit acts-1 year and 9 months' imprisonment for each count; 9 counts of accepting bribes for performing licit acts-1 year and 6 months' imprisonment for each count; 13 counts of money laundering-5 years' imprisonment for each count; 2 counts of power abuse-1 year and 6 months' imprisonment for each count; 1 count of inaccuracy of the declared information-1 year and 6 months' imprisonment; 1 count of unjustified wealth-2 years' imprisonment and a 240-day fine at MOP1,000 per day. The aforementioned penalties were combined into a 27 years' imprisonment plus a fine of MOP240,000 which could be replaced with a 6-month additional imprisonment. Part of the defendant's property was confiscated.

2. Date of Sentence: 14/02/2008

Case Summary: The chief of Macao Vehicle Association and a public servant allegedly obtained advantages from the Macao SAR Government by fraud in the course of co-organizing the Macau Grand Prix.

Defendant / Suspect	Status of defendant / suspect	Factors on Measurement of Penalty	Verdict
Alberto Ferreira Sin	President of Executive Committee of Macao Vehicle Association	After the hearing, the Collegiate Bench could not verify that the defendant had embezzled public fund. Due to the principle of presumption of innocence, the defendant was acquitted.	Acquitted
Chan Chan Po	Qualified Worker of the Civic and Municipal Affairs Bureau	As a public servant, the defendent improperly used the activity fund though he knew that the activity he participated in was organized by the authority. Therefore, the crime should be liable for penalty.	The defendant was convicted of embezzlement and was sentenced to 7 months' imprisonment with 1 year' probation plus a payment of 4 judiciary units and relevant expense for the hearing. All money seized in the case was confiscated.

3. Date of Sentence: 29/05/2008

Case Summary: A staff of the Civic and Municipal Affairs Bureau (IACM) was suspected to falsely report his marital status and forge rental receipt in attempt to defraud family subsidies and housing allowances.

Defendant / Suspect	Status of defendant/suspect	Factors on Measurement of Penalty	Verdict
Chan Kam Tong	Qualified Worker of the IACM	guilty at the hearing and the offence was not too serious and did not involve a large sum of money; therefore, the Collegiate Bench determined	The defendant was convicted of fraud and was sentenced to a 180-day fine at MOP60 per day, totalling MOP10,800. The fine could be replaced by a 120-day imprisonment. Moreover, the defendant had to pay MOP23,350 plus interest as restitution to the IACM, a sum of 5 judiciary units and expense for the hearing.

4. Date of Sentence: 04/06/2008

Case Summary: Secretary for Transport and Public Works, Ao Man Long, accepted tremendous bribes many times in return for assisting some businessmen including Ho Meng Fai, Chen Dongsheng and Federico Marques Nolasco da Silva in securing the grant of a number of

public works. Ao even controlled a number of relatives to assist in handling the bribes through money laundering. The case mainly put other suspects of Ao's corruption case except Ao Man Long on trial, such as his wife, father and younger brother.

Defendant/Suspect	Status of defendant/suspect	Factors on Measurement of Penalty	Verdict
Chan Meng leng	Senior Advisory Officer of the Government Information Bureau	As the crimes committed by all of the defendants brough negative effects to the society and they had assisted Ao Man Long in executing his criminal plan for a long time, which accomplished his plan and inflated his ambition. As a result, the reputation and dignity of the Macao SAR Government were seriously damaged and the social development was hindered. They should be strongly censured for their ethics and behviour. Knowing that her husband, Ao Man Long, had, for a long time, repeatedly accepted bribe by using his authority, the 1st accused, as a public servant, still assisted him in evading the law. Her wilfulness was strong and severe and the number of times she committed the offences was also large. Knowing that Ao Man Long, as a public servant, had accepted bribes by using his authority for a long time, the 2 nd , 3 rd and 4 th accused, as his close relatives, still provided him with assistance to have the illegalities consealed, significantly encouraging Ao's criminal acts	8 counts of money laundering–5 years' imprisonment for each count; 1 count of unjustified wealth–2 years' imprisonment; 1 count of failing the obligation to co-operate as the spouse in declaration of properties and incomes – 1-year imprisonment; The aforementioned penalties were combined into a 23 years' imprisonment plus a 360-day fine at MOP1,000 per day, totalling MOP360,000.
Ao Man Fu	Owner of Branch of Tai Kun Tailor Shop		8 counts of money laundering–5 years' imprisonment for each count; The penalties were combined into a 18 - year imprisonment. (Following the appeal to the Court of Second Instance, the charge was changed to 1 count of money laundering carried out in a continuous way and the defendant was sentenced to 5 years' imprisonment.)
Ao Chan Wa Choi	Clerk of Lei Po Development Co. Ltd.		5 counts of money laundering–5 years' imprisonment fo each count; The penalties were combined into a 13 years' imprisonment (Following the appeal to the Court of Second Instance, the charge was changed into 1 count of money laundering carried out in a continuous way and the defendant was sentenced to a 4 years and 6 months' imprisonment.)
Ao Veng Kong	Owner of Tai Kun Tailor Shop		3 counts of money laundering–5 years' imprisonment for each count; The penalties were combined into a 10 years' imprisonment (Following the appeal to the Court of Second Instance, the charge was changed into 1 count of money laundering carried out in a continuous way and the defendant was sentenced to a 4 years' imprisonment.)

Defendant/Suspect	Status of defendant/suspect	Factors on Measurement of Penalty	Verdict
Ho Meng Fai	Director of San Meng Fai Construction and Engineering Co. Ltd.	The 5 th accused, Ho Meng Fai, the 6 th accused, Chen Dongsheng, and the 7 th accused, Frederico Marques Nolasco Da Silva, respectively offered money to Ao Man Long in order to obtain the concessions for public works, violating the principles of fairness, openness and justice of tendering. These defendants conspired with Ao Man Long to launder illicit money and conceal the sources of the money, inflating his ambition to perform illegal acts. Without their assistance, Ao would not have easily carried out the illegal acts independently. The level of their wilfulness was high. In particular, the number of crimes involving the 5 th accused was the biggest.	8 counts of money laundering–5 years' imprisonment for each count; 8 counts of offering bribes for performing illicit acts–2 years and 10 months' imprisonment for each count; 10 counts of offering bribes for performing licit acts–5 months' imprisonment for each count; The penalties were combined into a 25 years' imprisonment plus a repayment of MOP50 million to the Macao SAR Government.
Chen Dongsheng	General Manager of Chon Tit (Macao) Engineering Co. Ltd.		1 count of money laundering–5 years' imprisonment 1 count of offering bribes for performing illicit acts–2 years and 10 months' imprisonment; 3 counts of offering bribes for performing licit acts–5 months' imprisonment for each count; The penalties were combined into a 7 years' imprisonment plus a repayment of MOP20 million to the Macao SAR Government. (Following the appeal to the Court of Second Instance, the charge was changed into 1 count of money laundering and 1 count of offering bribes for performing illicit acts and the defendant was sentenced to a 5 years and 3 months' imprisonment.)
Frederico Marques Nolasco da Silva	Director of Macau Residue System Co. Ltd.		2 counts of money laundering—4 years and 6 months' imprisonment for each count; 3 counts of offering bribes for performing illicit acts—2 years and 6 months' imprisonment for each count; The penalties were combined into a 10 years' imprisonment plus a repayment of MOP30 million to the Macao SAR Government. (Following the appeal to the Court of Second Instance, the charge was changed into 1 count of money laundering and 3 counts of offering bribes for performing illicit acts and the defendant was sentenced to a 6 years' imprisonment.)

5. Date of Sentence: 06/06/2008

Case Summary: 2 staff of the Finance Services Bureau (DSF) forged their attendance records by requesting other people to "punch their attendance cards" in attempt to be absent from their duties.

Defendant / Suspect	Status of defendant/suspect	Factors on Measurement of Penalty	Verdict
David Henrique Carvalho	Principal clerk of DSF	After the hearing, the court could duly prove the charges except the fact that the defendants assisted each other in having their	Found guilty of document forgery and sentenced to 5 months' imprisonment with 1-year probation and had to repay a restitution for the loss caused by his absence to the DSF.
Aureliano António Ritchie	Semi-qualified worker of DSF		Found guilty of document forgery and sentenced to a 120-day fine at MOP100 per day totalling MOP12,000 which could be replaced with a 80-day imprisonment and had to repay a restitution for the loss caused by his absence to the DSF.

6. Date of Sentence: 09/07/2008

Case Summary: Former Secretary for Transport and Public Works, Ao Man Long, received tremendous bribes many times to assist some businessmen including Tang Kim Man in obtaining concessions for a number of public works. Ao even controlled a number of relatives to assist in handling the bribes through money laundering. The case mainly put other suspects of Ao's corruption case except Ao Man Long on trial, including his father, younger brother and sister-in-law.

Defendant/Suspect	Status of defendant/suspect	Factors on Measurement of Penalty	Verdict
Tang Kim Man	Chairman of Board of Directors of Tong Lei Construction and Engineering Co. Ltd.	Based on the written and oral testimonies, the Collegiate Bench could duly prove that the defendant had many times offered Bribes to Ao Man Long through companies or bank accounts opened in the name of himself or third persons. As a result, Ao interfered in the process of granting of public works to benefit the company controlled by the defendant. Moreover, there were sufficient evidences to prove that the relevent bribes were closely related to the grant of contracts of the projects.	2 counts of money laundering–4 years' imprisonment for each count; 8 counts of offering bribes for performing illicit acts–2 years and 6 months' imprisonment for each count; 7 counts of offering bribes for performing licit acts–5 months' imprisonment for each count; The penalties were combined into a 12 years and 6 months' imprisonment plus a payment of 150 judiciary units.
Lo Chi Cheong	Engineer of Tong Lei Construction and Engineering Co. Ltd.	The projects involved in the case were mainly direct transactions between the 1st accused and Ao Man Long. The 2nd accused, Lo	Acquitted
Leong Chiu Tung	Owner of Min Da Engineering Co. Ltd.	Chi Cheong, and the 3 rd accused, Leong Chiu Tung, were only subordinates of the 1 st accused. Also, there was no evidence directly showing that the 2 defendants knew that the money involved was used as bribes for Ao. Therefore, the Collegiate Bench acquitted them according to the principle of presumption of innocence.	Acquitted
Lao Chon Hong	Secretary of Chairman of Board of Directors of Tong Lei Engineering Co. Ltd.	The projects involved in the case were mainly direct transactions between the 1 st accused and Ao Man Long. The 4 th accused, Lao Chon Hong, was only a subordinate of the 1 st accused. The Collegiate Bench could not determine that she had directly participated in all bribering acts. However, as to part of the projects involved in the case, the written and oral testimonies showed that the 4 th accused had actively participated in the process of offering bribes by the 1 st accused to Ao. Due to the 1 st accused to to the 4 th accused, the Collegiate Bench determined that the latter knew the sources of the bribes and the direction in which they had gone and had actively participated in the transferrence of some of the bribes.	The Court of First Instance sentenced the defendant to 3 years and 6 months' imprisonment for 1 count of money laundering

Defendant / Suspect	Status of defendant/suspect	Factors on Measurement of Penalty	Verdict
Ao Man Fu	Owner of branch of Tai Kun Tailor Shop	The Collegiate Bench could not duly prove that the defendant had participated in relevant crimes. Therefore, according to the principle of presumption of innocence, he was acquitted.	Acquitted
Ao Chan Wa Choi	Clerk of Lei Po Development Co. Ltd.	Ao Chan Wa Choi opened companies and banks accounts in response to Ao Man Long's request, while large amounts of sums had been deposited to those accounts many times. The accused also knew that the tremendous amounts of money were not regular incomes proportioned to Ao Man Long's position. Nevertheless, the aformentioned criminal acts should be classified as accepting bribes for performing licit acts. Due to the fact that the crime was liable to imprisonment up to 6 months, the defendent was found guilty of 2 counts of money laundering but the court did not impose any punishment on her.	No punishment
Ao Veng Kong	Owner of Tai Kun Tailor Shop	The 7 th accused, Ao Veng Kong, opened companies and banks accounts in response to Ao Man Long's request, while large amounts of sums were deposited to those accounts many times. The accused also knew that the tremendous amounts of money were not regular incomes proportioned to Ao Man Long's position. Part of the offences which the defendant was accused of were duly proved, so he was found guilty of money laundering.	1 count of money laundering – 3 years and 6 months' imprisonment

7. Date of Sentence: 09/10/2008

Case Summary: A staff of the IACM forged rental receipt and falsely declared his residential information to claim housing allowance. He even falsely claimed that his wife was jobless and hence submitted a fake proclamation to the department he worked for to obtain family allowance.

Defendant / Suspect	Status of defendant/suspect	Factors on Measurementof Penalty	Verdict
Leong Pui Kuan	Qualified auxiliary staff of IACM	The Collegiate Bench determined that the defendant was the principal offender who had committed fraud accomplishedly through document forgery. The court took into account the seriousness of the circumstances, so fine was not sufficient to have deterrent effect. Also, the criminal acts committed by the defendant affected social harmony and caused a loss of the government's property.	sentenced to 1 year and 6 months' imprisonment with 2 years' probation; Moreover, the defendant had to pay MOP86,760 plus interest as restitution to the IACM, a sum of 3 judiciary units and

8. Date of Sentence: 04/12/2008

Case Summary: A prison guard accepted bribes from inmates many times in return for smuggling prohibited items such as mobile phones, battery chargers and accessories into the prison for the inmates with the assistance of third persons.

Defendant/Suspect	Status of defendant/suspect	Factors on Measurement of Penalty	Verdict
Choi Hac Kan	Prison guard of Macao Prison	Following analysis on written and oral testimonies, the Collegiate Bench thought that the CCAC's long-term investigation clearly ascertained the criminal facts. The 1 st accused's confession	5 counts of accepting bribes for performing illicit acts-5 years' imprisonment plus a payment of 4 judiciary units and expense relevant to hearing.
Leong Tim Hei	Unemployed	to all charges became the proof for the court to verify the crimes committed	of 5 counts of bribe offering
U Wai Kit	Inmate	by the remaining defendants. As a public servant, the 1 st accused agreed to accept money from others as reward for performing acts contrary to his duties. His conduct has violated the discipline and the rules of the prison. The remaining defendants encouraged the 1 st accused to smuggle prohibit items such as mobile phones and electronic games into the prison. Their acts seriously affected the operation of the prison and the reputation of the Macao SAR Government, bringing negative influence on the society.	and sentenced to 2 years and 6 months' imprisonment without probation plus a payment of 4 judiciary units and expense relevant to hearing. As they were absent from the adjudication, the court has issued a detention warrant.
Vong Vai Meng	Inmate		prison. Their acts seriously affected the operation of the prison and the reputation of the Macao SAR Government, bringing

9. Date of Sentence: 16/12/2008

Case Summary: A retired public servant falsely claimed that he could assist others in applying for non-local worker ID cards in attempt to defraud money. He even illegally hired a domestic worker.

Defendant / Suspect	Status of defendant/suspect	Factors on Measurement of Penalty	Verdict
José Maria Ernesto de Carvalho e Rego	Retired public servant	Following the analysis on written and oral testimonies, the Collegiate Bench could not confirm that the fraudulent behavior committed by the defendant existed, but the fact that he illegally hired a domestic worker could be duly proved. Although he was not a first offender, he did not commit any crimes during the eight years' time between the dates of the previous case and this case. Therefore, the Collegiate Bench thought that an imprisonment with probation was sufficient.	of illegal employment and was sentenced to a 7 months' imprisonment with 2 years' probation, but he should pay the Macao Government MOP1,500 as restitution plus relevant judiciary fees, otherwise, the probation would be cancelled.

4.4 The Recovery of Illicit Assets Related to Ao Man Long's Case and the INTERPOL's Red Notice

After the adjudication of Ao Man Long's case, the CCAC took action to recover the illicit assets involved in the case. In Macao, the court adjudicated that the bribes accepted by Ao were confiscated and sentenced him to a fine of MOP240,000. In Hong Kong, following the CCAC's efforts, the High Court ruled that Ao's illicit assets in Hong Kong, which were worth around HKD230 million in total, should go to the Macao SAR Government. Although there were various legal and judiciary obstacles to the recovery of the illicit assets overseas, the CCAC will continue to do its best to repatriate the illicit assets related to the case.

In January 2008 and 2009, the CCAC put the fugitives related to Ao's case onto the wanted list through the Red Notice issued by the INTERPOL. The 6 fugitives included Ao's wife Chan Meng leng, businessmen Ho Meng Fai, Pedro Chiang and Chan Lin Ian, Chan Lin Ian's wife Lam Man I, and a Macao resident, Lei Leong Chi. It was the first time the CCAC requested the INTERPOL to arrest fugitives through the Macao Branch of the INTERPOL China National Central Bureau.

The details of the wanted individuals were indicated in the INTERPOL's website at http://www.interpol.int.

4.5 Training and Exchange

4.5.1 Recruitment of Investigators

In July 2008, the CCAC conducted the recruitment of a group of investigators. Following a series of tests and selections, 12 candidates were recruited among over 1,600 applicants. Later, the CCAC commenced the 7th (2008) Training Programme for Investigators. With more than 90 subjects focusing on investigative works, the programme consisted of 4 parts including theory, practice, observation and visit. Apart from the leadership and the experienced investigators of the CCAC and professors and experts from local higher education institutes, the instructors also included the chiefs or supervisors of courts, the Public Prosecutions Office, the Judiciary Police, the Public Security Police Force, the Macao Prison, the Gaming Inspection and Coordination Bureau and the Macao Customs Service and media veterans.

4.5.2. Training in the Mainland China and Hong Kong

The anti-corruption and law enforcement agencies in Guangdong, Hong Kong and Macao organized practical symposia on joint investigation of cases regularly each year in order to review the case assistance over the previous year. During 27th to 29th November 2008, the 4th Symposium on Mutual Case Assistance – Guandgong, Hong Kong and Macao took place in Shaoqing, Guangdong.

From October to November 2008, the CCAC sent staff for courses on internal affairs of China organized by the China National School of Administration and the Guangdong Institute of Public Administration respectively. The courses focused on the current policies and development of the economy, diplomacy, administrative system and integrity building of China. Moreover, the Chinese People's Public Security University organized the 9th Training Course for the CCAC.

In 2008, the exchange between the staff of the CCAC and the ICAC of Hong Kong was relatively frequent. The important trainings included the 6^{th} (2007) Training Programme of CCAC with 17 investigators, the ICAC Investigator Induction Course, the Training Programme of Application of Analysis Software and the ICAC Induction Course 2008.



4.5.3 Other Exchange and Training Programmes

The 2nd Seminar of the International Association of Anti-Corruption Authorities was held in Chongqing during 14th to 23rd May 2008. In response to the invitation, the CCAC sent 2 investigation officers to attend the seminar.

In June 2008, the CCAC dispatched staff to the Asset Tracing & Recovery Workshop organized by the World Bank, the United Nations Office of Drug and Crime and the American Bar Association in response to an invitation. The participants came from 8 countries and regions including Malaysia, Brunei, the Philippines, Indonesia, Vietnam, Thailand, Bangladesh and Macao. In July 2008, the CCAC staff also had an exchange with the Liaison Officer of the Organized Crime Department of the Criminal Investigation Bureau of the National Police Agency of Japan in Hong Kong.

Apart from exchange in works, the CCAC also organized the 3rd Sports Games of the Anti-Corruption Law Enforcement Staff in Guangdong, Hong Kong and Macao in January 2008 in order to foster mutual friendship. Gaining the highest total score, the CCAC finally became the champion.



4.5.4 Observation on the elections in Hong Kong and Taiwan

In order to enrich the knowledge about the prevention and suppression of electoral corruption in different places and draw on relevant experiences, the CCAC sent delegations to observe the presidential election of Taiwan and the Legislative Council Election of Hong Kong in 2008.

4.6 Declaration of Incomes and Properties

Under the provision concerning declaration of incomes and properties, public servants shall renew their declaration of incomes and properties every 5 years. Between September 2008 and February 2009, it was the second time of the 5-year renewal by around 8,000 public servants. For the declarers' convenience, the CCAC launched the system of collection by appointment in October 2008. Under the system, staff are dispatched to 40 offices of 21 government departments to collect the declaration forms by appointment. Up to 31st December 2008, the CCAC had collected a total of 3,208 forms from 30 offices of 13 government departments. The second renewal was basically completed in late February 2009. The CCAC will collate the data in 2009.

In order to provide a more comfortable environment for declarers and shorten the waiting time, the CCAC moved the Centre for Declaration of Incomes and Properties from the 14th floor to the 18th floor of the Dynasty Plaza. The new centre features a more spacious waiting area where magazines are available and promotional video clips are shown. Also, with a new waiting number slot machine installed and 3 rooms for submission of declaration forms, the centre is able to serve more declarers at the same time and thus shortens their waiting time and boosts the efficiency of the reception.

In order to introduce to the newly recruited public servants the regulations on the declaration of incomes and properties and the points to note while filling the forms, the CCAC provides briefing sessions for the public departments which have the need. In 2008, the Property Declaration Team of the CCAC held a briefing session on the declaration of incomes and properties for over 200 new trainees of the Academy of Public Security Forces in response to the invitation by the academy.





CHAPTER V OMBUDSMAN

Chapter V – Ombudsman

The CCAC recorded 243 cases involving administrative complaints in 2008, a slight increase compared with the previous year. Also, the number of requests for help and consultation reached 639. To sum up the cases, most of them were related to the legal system governing public services, illegal construction, traffic offences and supervision of property use.

As to the research and examination on system and operation, the CCAC completed a project of system examination entitled *Analysis of Current Regulations on Use of Property and Relevant Supervisory Mechanism*. The report has been submitted to the Chief Executive. Meanwhile, regarding the examination on operation, the CCAC cooperated with the Labour Affairs Bureau for the first time to examine the procedures of the handling of labour dispute and combating of illegal employment. Also, the CCAC continued to partner with the Identification Bureau to examine the procedures of issuing and managing residents' identification documents. Moreover, the CCAC followed up the implementation of improvement measures taken by the Department of Travel Documents of the Identification Bureau and the Inspection Division of the Urbanization Department of the Land, Public Works and Transport Bureau.

The CCAC has already signed the "Integrity Management Plan—Protocol of Collaboration" with all the 61 public departments since the plan was implemented in August 2007. Some of them have carried out further improvement based on their initial experience, while the CCAC provided them assistance. In general, the departments have further alerted their staff to the problems concerning recusation, handling of advantages received and outside employment and have improved the mechanisms regarding procurement process.

In response to the requests by government departments/institutions and private associations/bodies, the CCAC organized workshops on different topics, including public procurement, ombudsman and enhancement of integrity awareness.

As to external exchange, the CCAC sent delegations to the conferences co-organized by the Ministry of Supervision of the People's Republic of China, the ICAC of Hong Kong and the CCAC itself and continued to participate in the symposia and conferences organized by international ombudsman associations and corruption prevention organizations. Regarding personnel training, the Ombudsman Bureau of the CCAC sent staff to participate in the course organized by the China National School of Administration and the Chinese People's Public Security University in Beijing and dispatched delegates to observe the operation of supervisory bodies in the Mainland China.

5.1 Investigation

5.1.1 Case Intervention

5.1.1.1 Cases Recorded and Processed

In 2008, the CCAC handled 243 cases involving administrative complaints, a 3% increase compared with 236 cases in 2007. The significant increase in complaints over the supervision on property use was related to the deficiencies and loopholes in the mechanisms of supervision on use of property adopted by the authorities and the current regulations on the purpose of property. Therefore, the CCAC has completed the project of research and examination on the system, entitled *Analysis on Current Regulations on Use of Property and Relevant Supervisory Mechanism*, and has made recommendations for improvement to the authorities. Moreover, the complaints over labour dispute also increased. Most of them involved the competent department's treatments which were unfair or beyond the prescribed limitation. Therefore, the Labour Affairs Bureau suggested cooperating with the CCAC to commence an examination on operation through signing the Integrity Management Plan in 2008.

The cases of administrative complaints in 2008 still primarily involved the legal system governing public services, illegal construction and traffic offences. The cases handled in

informal way but have raised public concern involved: 1) a member of the leadership of a higher education institute had violated the regulations on recusation repeatedly by participating in making resolutions linked to his interest; 2) a higher education institute illegally allowed the operator of a canteen to raise the price and subsequently granted catering subsidies to the students and hired some students to distribute the coupons; 3) the rules of the Conceptual Design Competition of the New Macao Central Library did not restrict the participation of the advantaged entities and individuals who had obtained more relevant information, such as the consultancy company which was previously awarded a contract of constructional planning of the Central Library and its staff, thus resulting in unfairness.

Table 14
Content classification of administrative complaints in 2008

Problems involved	Caseload
Legal system governing public services (rights and benefits of staff, recruitment, internal management and discipline)	60
Illegal constructions	28
Traffic offences	21
Supervision of property use	17
Labour disputes	11
Municipal affairs	9
Medical and healthcare	9
Social / economic housing	8
Access of information	8
Rights of abode	6
Illegal businesses	5
Investment residency	4
Irregularities in other administrative procedures	57
Total	243

243 cases of administrative complaint recorded in 2008 were added to the 50 cases forwarded from 2007, excluding 24 cases which concerned same problems, a total of 269 cases were processed during the year, of which 207 were completed and archived, accounting for over 77% of the total.

Some of the cases were archived because they showed no signs of administrative illegality or irregularity, were properly handled by the departments concerned (via the CCAC's transference and informal intervention), beyond the competence of the CCAC and lack of information. Among the 207 completed cases, 8 of them were handled by formal investigation while the remaining 199 were handled by means such as referral, document exchanges and meetings, of which 73% were resolved within 3 months. The numbers of cases in which the CCAC found no signs of illegality after initial analysis or were properly handled by the departments concerned following formal or informal interventions were 121 and 50 respectively, similar to that for the year of 2007.

Table 15
Administrative complaints in 2008

Reasons for cases archived	Caseload
No signs of administrative illegality or irregularity	121
Properly handled by respective departments (following formal or informal interventions of the CCAC)	50
Lack of information	24
Beyond the competence of the CCAC	2
Others	10
Total	207

5.1.1.2 Summaries of the 3 cases which have been handled in informal way and raised public concern

5.1.1.2.1 Case no. 188/C/2008

During the course of following up a reported case, the CCAC discovered that a member of the leadership of a public education institute had 3 times committed acts contrary to the regulation on mandatory recusation under the *Code of Administrative Procedure* by participating in the resolution making procedures related to the promotion of his own teaching position. However, after being informed of the infringement, the authority only carried out warning measures without initiating any disciplinary procedure in accordance with law. Moreover, the supervisory body agreed not to initiate disciplinary procedure against the staff concerning one of these cases.

In fact, under the legal system governing public services, once a public servant is suspected to have committed a disciplinary offences, the case shall be processed with disciplinary procedure. Therefore, there were deficiencies in the decision of not initiating disciplinary procedure. However, since the decision has been made for over 1 year, the deficiencies were thus "redressed". The staff could still be held liable for the 2 remaining disciplinary offence according to the law. By declaring the stance of the CCAC to the authority, the latter decided to initiate disciplinary procedure against the staff concerning these 2 cases. Finally, the staff was ordered to pay a fine equivalent to his 3-day salary.

5.1.1.2.2 Case no. 0017/E/2008

The CCAC received a complaint alleging that a public higher education institute subsidized the students through offering coupons, which is the same as using public fund to subsidize the outsourced canteen in the campus. Therefore, its regularity was questioned.

Following the investigation, it was discovered that the institute contracted out the canteen's operation to a private operator through open bidding and the leasing rules indicated that the leaseholder "shall not raise the price during the first year of the lease period". Later, the institute agreed on the price increase due to "continuous inflation." This agreement had not only violated the leasing rules but was also unfair to those potential bidders who intended to bid but finally did not do so due to the aforementioned clause, constituing breach of the principle of impartiality.

If the operator was able to prove that there was any force majeure, s/he could be exempted from the responsibilities caused by not fulfilling all or part of the contract. However, "force majeure" does not include "continuous inflation" in general. In other words, "continuous inflation" could not be a legitimate reason for the operator's exemption from abiding by the clause "shall not raise the price". The institute granted catering coupons to the students and hired some of them to distribute the coupons for the reason of "reducing students' economic pressure". However, the rules of the institute stipulated that the expense should conform to the tenet of education. The expense caused by the distribution of subsidies was obviously unrelated to the tenet and therefore the legal basis for the decision was insufficient. The hiring of students originated in the unlawful decision to distribute subsidies. That means deficiencies existed in the institute's formation of intention of employing students to distribute the coupons, and subsequently led to deficiencies of illegality / invalidity in the decision.

Since the institute has terminated the operation contract in advance and the new operator has started running the canteen, the aforementioned decision with deficiencies was an administrative act which could be repealed. Under the Code of Administrative Procedure, even though the administrative act was invalid, the authority can still recognize certain legal results of the facts caused by the invalid administrative act due to the lapse of time, principle of good will and safeguard of the stability of public administration, etc. Therefore, since the parties concerned should not be liable for any responsibility and the institute has already paid the correspondent the catering and employment expenses due to the execution of the aforementioned illegal decision, according to the law there were sufficient reasons to recognize the legal results of the facts caused by the revocable aforementioned administrative act (for example, the fact that the students have already enjoyed the catering subsidies). Based on this law, the relevant expense could not be retrieved. Hence, the CCAC requested the institute to strictly conform to the law of law-abidingness in discharging its duties during operation. The institute accepted the CCAC's opinion and promised to strictly abide by the contract entered into with the new operator and conducted a comprehensive review on the management in every aspects in order to ensure legality. The CCAC thus filed the case.

5.1.1.2.3 Case no. 0053/E/2008, no. 357/C/2008 and no. 0005/DSPJ-1/2008

In mid-2008, the media revealed that the winner of the Conceptual Design Competition of the New Macao Central Library was a staff from the company responsible for the research on preliminary construction planning of the library. The public questioned the fairness of this competition because the consultancy company that participated in the research had obtained substantial internal information related to the project and its' staff's participation was apparently extremely unfair to other participants.

Following the CCAC's investigation, when the authority awarded the contract of "research on advance construction planning of the New Macao Central Library", it did not prohibit the company and its staff to join the bid or competition for design in the later stage and relevant restrictions were not introduced into the rules of the competition either, so the participation of the staff was not prohibited according to law. Nevertheless, due to the principle of fairness, the CCAC has suggested the department concerned that if there were open contests or competitions for acquisition of goods or service, it should evaluate in advance whether there were any entities or individuals who might gain the advantage of obtaining related information due to any reasons as well as the possibilities for them to become potential competitors. The institute should also establish relevant handling mechanisms, such as publicizing relevant information for all potential competitors, banning the individuals who had participated in related works or having the advantage of information due to any reasons from joining the competition, in order to ensure the fairness and justice of the whole procedure and avoid any tarnish to the credibility of the authority.

Later, the department responded that the authority had already provided necessary information to all potential participants in the competition and insisted that what the authority had done was absolutely conforming to all the regulations and principles that it should abide by. Therefore, the CCAC reiterated its standpoints and recommendations, notified the Secretary of the relevant field of the response mentioned above and the CCAC's stance. Finally, the Cabinet of the Secretary replied that it agreed on the recommendations from the CCAC and would instruct the Cultural Affairs Bureau to improve the related administrative procedure so as to avoid the same problem.

In fact, the Macao SAR Government conducted researches or consultations on preliminary planning or feasibility of projects in different areas or fields many times over recent years and commissioned or contracted the projects to private entities (e.g. consultancy companies). However, there have been no regulations stipulating that entities or individuals that have provided service of research or consultation for the authority shall not participate in the bidding or competition related to that research or consultation and requiring the authority to formulate any prohibitive or restrictive clauses while signing contract with the company which provides the service of research or consultation. It is worth noting that the entities or individuals that participate in the preliminary / explorative researches or consultations naturally obtain more undisclosed information related to the project and are not subject to relevant responsibilities and obligation as public departments or public servants do. Moreover, on the premise that it is free to engage in any work and business, the possibility of the aforementioned private entity and its staff's participation in the authority's subsequent execution of the plan certainly could not be "automatically" excluded. Based on this presupposition, if the authority contracted out a research or consultation on feasibility and later acquired the goods or services related to the mentioned project of research or consultation through open contest or competition, some potential competitors might have special advantage of obtaining information due to their earlier participation in the research or consultation, bringing other competitors the chance to lose a fair competition and causing citizens to question about the fairness of contest or competitive activities held by the government.

Therefore, the CCAC proactively followed up the case and recommended the authority to urge all government departments to note that if there are open contest or competition for acquisition of goods or service in the future, they shall evaluate in advance whether there are any entities or people who might have the advantage in obtaining related information due to any reasons and the possibilities for them to become potential competitors and establish relevant handling mechanisms, such as publicizing relevant information for all potential competitors, banning the individuals, who had participated in related works or having advantage of information due to any reasons, from joining the competition, or requiring all competitors to make declarations, so as to adjust the grading proportion to offset privilege of the potential

competitors of obtaining certain information, In this way, the fairness and justice of the whole procedure can be ensured and damage to the credibility of the authority can be avoided. The CCAC's recommendation was transferred to the Secretaries and relevant departments following the Chief Executive agreement through an administrative order.

5.1.1.3 Formal Investigation, Admonition and Recommendation

In 2008, the CCAC conducted intensive investigation of 5 cases which involved "the Subsidy Assessment Scheme of the Macao Foundation and the Science and Technology Development," "establishment of an elderly home at a commercial unit", "inappropriate land-granting procedure concerning Travessa do Fogo," "not renewing the employment contracts of teaching staff of the Education and Youth Affairs Bureau" and "the legality of the establishment of intermediate storage of petroleum gas". For the first 4 cases, investigations have been completed and advices or recommendations have been made (please refer to the Appendix for summaries of the cases).

Moreover, the cases commenced for investigation and completed in 2007 included "Prosecution and Penalty Mechanism Concerning Unlicensed Meat Roasting Factory", "Prosecution of Illegal Hotel Proprietors and Unlicensed Tourist Guides" and "Prosecution Procedures Concerning Acts Against *Foreign Trade Law*". As the authorities concerned have already accepted the CCAC's admonitions and have carried out appropriate measures, such as formulation of written guidance, perfecting working procedure and enhancement of professional training for front-line staff, etc., the CCAC therefore filed the cases. As to the case of "employment of massage practitioner without professional qualification as a sports injury therapist" revealed by the CCAC which has reflected the internal maladministration of the public department, since the department adopted measures to improve its internal management in the course of follow-up, the CCAC did not need to make any admonition and filed the case. However, the CCAC will regularly review the implementation of the relevant measures with the department through mechanisms such as the "Integrity Management Plan".

5.1.2 Request for Help and Consultation

In 2008, the CCAC recorded 639 requests for help and consultation, a slight decrease of 1% comparing to that of 2007. To sum up, most of the requests addressed the legal system governing public services, traffic offences, illegal construction, municipal affairs and labour disputes. Those involving illegal construction saw a decrease of more than 33% (the complaints of the same subject also dropped off for more than 10%).

It should be noted that concerning the prosecution against and punishment for administrative infringement regarding the misuse and poor management of private premises, for example, illegal construction, due to the inadequacy and loopholes existing in current legislations of urban construction, the CCAC completed the research and examination on the Power of Intervention of the Public Administration Concerning the Misuse and Poor Management of Private Premises of which the outline of details was published in the 2006 Annual Report of the CCAC. The front-line staff of the CCAC will also explain to the citizens who come to request for help and consultation that the problems did not only lie on the internal operation and management of relevant departments but also the imperfection of the procedures of prosecution and punishment under current law. It is difficult to solve the problems fundamentally before the law is amended. Since the citizens can understand the difficulties in solving the problems concerning illegal construction through various channels, the number of requests for help and consultation (or even complaints) on related matters has decreased.

Meanwhile, there was, however, an increase of over 22% in the requests for help and consultation concerning traffic offences, reflecting citizens' concern on the strength and standard of the law enforcement since the *Law of Road Traffic* was implemented.

Table 16
Classification of requests for help and consultation in the ombudsman area in 2008

Issues	Caseload
The legal system governing public services (rights and benefits of staff, recruitment, discipline and declaration of incomes and properties)	125
Traffic offences	71
Guidelines on the Professional Ethics and Conduct of Public Servants	32
Illegal constructions	32
Municipal affairs	32
Labour disputes	28
Powers and functions of the CCAC	16
Education, sports and tourism	15
Telecommunication	14
Economic and social housing	14
Medical and healthcare	14
Right of abode	13
Illegal labour	10
Taxation	10
Social Security Fund	10
Property registration	8
Illegal businesses operation	8
Assessment and approval of imported labour	7
Access of information	5
Supervision on use of property	5
Improprieties of other procedures	95
Beyond the competence of the CCAC (private sector and lawsuits)	75
Total	639

5.2 Researches and Examinations

5.2.1 Researches and Examinations on System

As to the researches and examinations on systems and operations, the CCAC completed a project of system research entitled *Analysis on Current Regulations on Use of Property and the Relevant Supervisory Mechanism*, which has been submitted to the administrative authority in 2008. Below is a concise introduction of the relevant analysis:

Analysis on Current Regulations on Use of Property and the Relevant Supervisory Mechanism

The CCAC has received many complaints / reports about use of properties, so the research and examination on system was conducted in order to clarify the insufficiencies of current regulations on use of properties and the relevant supervisory mechanism, as well as making recommendations for perfection. After analyzing the current regulations and the relevant supervisory mechanisms, it had revealed incompatibilities, mainly in the 3 below aspects:

1. Neither the *General Regulations on Urban Construction* nor *the Regulations on Use of Urban Real Estate* had clearly defined the statutory denotation of purposes of urban property

The General Regulations on Urban Construction and the Regulations on Use of Urban Real Estate had respectively categorized the purposes of property (The former stipulated 6 types of statutory purposes by listing, while the latter specified 7 types of statutory purposes by providing examples complemented by other unspecified statutory purposes. As for the statutory purposes, they are basically concordant with each other). However, none of these two regulations had further clarified the concrete denotation of every type of the purposes of the properties, that means they had not specified which (kind of) trade activity would be suitable to be operated within the properties of various purposes. On the other hand, although the Rules of Fire Prevention and Safety stipulates the purposes of property and explains the purpose of different kinds of properties and units and the applicable trade activities by using examples, it could not complement the definitions of the statutory purposes of urban property stated in the General Regulations on Urban Construction and the Regulations on Use of Urban Real Estate.

Based on the aforementioned presuppositions, and since most of the laws of "trade activity licensing system" did not clearly stipulate which kind of trade activities shall be operated within the properties of relevant purpose, the competent authorities have to exercise the "discretion" according to their own interpretation while assessing application for license. They have to determine whether or not the purpose of property suits the trade activity in order to avoid constituting inappropriate use. In particular, if the departments do not set up objective standard of law enforcement, different standpoints will then exist in similar cases or "inconsistent" standpoints in the same case, causing the authority's credibility to be questioned. On the other hand, the authority's "interpretation" on the denotation of different purposes of properties also becomes the crux of successful establishment of the relevant facilities, which causes latent risk of corruption.

2. Controversy over "possible compatibility between similar trade activities and different property purposes" due to unclear regulations

Apart from the problems discussed above, competent authorities still have to face the confusion whether similar trade activities are "compatible" with different property purposes. In fact, a trade activity may possess two or more natures / characters, take profit-making elderly homes as an example, even the licensing department has different opinion on whether or not they have the nature of "social facility" or "commercial facility" during different periods of time. This leads to another problem which is more controversial: shall profit-making elderly homes be established at properties for "social facility" purpose, "commercial purpose" or properties which are "compatible" with these two purposes? If an elderly home is allowed to be operated at a property for "commercial purpose" due to its profit-making nature, once its ownership is transferred to a social association which operates it on a non-profit making basis, does this constitute inappropriate use unless the new owner finds another property which is built for the "social facility" purpose? This inference is manifestly absurd.

In view of the context of the *Regulations on Use of Urban Real Estate* and the interpretations made by the lawmaker while formulating the aforementioned norms, it seems that the lawmaker did not take into account the fact that similar trade activities may be compatible with properties for different purposes. Nevertheless, in reality, whether before or after the abovementioned regulations came into force in 2000, the authority always allows the operations of trade activities which have not been clearly stipulated by specific laws of

licensing system about their compatibility. The aforementioned circumstance may lead to public's suspicion of whether or not the authority has assessed and approved the applications in accordance with law and the established assessment criteria, giving rise to potential risks of corruption.

- 3. Ineffective supervision by public law
- a. The public works department did not perform its supervision role in the course of assessment and approval of construction license

In general, before the licensing department makes the final decision concerning application for license, the public works department has usually been participating in the processing of the case: either issuing construction license or rendering professional opinions to fulfil their duties to supervise the use of property. The *General Regulations on Urban Construction* has clearly stipulated that the public works department shall supervise whether or not the construction project conforms to the specific requirements laid down by the "trade activity licensing system".

Therefore, if legislations of the "trade activity licensing system" have already stipulated a particular trade activity to be operated within properties of specific purpose, or that the conformity of the premises with relevant purposes shall be the prerequisite for issuance of construction license, the public works department has the power to dismiss the construction project should it be discovered that the project does not accord with the purpose of property. However, if the licensing system has no concrete regulations as mentioned above, a larger controversy may rise regarding the public works department's competence to dismiss the projects due to "inconformity of purpose". In particular, under the Regulations on Use of Urban Real Estate, "only when the use of property, in law or in fact, different from that indicated in its license of use, inappropriate use has been constituted" and when the party concerned submitted the application for construction license to the public works department, s/he "has not yet utilized" the unit for the purpose different from that indicated in its license of use, whether in law or in fact. However, from another point of view of this case, even if the party concerned has successfully obtained the construction license issued by the public works department, as long as the problem concerning "inappropriate use" is not solved, s/he may not obtain the license successfully in the future.

In reality, the CCAC has discovered that the public works department had issued construction license based on the notion that it was not necessary to verify whether or not there was "potential" alteration of use while assessing and approving construction project. Also, the department did not explain on the future risk of committing "alteration of use" to the applicants. The practice has been detrimental to the "credibility" of the authority and violated the principle of good will under the *Code of Administrative Procedure*.

b. Inconsistency between the administrative supervisory system and the civil supervisory system

According to the current *Civil Code*, whether or not a proprietor of a unit is allowed to modify the constitutive title of the horizontal property to change the purposes of the unit is a common disciplinary power of all proprietors of the units at the property. In principle, the modification of the purpose of property indicated in the constitutive title shall be approved by all proprietors unanimously. Even if the proprietor opts for judicial means to make the modification, s/he shall obtain the agreement of two-third of all proprietors. In that sense, it is stringent to make such modification.

Therefore, the lawmaker made a choice between the public interest and other proprietors' interests regarding some of the trade activities with the nature of public interest, such as social facilities, by stipulating specifically in the "licensing system" that the authority is allowed to issue licenses to facilities which are not established at units of "social facility purpose", without obtaining the agreement of other proprietors. Once the licenses are issued, the operators will not be liable for minor violation of "inappropriate use" if they do not engage in any trade activity which exceeds the prescript of the administrative licenses.

However, the aforementioned special regulation does not rule out the proprietors' right to raise objection about "not using the property for the purpose indicated in the constitutive title" through civil means. Therefore, even if the operator of the facility has obtained the administrative license issued by the authority, s/he may still be exposed to the risk of judiciary lawsuits filed by other proprietors. The operator shall take civil responsibilities or even prohibition from continuing the activity once s/he loses.

Moreover, the authority may be held liable had it not notified the operator of the aforementioned risk while issuing the administrative license.

c. "Proprietors' written consent" is not sufficient to make up for the deficiencies in the current system

Modification of constitutive title requires not only the consent of a certain proportion of proprietors according to the "strict" requirements under the law but also completion of certain procedures and relevant expenses. Besides, the market value of the property might be affected by the alteration of unit. Therefore, in practice, even if the proprietors of the remaining units at the property agreed on the alteration, they might not agree on modification of constitutive title and property registration. According to the information available, the public works department has adopted a "compromising resolution", which was that once the party concerned submitted the written consent by a sufficient proportion of proprietors, the department would issue the construction license or render feasible opinion in the course of issuance of license without requiring the party concerned to modify the constitutive title and property registration. However, it is worth paying attention that since the registered purpose of the unit was not altered in law, the "compromising resolution" adopted by the authority, strictly speaking, is likely to violate the provision that "the utilisation of property shall conform to the registered purpose" under the *Regulations on Use of Urban Real Estate*.

Furthermore, although the proprietors who have signed the consent in principle could not file an administrative or civil petition to the administrative or judiciary authorities against the alteration of purpose, the current legal system (including the *Civil Code* and the *Code of Property Registration*) does not absolutely bar the subsequent owner, who later acquires proprietorship, from lodging a civil proceeding against the licensee for utilising the unit different from the registered purpose, since the "purpose of property" recorded in the constitutive title and Property Registration has not been altered. In other words, the "compromising resolution" adopted by the authority did not "properly" solve the problems existing in the current system.

The various problems mentioned above have to be improved through amendment of law. Relevant suggestions are listed below:

- 1. To standardize the classification of the purposes of properties stated in the *General Regulations on Urban Construction and the Regulations on Use of Urban Real Estate*; clearly define each type of purpose, i.e., which kind / kinds of trade activities is / are suitable to be operated in the properties for the mentioned purposes, and stipulate "whether or not properties for different purposes can be used for same business activity".
- 2. Concerning the trade activities which are considered to have significant value of public interest, the authority should consider how the public interest may override the right to dispose enjoyed by the proprietors, review the pertinent licensing system to make it truly reflect the significant public interests of the relevant trade activities, restrict the proprietors' right to dispose to an appropriate extent. (For example, for mandatory alteration of registered purpose due to the establishment of certain trade activities, the related legislations may be amended to reduce the statutory proportion of consent or stipulate that establishment of the facility can only be prevented by the objection raised by proprietors of a particular proportion, or else, the facility may be established without complying with the registered purpose. In this case, the proprietors and those who acquire ownership of the units at the property afterwards are barred from raising any objection by civil means)
- 3. The authority is advised to confirm the validity of the written consent through law amendment if it deems maintaining current written consent of proprietors to be necessary, so that it will be compatible with the provisions of the *Regulations on Use of Urban Real Estate*, the Civil Code and the Code of Property Registration.

On the other hand, the authority should adopt the measures below prior to law amendment:

1. The public works department and the licensing department should establish clear and standard criteria to interpret the definition of every types of purposes of property and confirm the criteria as standard for law enforcement. (applicable when the public works department assesses and approves construction license as well as provides professional opinions in respect of the licensing procedure and the licensing department assesses and approves application for license)

- 2. As to the situation where the public works department has already released that the activity to be engaged in at the property will contravene the registered purpose in the future while assessing and approving the application for construction license, the department should establish the criteria for issuance of construction license. Even if the license is issued, the department should make the following suggestions as appropriate according to the actual situation:
 - a) The party concerned does not require administrative license for the activity s/he engaged in, however, the procedure of legalization has not yet been undergone. In this case, the public works department should remind the party concerned that s/he will commit inappropriate use of the relevant property when the activity is commenced in the future.
 - b) If administrative license is required for the activity engaged in by the party concerned and the licensing department, according to law, has no authority to exempt the premises from compliance of the requirement of conformity to the purpose of the properties, the public works department should remind the party concerned that change of utilisation will prevent him / her from obtaining the license.
 - c) If administrative license is required for the activity engaged in by the party concerned but the power of exemption of conformity to the purpose of the properties has been conferred upon the licensing department by law, the public works department should also remind the party concerned that even the licenses has been granted, there is still a possibility to face the civil lawsuit filed by other proprietors against his / her inappropriate use of the property in the future.

5.2.2 Research and Examination on Operation

In 2008, the CCAC conducted a conjoint research and examination with the Identification Bureau (DSI) on the operation of its subdivisions, the Department of Travel Documents and the Department of Residents Information, and carried out a research and examination project on the operation of the Labour Inspection Department of the Labour Affairs Bureau.

The Identification Bureau

A. The CCAC and the Identification Bureau (DSI) carried out a conjoint research and examination on operation of the Department of Travel Documents in 2007. In the first quarter of 2008, a consensus of improvement was implemented by the DSI by November 2008.

1. Provision of Information

To adjust the contents of "the procedure of application for minor children's travel document" on the website and the promotional pamphlet.

2. Procedure of issuance of travel document

- To improve the procedure of handling enquiries through establishment of the reviewing mechanism;
- b. To adjust the content of the "declaration of responsibility" which shall be signed by mothers whose marital status are "unmarried" when submitting applications for their minor children and remind them of the legal responsibility caused by false declarations;
- c. To standardize the method of recording outstanding documents and indicate at the column of "Expected day of collection" on the receipts that "the collection date is dependent upon the date when all required documents have been provided";
- d. To send letters to notify the applicants of the suspension of issuing documents and refund the fees charged;

- e. In the cases of not issuing documents and thus having to refund the fees charged, letters will be sent to notify the applicants of the reasons, the means to appeal and the competent authority where the appeal can be lodged;
- f. To immediately verify whether or not there is overlap while receiving applications at the counter; to record the overlapping applications with the computer system; to remind on the application forms that criminal liability will ensue from false declarations and report false declarations to law enforcement authorities if the explanations of the parties concerned are not accepted;
- g. To establish fingerprint cross-checking mechanism for overseas applications submitted by post; to list the amount of every type of fees and indicate the procedure of refunding the remaining sum in the letters attached to the travel documents being sent back;
- h. To properly record the authority's decisions and relevant basis for the requests for expedited issuance of documents after loss of travel documents; to notify the applicant and make relevant records;
- i. In the cases of application of replacement due to damage, it is not necessary for the applicant to undertake to return the old documents in the statement has s/he already returned the old one.

3. Management of documents and files

- To establish the mechanism of archiving the "form of follow-up on matters of issuance of travel document" in chronological order and to destroy the expired forms;
- b. To adjust the format of "case follow-up form" by creating relevant forms respectively for in-person application, application by post from overseas and enquiry by post and to ensure that the forms are filled in clearly and completely;
- c. To carry out stocktaking mechanism and store the travel documents which have been uncollected for more than half year after issuance; to destroy the uncollected travel documents which have expired.

4. Enquiry and access of archiving system

To establish an archive system with index formed by Identification Card numbers for the follow-up and handling of enquiry cases and to add a procedure of "Inspection on existence of enquiry exist".

5. Procedure and record of receipts of fees

To improve the procedure of receipts of fees at the general counters.

6. Personnel training

To research on the enhancement of personnel training in order to facilitate the succession of work.

7. Working rules and guidelines

- a. To formulate written guidelines for the procedure of handling replacement due to loss and damage, including the expected date of collection, period of validity, documents required for expedited application and the approval criteria;
- b. To formulate guidelines for recusation and adopt measures to ensure all staff are clear about the relevant provisions;
- c. To keep a copy of the working procedural guidelines of "receiving applications for travel documents" at the front desk.
- B. The CCAC and the DSI conducted a conjoint research and examination on the operation of the Department of Residents Information in the third quarter of 2008 and reached a consensus on the following improvements:

1. Provision of information

- a. Reasons will not be required for expedited application which are not made on the basis of loss of documents;
- b. To explain the contact methods adopted by the DSI and the matters concerning the charges to the applicants who can only provide overseas contact numbers;

c. To formulate "notice to applicants" for different types of application; the notices should include the means of contact adopted by the authority and the consequences of not submitting outstanding documents in accordance with the notices and to upload the notices on the official website.

2. Procedure of issuance of the Resident Identity Card

- Handle the cases which have been persistently "pending" by considering whether or not the cause is attributable to the party concerned;
- b. To establish fingerprint cross-checking mechanism for the applicants who did not apply for the right of abode but had gone through the fingerprint checking process except for those who have already undergone automatic fingerprint verification.

3. Modification of identification data

- a. To handle the applications for modification of address rejected due the use of inappropriate application form and notify the applicants; To rearrange the application forms for modification of identification data and create another form especially for the declaration of address for receiving the cheque under the Wealth Partaking Scheme;
- b. Regarding the application for change of name, if the applicant cannot present the birth certificate or official certification documents to prove that s/he has ever used the previous name, yet the authority regards the reason for such changing as sufficient, the authority should then request the Chief Executive to make the decision;
- c. To make and archive written records of all applications for updating the fingerprints, including the requests expressed to the authority before submitting formal application and the authority's decisions;
- d. The Director of the DSI should issue and publicize an administrative order to delegate the power to approve/reject residents' application for modification of identification data to the chief of the Department of Residents Information.

4. Notification

For applications being rejected by the authority (including applications for modification of identification data and issuance of certificate) and cases in which the data contained in the applicants' ID cards has been modified by the authority, notifications shall be made by post and the methods and period for making appeals should be included.

5. Handling false declarations of identification data

- a. To review the criteria for reporting cases concerning false identification data to the Public Prosecutions Office and allow the director's discretion on reporting;
- b. For people who were born after 1990 and whose biological father/mother was confirmed not to be legally residing in Macao by the time of his/her birth through judicial verdict, the authority should refer the cases to the Chief Executive and request the latter to decide whether or not to allow them to reside in Macao and issue Resident Identity Cards.

6. Authentication of Resident Identity Card and provision of personal data

- To standardize the handling of application for authentication of document by cancelling the measure that requires the applicants to obtain prior consent of their domestic helpers / clients;
- b. As to the requests by public or private entities involving provision of personal information, establish reviewing mechanism according to the complexity of the details being requested.

7. Internal management

- a. To rearrange the shift of telephone operators at noon;
- b. To review the operating system for the issuance of resident identification documents being used currently; to improve and promote the computer tracking system gradually.

The Labour Affairs Bureau

The joint research and examination on operation conducted by the CCAC and the Labour Affairs Bureau (DSAL) was commenced in late April 2008, featuring an in-depth analysis on the works of the Labour Inspection Department in the areas of labour dispute, fight against illegal employment, industrial injury at work and recruitment agencies. Up to late 2008, the analysis on relevant operation had been completed, but both parties were still discussing the improvement measures agreed upon. (Since the DSAL was focusing on the promotion of the new Labour Relation Law and the preparation for new law enforcement mechanism, the discussion was thus postponed.)

5.3 Integrity Management of Government Departments / Institutions

5.3.1 Integrity Management Plan

Up to February 2009, all 61 government departments / institutions have already joined the Integrity Management Plan – Protocol of Collaboration launched by the CCAC in late August 2007, promising to establish preventive and educational mechanisms regarding internal management.

Each participating department or institution may decide its own pace of implementation of the 2-year plan according to their own situations. To sum up the status of implementation, the plan has been generally implemented. All departments and institutions have already fulfiled the most essential requirement – the formulation of internal code of conduct. Some of them have furthered the improvement based on their initial experiences. In general, the departments have further alerted their staff to the problems concerning recusation, handling of advantages received and outside employment and have improved the operating mechanisms in respect of the enhancement of transparency, justice and the prevention of conflict of interests in procurement process. The summaries of the departments' implementation are listed below:

1. Some departments have established independent working groups responsible for the coordination, research and follow-up on the implementation of various projects indicated in the plan as well as make a specific work schedule.

- 2. Improvement of the mechanism of recusation implementation: Many departments have formulated more concrete and complete recusal mechanisms regarding procurement procedure and assessment, including the recusation of the members of collegial bodies of the departments, which facilitate in enhancing impartiality and transparency of relevant works.
- 3. Systems of handling and review of data and information: many departments have formulated more concrete internal procedures and rules of handling, reviewing and using internal data, documents and other information.
- 4. Conducting risk assessment of internal corruption and formulating preventive measures: many departments have excogitated working procedures and rules for corruption-prone areas in order to fortify supervision, especially on the formation of tender-evaluation committee during the procurement process, the criteria of evaluation and the recusal mechanism. Also, some departments have formulated independent code of practice for field work inspection in order to consolidate the supervision.
- 5. Some departments requested continuous technical assistance from the CCAC especially in the aspect of fortification of personnel's awareness of integrity and the technical guidance on risk assessment of corruption.

5.3.2 "Research Awards on Comparative Studies of Ombudsman Systems in Asia"

The 3 shortlisted research teams participating in the "Research Awards on Comparative Studies of Ombudsman Systems in Asia" co-organized by the CCAC and the Macao Foundation completed their research reports in February 2008. According to the rules of the scheme, the organizer may select the best research report and award the team. The Jury Panel has selected the report entitled "Exploration of the Direction of Development of the Ombudsman System in Macao – Comparative Studies of Ombudsman Systems in Asia" by the Association of Study of Law of the 21st Century of Macao as the most outstanding research.

The report mentioned above and the report entitled "Comparative Studies of Ombudsman Systems in Asia: Observation on Macao, Korea and India" by another team were being translated into English. The English versions will be submitted to the Asian Ombudsman

Association upon the completion of proofreading in order to enhance the promotion of the ombudsman system in Asia.

5.4 Formulation of Guidelines and Organization of Seminars / Workshops

The CCAC continued to organize seminars and workshops on topics such as "Professional Ethics and Conduct", "Public Procurement" and "Ombudsman" targeting at the law enforcement staff who were going to be promoted, newly recruited public servants, personnel of newly established public departments/institutions and staff of private enterprises or organizations or those partly owned by the government. Aside from this, representatives were also sent to conduct seminars about the integrity building of Macao in response to invitations by departments of the local government in Mainland China.

5.5 External Exchanges and Personnel Training

As to external exchange, the Ministry of Supervision of the People's Republic of China, the ICAC of Hong Kong and the CCAC co-organized conferences respectively in Shenzhen and Hong Kong, namely "Corruption Prevention Strategies in relation to Construction Projects" and "Conference on Corporate Governance in the Financial Sector". The CCAC sent delegates to these conferences, while representatives of local public departments / institutions and professionals from private sector in related fields also attended the conferences. On the other hand, the CCAC continued to take part in the symposia and conferences held by the International Ombudsman Institution and other international corruption prevention organizations.

As to personnel training, the Ombudsman Bureau of the CCAC for the first time dispatched staff to attend the course on studies of internal affairs of China which was organized by the China National School of Administration exclusively for CCAC's staff and continued to take part in the investigation course co-organized by the Chinese People's Public Security University and the CCAC. Moreover, the CCAC also sent delegation to the Mainland China to observe the operation of supervisory bodies.



CHAPTER VI COMMUNITY RELATIONS

Chapter VI – Community Relations

Based on the foundation laid, the CCAC made use of diversified means to enhance citizens' awareness of integrity, with priority on moral education for teenagers, anti-electoral corruption promotion and collecting opinions about anti-corruption in the private sector. The Commission strived to expand the community relations through exchange activities at different levels in order to obtain citizens' opinions about integrity building, popularize the sense of public supervision and encourage integration of all sectors in society in integrity building. Moreover, the CCAC reinforced partnership with international organizations and exchanged anti-corruption experiences with other law enforcement agencies.

6.1 Integrity Education

In 2008, the CCAC continued to carry out promotion and education of integrity among public servants, students, civil associations and staff of public utilities and private entities in different forms. Throughout the year, a total of 377 seminars and symposia were held, while the number of participants reached 33,500.

Table 17 Seminars held in 2000 to 2008

		2000	2001	2002	2003	2004	2005	2006	2007	2008
Public servants	No. of Sessions	23	94	132	132	51	173	67	88	64
	No. of Participants	855	5,209	7,435	11,385	1,752	20,228	3,340	4,731	2,842
Students,	No. of Sessions	10	21	40	50	301	175	263	182	286
trainees	No. of Participants	886	5,386	3,271	6,105	27,483	12,430	18,902	14,300	29,746
Teachers	No. of Sessions	_	_	_	24	_	_	_	_	_
	No. of Participants	1	-	-	810	-	-	-	_	_
Members of civil associations	No. of Sessions	14	19	10	6	22	17	25	13	8
	No. of Participants	1,678	1,736	493	190	890	876	1,010	413	277
Staff of credit	No. of Sessions	6	4	2	6	8	3	2	1	1
institutions	No. of Participants	220	132	55	316	538	135	75	90	100
Staff of public utilities and private entities	No. of Sessions		2	1	_	3	3	9	16	18
	No. of Participants	ı	70	25	ı	105	154	393	586	535
Total	No. of Sessions	53	140	185	218	385	371	366	300	377
	No. of Participants	3,639	12,533	11,279	18,806	30,768	33,823	23,720	20,120	33,500

6.1.1. Integrity Education Targeting Public Servants

In 2008, the CCAC organized seminars on various topics for public servants in different fields. A total of 64 seminars on topics including integrity and observance, professional ethics and conduct, public procurement procedure and ombudsman were organized, with 2,842 participants.

Table 18
Seminars and symposia organized for public servants in 2008

Tonic	No. of	No. of		
Topic	Department	Target	Sessions	Participants
Symposium of "Noble Character, Righteous Conduct"	Technology Committee / Environmental Protection Committee / Combustibles Security Committee / Macau Government Tourist Office	Staff	3	92
Basic Training Course for Public Servants	Public departments	Staff	36	1,260
Workshop on Integrity Management	Land, Public Works and Transport Bureau / Financial Services Bureau	Chief personnel, inspectors and staff	4	160
Public Procurement Procedure	Health Bureau / University of Macau / Public Administration and Civil Service Bureau	Procurement and engineering staff	4	330
Declaration of Incomes and Properties	ties Academy of Public Security Forces Security trainees of 9 th course		1	200
Advanced Course on Integrity		Deputy Superintendents	1	36
	Academy of Public Security Forces	Sergeants	1	23
		Deputy Sergeants / Deputy Divisional Officers	2	78
	Macao Customs Service	Deputy Customs Inspectors	1	30
	Macao Prison	Sergeant Promotion Course	1	12
Integrity and Observance	Judiciary Police	Trainees of the 12 th Criminal Investigator Training Course	1	80
	Civic and Municipal Affairs Bureau	New recruits	3	125
Professional Ethics and Conduct	Macao Customs Service	Principal Customs Officers	1	49
	Academy of Public Security Forces	Senior Policemen / Firemen	2	267
	Civil Engineering Laboratory of Macau	Leadership and staff	3	100
	64	2,842		

6.1.2 Integrity Education Targeting Teenagers and Students

In 2008, the CCAC continued to organize a series of activities entitled "New Generation of Integrity—an Education Programme on Honesty for Primary Students" for students in primary 4 to 6 at the activity room named "Paradise of Integrity" at the CCAC's Branch Office at Areia Preta. A total of 5,812 students from 30 primary schools participated in 157 activities throughout the year.



Primary students participated in "New Generation of Integrity" series

The CCAC organized 17 activities before and after the Children's Day on 1st June, celebrating the festival with 654 primary students from different schools. In addition, the CCAC co-organized bazaars with several government departments and the activity celebrating Children's Day organized by the Macao Federation of Trade Unions in order to instil in the children the value of honesty and law observance through the games. The mascot of the CCAC, William, visited the children staying at the Hospital Centre S. Januario to celebrate the festival with them.



Children staying at the hospital celebrated Children's Day with "William"

The promotional and educational programmes targeting teenagers include a new project entitled "Act on Integrity." The CCAC commissioned a theatre group to stage a drama which introduced correct values and the spirit of integrity and law-abidingness to teenagers through stories and interaction. In 2008, the CCAC co-organized the drama tour with 5 schools, attracting 1,645 students to join. The programme will be continued.

The CCAC continued to co-organize "Integrity Week" and seminars on integrity education with secondary schools and publicized the information about integrity among teenagers through "Teen City" (www.ccac.org.mo/teencity), a website promoting integrity among teenagers, while the development of teaching materials for integrity education targeting secondary students has entered the final stage. Moreover, the CCAC organized a total of 21 seminars on integrity for students from higher education institutes and trainees of vocational trainings, with 1,497 participants.

In 2008, the CCAC organized or participated in a number of activities for teenagers, such as co-organizing a comic drawing contest entitled "Draw a New World of Integrity" with the General Association of Chinese Students of Macau. The contest attracted over 200 pieces of work and a tour exhibition of the awarded works was held at 12 schools and higher education institutes. The CCAC also held seminars at two higher education institutes concurrently during the exhibitions in order to enhance students' knowledge of the works of the CCAC. Moreover,

the CCAC also co-organized "Integrity and Honesty: the 9th Chinese Calligraphy Contests for Macao Students" with the General Association of Chinese Students of Macau and participated in the "Carnival against Crime and Drug Abuse" organized by Junior Police Call.



Introducing awareness of integrity and law-abidingness to secondary students through drama



Chief of Cabinet of the Commissioner, Ho Ioc San, delivered speech during the inauguration ceremony of "Integrity Week" at Our Lady of Fatima Girl's School



The exhibition of awarded works of the comic drawing contest attracted many students



The representatives of the CCAC and the General Association of Chinese Students of Macau, guests and winners of Honesty and Integrity: the 9th Chinese Calligraphy Contests for Macao Students

6.1.3 Integrity Education Targeting Members of Community Associations and Private Entities

In 2008, there were a total of 8 seminars and visits organized for members of community associations which attracted 277 participants. For the staff of private entities, 19 seminars were organized with a total of 635 participants. The CCAC will carry out the promotions for community associations and private entities in various ways, focusing on different topics for different targets in order to achieve the best effect.



Seminar organized for the Scout Association of Macau, aiming to promote integrity among scouts



Members of the Women's General Association of Macau visited the CCAC's Branch Office at Areia Preta

Table 19
Seminars held for community associations, educational institutions, departments and companies in 2008

	Community association, educational institution and company	Target	No. of Sessions	No. of Participants	Sub-total of participants
	Green Island Community Centre of General Union of Neighbourhood Associations of Macao	Elderly members	1	75	
	The Women's General Association of Macau	Members	2	60	
	The Scout Association of Macau	Scouts	1	60	
Community association, educational institute and others	Youth Service Department of Mutual Assistance Association of Neighbourhood of Fai Chi Kei		1	18	277
	Bosco Youth Service Network, Family Service Centre of Praça de Ponte e Horta	Members	2	40	
	Family Service Centre of Kin Wa, Mong Ha Community Centre of General Union of Neighbourhood Associations of Macao		1	24	
	Tai Fung Bank	New recruits	1	100	
	CLP Engineering Limited	Staff	2	20	
	LV	Staff	2	50	
	MGM Grand Macau	Staff of Security Department	3	105	
	Otis Elevator Company	Staff	1	20	
Private entities	Seng Fong Civil Engineering Consultancy Co. Ltd.	Staff	1	50	635
	Hutchinson Telecom	Management and staff	5	100	
	The Macao Water Supply Co. Ltd	Staff	2	110	
	Macau International Airport Co. Ltd.	Management and staff	1	50	
	Airport Information Management Solution Co. Ltd.	Staff	1	30	
	Total	27	912	2	

To conclude, the CCAC organized a total of 377 sessions of various seminars, talks and symposia in 2008, attracting 33,500 participants. The details are listed below:

Table 20 Seminars, symposia and workshops held in 2008

Target	Nature / topic of activity	No. of sessions	No. of participants	Sub-total of participants	
	Symposium of "Noble Character, Righteous Conduct"	3	92		
	Basic Training Course for Public Servants	36	1,260		
	Workshop on integrity management	4	160		
Public servants	Public procurement procedure	4	330	2,842	
rublic servants	Declaration of Incomes and Properties	1	200	2,042	
	Advanced integrity course	6	179		
	Integrity and observance	4	205		
	Professional Ethics and Conduct	6	416		
Primary students	New Generation of Integrity – an Education Progremme on Honesty for Primary Students	157	5,812	6,466	
	June 1 st Children's Day Special Programme	17	654		
Secondary students	Education Programme on Honesty for Teenagers	77	20,138	21,783	
	Drama Touring Programme for Secondary Students	14	1,645		
College students	College students Seminar on "Integrity Awareness"		127	1 407	
Trainees	Seminar on "Integrity Awareness"	18	1,370	1,497	
Civil associations	"Education on Honesty for Teenagers" Seminar	Seminar 5 14		277	
	Seminar on "Integrity Awareness" 3		135	277	
Public utilities, credit institutions and private entities	dit institutions Seminar on "Integrity Awareness"		635	635	
	Total			500	

6.2 Community Activities

The CCAC strived to enhance its community relation by extensively liaising with different associations and institutions through the networking of the Branch Office, obtaining their opinions and suggestions in order to gain cooperation of all sectors in the integrity building. In 2008, the CCAC's representatives visited 11 civil associations in different districts,

organized seminars for the associations and participated in activities held by them in order to jointly promote integrity awareness. Moreover, the Branch Office at Taipa is expected to start operating in mid-2009 in order to further the CCAC's community activities.



The CCAC's representatives met the leadership of civil associations and exchanged opinions with them

The Branch Office at Areia Preta receives citizens' complaints, reports, requests for help and consultations. In 2008, the number of complaints, reports, requests for help and consultation and simple enquiries totalled 568, similar to that of 2007 (562).

Table 21 Number of citizens received by the Branch Office in 2008

Complaints / reports		Written	Requests for help/	Simple enquiries		
In person	Telephone	complaints	consultation	In person	Telephone	
35	1	13	160	281	78	
Sub-total: 49			Sub-total: 519			
Total: 568						

6.3 Collecting Opinions about Anti-Corruption in Private Sector

In order to comply with the Policy Address of the Macao SAR Government 2008 and fulfil the objectives of the *United Nations Convention Against Corruption*, the CCAC's jurisdiction will be expanded to the private sector. Therefore, the CCAC organized a series of symposia and seminars in order to obtain the opinions from various sectors in the society.

In early March 2008, the CCAC organized 2 sessions of forum entitled "Private and Public Sector: Towards Integrity and Fairness". Experts and scholars from Macao, Hong Kong and Portugal were invited to give speech, while there were over 700 participants, including members of the Executive Council and the Legislative Assembly, judges and public prosecutors, senior management and public servants at different levels of public departments and institutions, representatives of community associations, employers of private companies and representatives from different strata of the society, who were active in posing questions, exchanging views and discussing with the guest speakers.



The Commissioner, Cheong U, and guest speakers

Following the forum "Private and Public Sector: Towards Integrity and Fairness," the CCAC co-organized a series of symposia entitled "Anti-Corruption Extends to Private Sector" with a number of community associations from the major sectors of the society from April to June 2008 in order to collect opinions about anti-corruption in private sector. Experts from related sectors in Hong Kong were invited to be the guest speakers to share their experiences in corporate ethics and integrity management.

Date	Co-organizer	Guest speaker
17 th April	Macau Institute of Financial Services	Michael Chan Kee-huen Head of Group Compliance of Ping An Insurance (Group) Company of China Ltd. of Hong Kong and senior member of Hong Kong Institute of Certified Public Accountants (HKICPA) and Association of Chartered Certified Accountants (ACCA)
9 th May	Macao Media Workers Association, Macao Journalists Club, Macao Journalists Association, Macao Media club	Pang Kin-Kee Judge of the Court of First Instance of the High Court of Hong Kong and President of Electoral Affairs Commission Tony Kwok Man-wai Former Deputy Commissioner and Head of Operations of Independent Commission Against Corruption (ICAC) of Hong Kong
14 th May	The United Association of Food and Beverage Merchants of Macao	Woo-Chu Vice President of Hong Kong Catering Industry Association
16 th May	Association of Macao Tourist Agents, Macau Travel Agency Association, Travel Industry Council of Macau	Joseph Tung Executive Director of Travel Industry Council of Hong Kong
22 nd May	The Macau Institute of Engineers Association of Architects of Macao	Andrew Chan Member of the Corruption Prevention Advisory Committee of ICAC of Hong Kong, Vice President of Hong Kong Institution of Engineers and Arup Group of Hong Kong
30 th May	Association of Small and Medium Enterprises of Macao	Stanley Lau Vice President of Federation of Hong Kong Industries of Hong Kong and Managing Director of Renley Watch Mfg Co Ltd.
16 th June	20 local public servants' associations	Julie Mu Fee-man Assistant Director of Community Relations of ICAC of Hong Kong



Deputy Commissioner, Tou Wai Fong, speakers and guests at the symposium co-organized with the financial sector



Representatives of public servants' associations

6.4 Study and Promotion of Anti-Electoral Corruption

The 4th Legislative Assembly Election is going to take place in 2009. Highly concerned about the integrity and impartiality of election, the CCAC has established the Task Force to Fight Against Electoral Corruption to conduct the works on prevention and promotion. In November 2008, the Commission co-organized the "Happy Day of Voters Registration" twice with the Public Administration and Civil Service Bureau (SAFP), aiming to promote voters registration and the message of electoral integrity in the public. Based on the experiences in the supervision on the Legislative Assembly Election 2005, the education on "clean election" has become part of regular promotional activities and was added into the activity for primary 5 students of the New Generation of Integrity—an Education Programme on Honesty for Primary Students" and the "Education Programme on Honesty for Secondary Students." In 2008, the CCAC had been actively liaising with local secondary schools to co-organize seminars on "clean election" or "Act on Integrity" in order to enhance teenagers' awareness of electoral integrity. The Guidelines for Voters Registration have been published based on the newly revised voters registration law and were distributed to public departments, schools, civil associations and private entities for free. With the co-operation of the SAFP, the copies are available at the voters registration stations at different districts in order to educate the newly registered voters.



The guests officiated the inauguration ceremony



Accompanied by the leadership of the CCAC, Secretary for Administration and Justice visited the CCAC's booth

6.5 Conferences Held by Supervisory Agencies of Mainland China, Hong Kong and Macao

In January and December 2008, the Ministry of Supervision of the People's Republic of China, the ICAC of Hong Kong and the CCAC co-organized conferences respectively in Shenzhen and Hong Kong, namely "Corruption Prevention Strategies in relation to Construction Projects" and "Conference on Corporate Governance in the Financial Sector." The participants included members of the supervisory agencies of Mainland China, Hong Kong and Macao and senior management staff and professionals in related fields.



The Commissioner, Cheong U, addressed the opening ceremony of the conference "Corruption Prevention Strategies in relation to Construction Projects"



Vice Minister of Supervision, People's Republic of China, Yao Zengke (middle), Commissioner of ICAC, Timothy Tong (left), and Commissioner of CCAC, Cheong U at the opening ceremony of the Conference on Corporate Governance in the Financial Sector

6.6 Regular Promotional Works

6.6.1 Promotions through Various Channels

The CCAC continued to extensively publicize information about integrity through various channels. The efforts included:

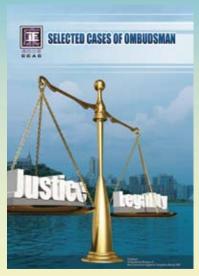
- Publishing articles in the Chinese press "Clean Administration Forum". Some of them were published in *Periodicals of the Association of Adult Education of Macao* and *Kai Pou*, the Macao Prison publication;
- Explaining the works of the CCAC on TV information programme "Enquiry and Reply";

- Publicizing information about integrity through newspaper advertisements, radio commercials, bus advertisements and indoor lightbox advertisements, etc.;
- Producing promotional gifts for students;
- Participating in the Caritas Bazaar of Macao;
- Publishing the Annual Report of the CCAC in Chinese, Portuguese and English;
- Continuing to publish the quarterly CCAC bulletin in Chinese and Portuguese and half-yearly CCAC Newsletter in English;
- Published the Portuguese version of *Integrity Story Salon*, which promoted integrity, fighting corruption and observance of law among teenagers of different cultural and linguistic backgrounds by comic;



Portuguese version of Integrity Story Salon

- Publishing the English version of Selected Cases of Ombudsman;



English version of Selected Cases of Ombudsman

- Creating a new poster with the theme on "Act in accordance with Law. Do not Accept Advantage." aiming to enhance the public servants' awareness of integrity; The copies were distributed to government departments, civil associations and schools;



Poster of "Act in accordance with Law. Do not Accept Advantage."

- Publishing anti-corruption leaflets to promote the anti-corruption function of the CCAC.



Anti-Corruption leaflet entitled "Both Giving and Taking Bribe are Offences"

6.6.2 Integrity Volunteer Team

In 2008, the CCAC's Integrity Volunteer Team continued to assist in the promotional and educational works of the CCAC and endeavoured to participate in many promotional activities. Meanwhile, the team members demonstrated their devotion to the community by joining the Charity Walk for Millions, donating money and visiting elderly homes.



The Integrity Volunteer Team and the CCAC personnel participated in Charity Walk for Millions

Moreover, in order to enhance the participation of members and the spirit of teamwork, the CCAC organized the Integrity Volunteers' Day 2008 in late October. Deputy Commissioner, Tou Wai Fong, and Chief of the Cabinet, Ho loc San, also participated in the activity and met with the volunteers to exchange views on the integrity building in Macao.



Volunteers and the leadership of the CCAC shared opinions at the Integrity Volunteers' Day 2008

6.7 Liaison and Exchange

6.7.1 Liaison with the Media

Maintaining close connection and good partnership with the media facilitates the communication and cooperation between the CCAC and different sectors. The CCAC organized the "Tea Meeting on Clean Administration" each year in order to obtain opinions and suggestions about anti-corruption work from media workers. The Commission also held press conferences to release the information about anti-corruption work to the media in order to enhance the transparency.



The annual "Tea Meeting on Clean Administration" between the CCAC's leadership and media directors

6.7.2 External Exchange

In 2008, the CCAC actively engaged in the exchange and liaison with anti-corruption and ombudsman agencies of Mainland China, Hong Kong and other countries and regions. The exchange activities attended by the Commission included a visit to the Public Complaints Bureau and the Anti-Corruption Agency of Malaysia, the 3rd Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities in Kiev,

Ukraine, the Board of Directors' Meeting of the International Ombudsman Institute (IOI) in Hong Kong, the Anti-Corruption Expertise Workshop in Singapore at which the promotional and education works of the CCAC were introduced, the 13th International Anti-Corruption Conference in Athens, the 5th China-ASEAN Prosecutors General Conference in Manila, the 12th Steering Group Meeting of ADB / OECD Anti-Corruption Initiative for Asia and the Pacific and Regional Conference in Singapore and the Symposium of Brazilian Ombudsmen.



The CCAC's delegation and the leadership of the Anti-Corruption Agency of Malaysia



The CCAC's delegation visited the Public Complaints Bureau of Malaysia and the Commissioner, Cheong U presented a souvenir to the Director General of the Bureau



The CCAC's delegation was invited to have a work meeting with the Ministry of Supervision of China in Beijing



The delegation, Deputy Prosecutor-General of the Supreme People's Prosecutorate, Zhang Geng, (middle in the front row) and Director General of International Judicial Cooperation Department, Ye Feng (second from the right in the front row)



The Commissioner, Cheong U, and board members at the IOI Board of Directors' Meeting in Hong Kong



The Commissioner, Cheong U, was invited to deliver a themed speech at the 3rd Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities in Ukraine



Chief of Cabinet of the Commissioner, Ho loc San, was invited to deliver a speech at the Anti-Corruption Expertise Workshop in Singapore



Attendants of the 5th China-ASEAN Prosecutors General Conference



Deputy Commissioner, Afonso Chan, led a delegation to the 13th International Anti-Corruption Conference in Athens



Delegation at the 12th Steering Group Meeting of ADB / OECD Anti-Corruption Initiative for Asia and the Pacific

In 2008, the CCAC received delegations from various countries and regions, such as the delegation of the ICAC of Hong Kong, the Australian Consulate-General in Hong Kong, members of National Parliament of the East Timor, the Consulate-General of New Zealand in Hong Kong, delegations of the Administrative School of Finland, the China University of Political Science and Law, board members of the IOI who joined the IOI Board of Directors' Meeting and the Ministry of Supervision of China.



Delegation of the ICAC led by the Commissioner of ICAC, Timothy Tong, and the leadership of the CCAC



Members of the Board of Directors of the IOI visited the Branch Office at Areia Preta



Vice Minister of Supervision of the PRC, Yao Zengke (second from the left in the front row), led a delegation to the CCAC and met with the Chief Executive, Edmund Ho

Moreover, the CCAC's leadership visited and had meetings with leaders of many local associations and organizations, including the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Macao SAR, representatives of the Chinese People's Liberation Army Macao Garrison, the Macau Development Strategy Research Centre, the Association of Chinese Literature, the Scout Association of Macau, the Women's Association of Macau, the Department of Youth Service of the Mutual Assistance Association of Neighbourhood of Fai Chi Kei, the Bosco Youth Service Network, the Charity Foundation of Macao Daily News Readers. Meanwhile, the representatives of the CCAC also visited the General Union of Neighbourhood Associations of Macao, the Macao Federation of Trade Unions, the General Association of Chinese Students of Macau, the Macao New Chinese Youth Association, the Social Service Centre of Sheng Kung Hui, the Mutual Assistance Association of Neighbourhood of 6 Ruas Chou Toi, the Mutual Assistance Association of Neighbourhood of Bairro O T'âi, the Macau Association of Support for the Disabled, the Family Service Centre of the Women's Association of Macau, the Charity Association of Sheun Tao Church, the Pastoral Centre of Areia Preta, the Welfare Association of Residents at Taipa and Coloane, the Taipa Community Centre of the General Union of Neighbourhood Associations of Macao, the Family Service Centre of Kin Wa and the Activity Center of the Macao Federation of Trade Unions at Taipa.



The Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Macao SAR, Lu Shu Min, who visited the CCAC, and the Commissioner, Cheong U



The Commissioner, Cheong U, led the CCAC's representatives to visit the General Association of Chinese Students of Macau



The CCAC's leadership met with representatives of the General Union of Neighbourhood Associations of Macao



The CCAC's leadership visited the Macao Federation of Trade Unions



CHAPTER VII ADMINISTRATION

Chapter VII – Administration

7.1 Budget

7.1.1 Legal Framework

The CCAC is a public entity endowed with functional, administrative and financial autonomy, its organization and operations being governed by Law no. 10/2000 and Administrative Regulation no. 31/2000. In the meantime, the general financial system of autonomous entities as stipulated in Administrative Regulation no. 6/2006 is complementarily applicable to the CCAC.

The budget of the CCAC for 2008 was approved by the Executive Order no. 52/2008 of the Chief Executive and was published in Series 1, Issue 8 of the *Official Gazette of the Macao SAR* on 25^{th} February 2008. The budgeted income approved was MOP108,432,000.00 (one hundred and eight million, four hundred and thirty-two thousand patacas).

After closing accounts of 2007 and settling the related surplus, the CCAC recorded a final management surplus of MOP13,501,977.66 (thirteen million, five hundred and one thousand, nine hundred and seventy-seven patacas, and sixty-six avos), which was MOP1,498,022.34 (one million, four hundred and ninety-eight thousand, twenty two patacas, and thirty-four avos) less than the budgeted management surplus, MOP15,000,000.00 (fifteen million patacas). The actual surplus was less than budgeted surplus because the "one-twelfth" budgeted appropriation which was supposed to be deposited into the Commission's account in December 2007, amounting to MOP5,731,724.60 (five million, seven hundred and thirty-one thousand, seven hundred and twenty-four patacas, and sixty avos), were saved in the CCAC's bank account by the Financial Services Bureau on 2nd January 2008. According to financial principles, the appropriation could only be considered as an income in 2008. As a result, insufficient surplus occurred. Since the amount of the actual surplus was less than that of the budgeted surplus, under Section 3 of Article 66 of Administrative Regulation no. 6 / 2006, MOP1,498,022.34 (one million, four hundred and ninety-eight thousand, twenty-two patacas, and thirty-four avos) was

drew from the budget no. 05-04-00-00-09 of the CCAC, which was "backup appropriation". In the sense, the CCAC, in accordance with law, compiled the Supplementary Budget 1 amounting to MOP1,498,022.34 (one million, four hundred and ninety-eight thousand, twenty-two patacas, and thirty-four avos) approved by Executive Order no. 141/2008 of the Chief Executive and was published in Series 1, Issue 20 of the *Official Gazette of the Macao SAR* on 19th May 2008. Moreover, in order to make up the sum drawn from the "backup appropriation" and due to the modification of the personnel system of investigation staff, the Supplementary Budget 2 for the CCAC was MOP11,950,000.00 (eleven million, nine hundred and fifty thousand patacas) approved by Executive Order no. 184/2008 of the Chief Executive and was published in Series 1, Issue 25 of the *Official Gazette of the Macao SAR* on 23rd June 2008. Therefore, after the adjustment, the budget for the CCAC to carry out various projects and activities in 2008 totalled MOP 118,883,977.66 (one hundred and eighteen million, eight hundred and eighty-three thousand, nine hundred and seventy-seven patacas, and sixty-six avos).

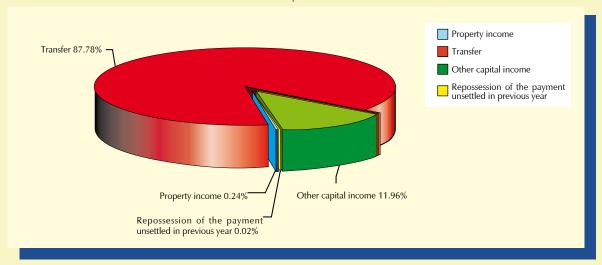
7.1.2 Budgeted Income

The amended budgeted income for 2008 was MOP118,883,977.66 (one hundred and eighteen million, eight hundred and eighty-three thousand, nine hundred and seventy-seven patacas, and sixty-six avos). However, the actual income was MOP112,856,733.02 (one hundred and twelve million, eight hundred and fifty-six thousand, seven hundred and thirty-three patacas, and two avos), with a difference of MOP6,027,244.64 (six million, twenty-seven thousand, two hundred and forty-four patacas, and sixty-four avos) less than the budgeted income, thus resulting in an execution rate of 94.93%. Out of the total actual income of MOP112,856,733.02 (one hundred and twelve million, eight hundred and fifty-six thousand, seven hundred and thirty-three patacas, and two avos), the major part came from the item of "Transfer of the General Budget of the Macao SAR" amounting to MOP99,064,326.40 (ninety-nine million, sixty-four thousand, three hundred and twenty-six patacas, and forty avos), accounting for 87.78% of the actual total. Another major source of income was "Other Capital Income", which was MOP13,501,977.66 (thirteen million, five hundred and one thousand, nine hundred and seventy-seven patacas, and sixty-six avos), accounting for 11.96% of the actual total.

Table 22 Financial income in 2008

Codes	Designation	Budgeted	Supplementary	Supplementary	Total budgeted	Actual inc	ome	D.((Execu- tion rate
		income	budget 1	budget 2	income	Amount	Percentage	Difference	
	Ordinary income	93,422,000.00	_	_	105,372,000.00	99,334,996.16	88.02%	-6,037,003.84	94.27%
04-00-00	Property income	460,000.00	_	_	460,000.00	269,143.66	0.24%	-190,856.34	58.51%
05-00-00	Transfers	92,958,000.00	_	_	104,908,000.00	99,064,326.40	87.78%	-5,843,673.60	94.43%
06-00-00	Durable goods sale	1,000.00	_	_	1,000.00	447.00	0	-553.00	44.70%
07-00-00	Sale of services and non-durable assets	2,000.00	П	11,950,000.00	2,000.00	1,077.50	0	-922.50	53.88%
08-00-00	Other ordinary income	1,000.00	-	_	1,000.00	1.60	0	-998.40	0.16%
	Capital income	15,010,000.00	_	_	13,511,977.66	13,521,736.86	11.98%	9,759.20	100.07%
13-00-00	Other capital income	15,000,000.00	(1,498,022.34)	_	13,501,977.66	13,501,977.66	11.96%	0.00	100.00%
14-00-00	Reposses- sion of the payment unsettled in previous year	10,000.00	-	-	10,000.00	19,759.20	0.02%	9,759.20	197.59%
TO	OTAL	108,432,000.00		10,451,977.66	118,883,977.66	112,856,733.02	100%	6,027,244.64	94.93%

Table 23 Income components in 2008



7.1.3 Budgeted Expenditure

Out of the adjusted budgeted total of MOP118,883,977.66 (one hundred and eighteen million, eight hundred and eighty-three thousand, nine hundred and seventy-seven patacas, and sixty-six avos), the actual amount of expenditure was MOP101,774,613.20 (one hundred and one million, seven hundred and seventy-four thousand, six hundred and thirteen patacas, and twenty avos), resulting in the execution rate of 85.61%. This was because the project of the acquisition of machinery, equipments and durable assets was uncompleted in 2008. Moreover, the fitting-out works of the CCAC's Branch Office at Taipa had not yet been started, resulting in a surplus.

Of the actual expenditure of MOP101,774,613.20 (one hundred and one million, seven hundred and seventy-four thousand, six hundred and thirteen patacas, and twenty avos), the largest portion, amounting to MOP62,172,139.90 (sixty-two million, one hundred and seventy-two thousand, one hundred and thirty-nine patacas, and ninety avos), went to personnel costs. This accounted for 61.09% of the total expenditure. The second largest expenditure was on "Acquisition of Asset and Service", totalling MOP22,353,574.00 (twenty-two million, three hundred and fifty-three thousand, five hundred and seventy-four patacas) and accounting for 21.97% of the total. The amount for "Regular Transference" was MOP34,133.80 (thirty-four thousand, one hundred and thirty-three patacas, and eighty avos), accounting for 0.03%. The amount for "Other Ordinary Expenditure" was MOP15,400,934.20 (fifteen million, four hundred thousand, nine hundred and thirty-four patacas, and twenty avos), accounting for 15.13%. In addition, the amount for investment was MOP1,813,831.30 (one million, eight hundred and thirteen thousand, eight hundred and thirty-one patacas, and thirty avos), accounting for 1.78% of the actual total expenditure.

As the actual income was MOP112,856,733.02 (one hundred and twelve million, eight hundred and fifty-six thousand, seven hundred and thirty-three patacas, and two avos) and the total expenditure was MOP101,774,613.20 (one hundred and one million, seven hundred and seventy-four thousand, six hundred and thirteen patacas, and twenty avos), thus the difference was MOP11,082,119.82 (eleven million, eighty-two thousand, one hundred and nineteen patacas, and eighty-two avos).

Since the budgeted management surplus of 2008 was MOP12,000,000.00 (twelve million patacas) and the actual management surplus was MOP11,082,119.82 (eleven million, eighty-two thousand, one hundred and nineteen patacas, and eighty-two avos), the related management surplus was MOP917,880.18 (nine hundred and seventeen thousand, eight hundred and eighty patacas, and eighteen avos) less than the budgeted management surplus. The reason for the actual management surplus being less than the budgeted management surplus was mainly because the actual income was MOP6,027,244.64 (six million, twenty-seven thousand, two hundred and forty-four patacas, and sixty-four avos) less than the budgeted income in 2008. The difference included a decrease in the "05-01-03-01 Transference of the Budget of Macao SAR" of MOP5,843,673.60 (five million, eight hundred and forty-three thousand, six hundred and seventy three patacas, and sixty avos).

Table 24
Financial expenditure in 2008

		Initial	Supplementary	Budget	Approved	Actual	Surplus	Execution rate
Code	Designation	appropriation (1)	budget (2)	amendment (3)	appropriation (4)=(1)+(2)+(3)	expenditure (5)	(4)-(5)	(5)/(4) X 100%
	Ordinary Expenditures	100,202,000.00	10,451,977.66	1,602,000.00	112,255,977.66	99,960,781.90	12,295,195.76	89.05%
01-00-00-00	Personnel	60,325,000.00		6,182,000.00	66,507,000.00	62,172,139.90	4,334,860.10	93.48%
01-01-00-00	Fixed and long-term remuneration	56,456,000.00		6,551,000.00	63,007,000.00	59,459,711.70	3,547,288.30	94.37%
01-02-00-00	Extra remuneration	2,554,000.00		-869,000.00	1,685,000.00	1,416,122.50	268,877.50	84.04%
01-03-00-00	Bonus in kind	25,000.00			25,000.00	15,718.90	9,281.10	62.88%
01-05-00-00	Providence welfare	595,000.00		-180,000.00	415,000.00	323,190.00	91,810.00	77.88%
01-06-00-00	Compensation of expense share	695,000.00		680,000.00	1,375,000.00	957,396.80	417,603.20	69.63%
02-00-00-00	Assets and services	24,392,000.00		4,856,900.00	29,248,900.00	22,353,574.00	6,895,326.00	76.43%
02-01-00-00	Durable assets	310,000.00		380,000.00	690,000.00	294,674.20	395,325.80	42.71%
02-02-00-00	Non-durable assets	1,532,000.00		91,900.00	1,623,900.00	1,113,725.60	510,174.40	68.58%
02-03-00-00	Aquisition of services	22,550,000.00		4,385,000.00	26,935,000.00	20,945,174.20	5,989,825.80	77.76%
04-00-00-00	Ordinary transfers	45,000.00			45,000.00	34,133.80	10,866.20	75.85%
04-02-00-00	Private institution	20,000.00			20,000.00	20,000.00	0.00	100.00%
04-04-00-00	Overseas	25,000.00			25,000.00	14,133.80	10,866.20	56.54%
05-00-00-00	Other ordinary expenditure	15,440,000.00	10,451,977.66	-9,436,900.00	16,455,077.66	15,400,934.20	1,054,143.46	93.59%
05-02-00-00	Insurance	275,000.00		-50,000.00	225,000.00	125,027.20	99,972.80	55.57%
05-04-00-00	Miscellaneous	15,165,000.00	10,451,977.66	-9,386,900.00	16,230,077.66	15,275,907.00	945,170.66	94.12%
	Capital expenditure	8,230,000.00		-1,602,000.00	6,628,000.00	1,813,831.30	4,814,168.70	27.37%
07-00-00	Investment	8,230,000.00		-1,602,000.00	6,628,000.00	1,813,831.30	4,814,168.70	27.37%
07-03-00-00	Building	3,000,000.00		100,000.00	3,100,000.00	0.00	3,100,000.00	0.00%
07-09-00-00	Transportation materials	250,000.00		18,000.00	268,000.00	249,507.00	18,493.00	93.10%
07-10-00-00	Machinery and equipment	4,980,000.00		-1,720,000.00	3,260,000.00	1,564,324.30	1,695,675.70	47.99%
Total		108,432,000.00	10,451,977.66		118,883,977.66	101,774,613.20	17,109,364.46	85.61%

Table 25
Expenditure components in 2008

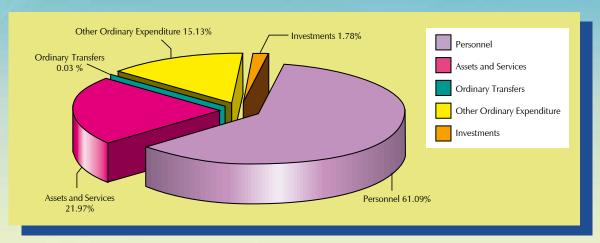
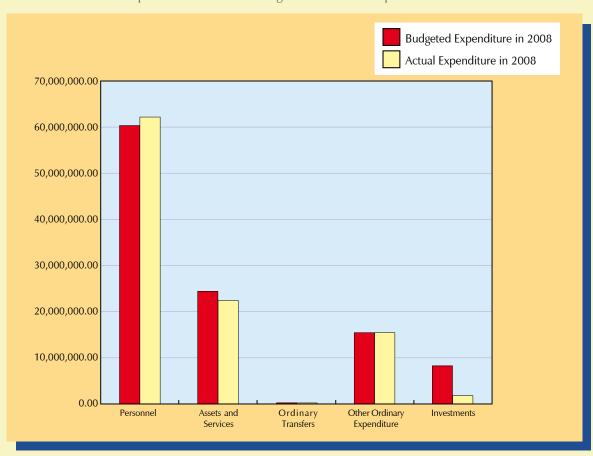


Table 26
Comparison between the budgeted and actual expenditures in 2008



7.2 Personnel

To cope with the increasing workload of all CCAC departments, an amendment was made to the "Organization and Operation of the CCAC" related in Article 31 of the Administrative Regulation No. 31 / 2000 through the Administrative Order No. 28 / 2003 given on 21st July 2003, thus the total number of staff members in the CCAC was 109. Until 31st December 2008, together with other forms of recruitment, the personnel of the CCAC had increased to 143.

Table 27
Comparison of the numbers of staff from 2000 to 2008

Posts	31-12-2000	31-12-2001	31-12-2002	31-12-003	31-12-2004	31-12-2005	31-12-2006	31-12-2007	31-12-2008
Commissioner	1	1	1	1	1	1	1	1	1
Deputy Commissioner	2	2	2	2	2	2	2	2	2
Chief of Cabinet of the Commissioner	1	1	1	1	1	1	1	1	1
Adviser / Expert	5	6	6	6	5	4	4	4	4
Department Head	_	1	1	1	1	1	1	1	1
Chief Investigation Officer	_	2	2	3	3	2	2	3	4
Division Head	1	1	_	1	1	1	1	1	1
Senior Officer	5	4	6	4	3	3	4	5	9
Senior Information Technology Officer	_	_	1	2	1	2	2	1	4
Interpreter	1	1	_	_	_	_	_	_	_
Personal Secretary	1	2	2	1	1	2	2	2	2
Office Assistant	_	_	_	1	1	1	1	1	1
Chinese Expert	_	1	1	1	1	1	1	_	_
Officer	1	1	1	1	1	1	1	1	8
Information Technology Officer				1	1	2	2	2	1
Investigator	19	32	35	40	50	49	61	55	66
Assistant Officer	7	6	8	18	16	15	13	18	13
Public Relations Officer	2	2	2	1	_	_		_	_
Auxiliary Officer		6	7	6	6	6	7	11	7
Information Technology Assistant	1	1	1	1	1	_	_	_	1
Administrative Clerk	3	3	3	3	5	6	6	6	4
Worker and Auxiliary Staff	12	11	11	11	11	11	11	11	11
Full-time Temporary Staff	_	_	_	_		1	2	2	2
Total	62	84	91	106	112	112	125	128 ¹	143 ²

Notes: 1. 13 trainees of investigators were not included in this figure.

^{2. 18} trainees of investigators were not included in this figure.



APPENDIX SUMMARIES OF THE CASES COMMENCED FOR INVESTIGATION UNDER THE AMBIT OF OMBUDSMANSHIP

Appendix Summaries of the Cases Commenced for Investigation under the Ambit of Ombudsmanship

File No. 13/2008

Subject: The Subsidy Assessment Scheme of the Macao Foundation and the Science and Technology Development Fund.

During the handling of a case, the CCAC discovered that some members of the Macao Foundation (FM) and the Science and Technology Development Fund (FDCT) did not recuse themselves from the assessment of application for subsidies submitted by private associations, allegedly violating the recusal provisions. Moreover, there have been deficiencies in the subsidy assessment and approval scheme. Therefore, the CCAC commenced an investigation:

1. On 10th October 2007, a report was made to the CCAC, alleging that the FM, which is a public legal person, has allotted considerable funds to the Macao University of Science and Technology (MUST) from the later half of 2001 to the first half of 2007. The FM has also granted huge amounts of financial subsidies to the Macao Federation of Trade Unions (FAOM), the Department of Service of Employment Agent under the FAOM, the General Union of Neighborhood Associations of Macao (UGAM) and the Women's General Association of Macau (AGM) during the first quarter of 2007. However, some of the holders of offices of the FM were also members of the Council of the MUST/Committee of the MUST Foundation Trustees/holders of offices of the associations applying for subsidy but they did not recuse themselves from the proceedings in accordance with law. Another public legal person, the FDCT, granted subsidies to the MUST, the MUST Foundation and the Macau New Technologies Incubator Centre Co. Ltd. (Manetic) from the 3rd quarter of 2005 to the 4th quarter of 2006. Some holders of offices of the FDCT, who were also holders of offices of the MUST and the MUST Foundation / Directors of Manetic, did not recuse themselves from the proceedings either. Therefore, the FM and the FDCT's approvals of the relevant subsidies were allegedly illegal in the sense of administration.

- 2. The alleged problems concerning recusation involved consideration and approvals over the years. Under Article 53, Section 1 of the *Code of Administrative Procedure*, violation of recusal provisions may lead to repeal of related administrative acts. Under Article 25, Section 2 of the *Code of Administrative Litigation*, the maximum period of time to dispute a revocable act is one year. Upon the lapse of time, the deficiency that might result a repeal of the act would be redressed. Therefore, the CCAC's analysis has only focused on the applications on which the decisions were made within one year before the day when the report was received (including the applications which were not mentioned by the complainant), and the process of application by the Manetic, which has been granted subsidy only once, before the report was received.
- 3. Following the initial investigation, it was discovered that some holders of offices of the FM and the FDCT were, de facto, members of the entities applying for the subsidies. Therefore, it was necessary to further analyze whether or not this dual capacity had inevitably constituted violation of the recusal provisions as the complainant mentioned.
- 4. Under the current legal systems, especially the principle of impartiality provided by the *Code of Administrative Procedure*, any holders of offices or personnel of the administrative authorities and their relatives shall not have any interests in the administrative acts they participate in. In order to reinforce the principle, the Code provides for the recusal system, stipulating that any holders of offices and personnel of the authorities shall prevent themselves from participating in any administrative acts and other acts or contracts executed in the name of the authorities which are directly or indirectly related to their personal interests. The mandatory nature of "prevention from participation" is divided into two tiers, namely "absolute prohibition" (mandatory recusation) and "relative prohibition" (self-recusation / requested recusation).
- 5. For "absolute prohibition", Article 46 of *Code of Administrative Procedure* states the 8 situations in which holders of offices and personnel of the authorities are absolutely prohibited from participating in administrative procedures. Their participation under those circumstances is presumed to pervert public interest due to their personal interest. In this case, among these several assessment and

approval procedures, only one situation fell into the prohibition stipulated by Section 1a) of the article mentioned above, because the holder of office who participated in the procedure allegedly held the position as the "representative" for the entity that applied for the subsidy.

- 6. Under Article 251 of the *Civil Code*, representative refers to anyone "carries out legal acts on behalf of the represented individual according to the power the former was conferred upon, while the legal acts are effective within the scope of rights and obligations of the represented individual".
- 7. Except Manetics, the subsidized entities empowered to carry out legal acts in the name of the subsidized entities are the administrators of those entities as well, such as the Administrative Committee of the MUST Foundation, the Council/Executive Committee of the MUST, the Board of Directors/Executive Directors of the AGM (FAOM/UGAM). The holders of offices of the FM and the FDCT, who possess dual capacity, are at most one of the members or a minority of the administrative organs of the applicants. These members themselves did not suffice for representing the applicants and therefore could not be regarded as representatives of those entities.
- 8. The Chairman and two members of the Board of Directors of the Manetic (one of them was the representative of the government) were the Chairman of the Executive Committee and members of the Board of Trustees and the Committee of Project Consultants of the FDCT respectively. Under the rules of the company, a sole Director can carry out management routines and his signature thereof would suffice for incurring liability. That means it is effective within the scope of right and obligation of the company. In this sense, a sole Director can be considered as the representative for the Manetic. Moreover, as the application did not bring any onus or risk to the company, the Directors' position as representatives was not questioned in this case. The grant of the subsidy would doubtlessly benefit the operation, the overall functioning and the fulfilment of objectives of the company, while the "pursue for overall interests in order to ensure management of the company" is exactly the premier mission of the Directors and even the whole Board of Directors. Therefore, the Directors had interests in the procedure of the relevant application.

- 9. Indeed, the holders of offices of the FDCT who were also the Directors / the Chairman of the Manetic included the Chairman of Administrative Committee, A, member of Board of Trustees, B, and member of the Committee of Project Consultants, C. Since C did not participate in the relevant assessment and approval procedure and A was the Official Director, their roles in the Manetic were not related to their personal interests, i.e., conflict between the public interests and their private interests did not exist. Therefore, it was only B who had allegedly violated the recusal provisions. As B held the position of Director on behalf of himself, the company's interests directly linked to his own interests. Since he was also the representative for the company, his participation in the procedure of assessment and approval of the company's application in the name of member of the Board of Trustees of the FDCT has breached the aforementioned provision under the *Code of Administrative Procedure*, causing the approval to be revocable. However, the decision, which was made on 17th August 2005, stood over one year and the irregularity has been redressed, so the approval could no longer be revoked under the law.
- 10.As to the level of "relative prohibition", Article 50, Section 1 of the *Code of Administrative Procedure* establishes the criteria for having self-recusation / requested recusation through an open ordinary provision, stipulating with examples that "in circumstances that give rise to reasonable doubt about the impartiality and the integrity of a holder of office or staff of the authorities", analysis on the fact from the stance of people being governed is required. If there is reasonable suspicion on the honesty, just and impartiality of the holder of office or the staff during the execution of duties, s/he shall request for recusation from participation in the relevant procedure, and the parties concerned may request for his/her recusation as well. The entity (i.e. the senior/chairman of the collegiate panel) which has the capacity to make the decision on recusation shall consider beforehand whether or not the integrity and impartiality of the holder of office/staff will be perverted and the credibility towards the administrator will be shattered if it allows the individual to continue to participate in the procedure.
- 11. Among the subsidized entities in the case, the MUST and the MUST Hospital are subordinate to the MUST Foundation. The MUST Foundation, as well as the AGM and the UGAM, all possess legal personality for administrative public welfare. Since

the cooperation between the administrative authorities and a legal person of public welfare was for the fulfilment of the latter's objective so as to promote and develop activities for public good, individual assuming of positions in legal persons of public welfare by holders of offices of the subsidy-approving entities, in fact, also aims at achieving goals of public interest. Therefore, there was no conflict between "public interest" and "private interest" in the related assessment and approval procedures.

12.In respect of the FAOM, though its Executive Director, D, was also a member of the Board of Trustees of the FM, which was the body approving subsidies, and even the FAOM was not recognized as a legal person of administrative public welfare but an ordinary private society, D's participation in related assessment and approval procedures did not constitute" not being recused from the procedures though self-recusation is required". The main reasons were: members of the Board of Trustees of the FM were nominated by the Chief Executive among the Macao citizens who were considered to be contributive, venerable, competent or representative. Certainly, the appointment was made after assessing on their background and it confirmed that the member fulfiled the statutory prerequisites, while the reappointment meant that the reappointed members still fulfiled those statutory prerequisites. Since the Chief Executive appointed D as a member early in 2001 and reappointed him in 2004, it was impossible for the Chief Executive not to know that D had been serving FAOM for a long time (D had been working as the Vice President of Executive Committee of the UGAM before he was appointed). Therefore, D did not need to notify the Chairman of the Board of Trustees (the Chief Executive) of his position in the FAOM despite his participation in the assessment and approval of the application by the FAOM. On the other hand, if the Chairman thought that D's involvement might pervert the principle of impartiality due to his dual capacity, he should have instructed D to withdraw from the procedure, yet the Chairman did not do so. This implied that the Chairman, who had the right to decide whether or not D should recuse himself from the case according to law and actual situation, had implicitly decided that that D's recusation was not needed.

- 13.As for the Manetic, as mentioned above, the procedure has breached the provisions of mandatory recusation. Yet even this deduction was not recognized, B's participation in the assessment and approval procedure on the application by the company had also breached the norm of self-recusation. The reason was that as the company is a commercial enterprise, "profit-making" should be its operational objective according to law. As a Director of the Manetic, B had an obligation to do whatever that benefited the operation of the company. Whatever that benefited the company also benefited B, who was the Director on behalf of himself, so his participation in the assessment as a member of the Board of Trustees of the FM might reasonably give rise to the question of his partiality towards the company during the course of assessment. As a result, it made grounds for suspicion of his impartiality. Nevertheless, the Manetic was established in 2001 with 15% stake owned by the government. As B has been working as a Director since its establishment, the Chief Executive should have known the facts mentioned above before he appointed B as a member of the Board of Trustees of the FDCT. Therefore, it was not necessary for B to notify the Chief Executive of his position in the company when he assessed and approved as a member of the Board of Trustees. Moreover, as the Chairman of the Board, the Chief Executive was also present at the meeting for the resolution to approve the application, but he did not request B to withdraw from the procedure. In this sense, dual capacity shall not be the only basis for administrative illegality from the standpoint of the mechanism of "relative prohibition from participation" under the recusal system in D and B's cases.
- 14. Therefore, in practice, if the competent entity determines, from the view of "outsiders", that the question about "the impartiality and justice of a staff of the administrative authority" who were non-public servants carried certain objectivity, the entity should declare recusation in order to ensure that the relevant administrative decisions were fair and just and thus conformed to the values established by the discretion conferred upon by the law. The entity has to require recusation unless there are some other reasons (for example, conduct and manner of the relevant staff, the supervisory power of other staff who also participated in the procedures could guarantee that the fairness and justice of the procedure would not be affected by the staff's conflict

of identities; and recusation would pervert the prompt operation of the authority and thus bringing more serious effects on the public interests). However, if these reasons are not comprehensible by ordinary people (the ones being governed), the administrative authority has to consider whether or not the public will question such doing and the public's confidence in the administration will then be shattered.

- 15.On the other hand, the majority of members of the FM, its Administrative Committee and the FDCT were not public servants and many of them did not serve on a full-time basis. They did not necessarily familiarize themselves with the basic principles and mechanisms, including the requirements and practices of the recusal system, as the other public servants when carrying out their duties. Therefore, the reinforcement of their awareness of the resusal system which should be abided by in execution of public duties would help avoid the occurrence of illegality and uphold the image of impartiality and reputation of the administrative authority. Based on this, it is necessary to provide relevant guidances for the non-public servants who serve in the public positions of these two foundations.
- 16.It should be emphasized that the holders of offices of the Board of Trustees of the FM, which operate under a collegiate panel, could be absent from meetings due to recusation and other reasons. For example, on 17th April 2007, a meeting of the Board of Trustees, which comprised 17 members, took place with absence of 8 members. The number of members present has just reached the quorum. In this case, in order to avoid affecting the operation of the collegiate panel, the FM may consider nominating the maximum statutory number (19) of members of the Board (ranging from 15 to 19) and stipulating in the charter that the minimum number of members present shall be the majority (8) of the minimum statutory number (15). In this case, even if the number of members who are absent due to recusation and other reasons reaches 11 (more than half of the maximum number 19), the committee may still proceed the meeting under the regulation on the minimum number of members present. This solution leads to greater flexibility of the operation of the committee as there is no need to nominate alternate members but effects a substitution in fact.

- 17.Before the FDCT approved the subsidies, they should take into account the opinions of the Committee of Project Consultants according to law. For applications of less than MOP500,000, the Administrative Committee should make the decision after taking full account of the opinions and grading if any by the Committee of Project Consultants and the eventual grading. For applications exceeding MOP500,000, the Board of Trustees should make the decision after receiving the proposal made by the Administrative Committee and the Committee of Project Consultants respectively and the grading if any. The proposals mentioned above were not binding but were necessary under Article 91, Section 2 of the *Code of Administrative Procedure*. Therefore, they were the necessary statutory parts of the procedure. Without them, there would be an irregularity of formality in the administrative act, causing the act to be revocable.
- 18. Nevertheless, during the assessment of the application for subsidy by the Manetic, the Board of Trustees of the FDCT had already approved the application before the proposals by the Administrative Committee and the Committee of Project Consultants were submitted. Thus, the approval bore a defect, rendering it revocable. However, since the administrative act has been executed for over one year, the defect has been redressed.
- 19.In respect of subsidy approval, the FM has fully subsidized a project of the MUST Hospital. Such doing differed from the statutory method that "the amount being granted is, in principle, not the total amount of expenditure of the project, and the organizer shall estimate other receipts". Besides, the FM did not make any explanation for this act. Moreover, the FM increased the decided amount of a subsidy granted to another applicant of funds by the reason of "increase where necessary", yet the reason was vague and equivocal, which was unable to explain why the Foundation increased the amount. Under Article 115, Section 2 of the *Code of Administrative Procedure*, this situation could be considered as no reasons had been provided. The applicant seemed not to have identified "other expected receipts and relevant means of income" as prescribed by law and the FM did not adopt any measures against it. All these are prone to cause questions about whether or not the FM has adopted any set standards for the assessment and whether or not the standards have conformed to law.

- 20.As to the FDCT, the "Regulations of Subsidy Assessment and Approval" had particularly laid down the assessment for the Committee of Project Consultants and the Administrative Committee. The latter was responsible for assessment of "the reasonableness of the budget". However, the minutes of the meetings of the Committee of Project Consultants, even the evaluations written by the consultants all indicated that the committee had contemplated excluding this item from assessment criteria. Moreover, there was no implication that the Administrative Committee had assessed the application according to the statutory criteria.
- 21. Following the analysis on the procedures of the FDCT's various assessments and approvals, the CCAC discovered the following unreasonable cases: Some consultants who disagreed on the approval had graded the project higher than those who agreed. Some consultants graded the projects although they considered that the application should be referred to experts for assessment, i.e. they declared themselves to be unqualified for assessing the application. Some of them gave low grade to application due to the reason that the application was considered as unqualified to be submitted for the time being/lacking of data/unable to solve the actual problems, but the Administrative Committee classified these comments as "no decision on whether or not to approve the application". Despite the fact that one consultant seconded the approval, one rendered conditional approval, one suggested referring the application to experts and two other had doubts, the Administrative Committee still confirmed its stance in favour of the approval. However, the minutes of the meetings of the Committee made no reference on the reasoning, the votes of such resolution and the outcome (under Article 29, Section 1 of the Code of Administrative Procedure). In light of the possible influence on the members of the Committee of Project Consultants by factors beyond their assessing scope, the imperfect reflection on the grounds of whether or not subsidies should be granted and the relevant subsidizing extent, false classification of the consultants' opinions by the Administrative Committee, approval of subsidies without explanation where discrepancies existed in consultants' opinions and the lack of information which would be able to reveal that the Administrative Committee had assessed under the statutory standards, would lead to doubts on the legality and fairness of the FDCT's approval and the appropriateness of utilization of funds, which would eventually jeopardize the credibility of the government.

- 22.In fact, even it is considered to be necessary to classify the consultants' comments, it would be more appropriate for the consultants to classify their own comments, so that wrong classification would not occur due to misunderstanding. Moreover, it would be appropriate to set a qualifying grade so that grades lower than that shall be construed as disapproval. As a result, the consultants' grades could be consistent with their comments and the grades could reflect the consultants' standpoints about whether or not the application shall be approved so as to avoid the unreasonable situation in which the grades given by consultants who favour the approval are lower than that given by those who stand for the opposite side. Furthermore, the FDCT might consider introducing a mechanism to have all consultants discussed about the reasons for their grades and comments (especially the comments of the consultants who have given the highest and the lowest grades) after grading the project. If some consultants regard it as necessary to adjust their own positions after making references to other consultants' opinions, the FDCT shall allow them to do so and make a suitable record, so that the assessment effects more objectively, reasonably and effectively.
- 23.Moreover, many other public departments / entities under the large structure of the Administration are empowered to grant subsidies. For example, the MUST Hospital may submit applications of subsidies for acquisition of medical equipments to the FM as well as the Health Bureau (SS), but the FM seemed not to have communicated with the SS in order to "control the amount of subsidies" in accordance with law. Also, the SS and the Social Welfare Bureau granted subsidies to the subsidiary organizations of the FAOM, the UGAM and the AGM in 2006 and 2007. When assessing the applications for subsidies of operating funds submitted by these associations, will the FM take into account the fact that they have obtained subsidies granted by other government departments? Are there any mechanisms of coordination among the departments / entities which have the powers to grant subsidies? It would be appropriate to explore these issues more thoroughly.
- 24. In addition, as grant of subsidy is related to the appropriation of public money and the amount involved in every application very often ranges from hundred thousands to millions, it is therefore necessary to supervise and control the use of the subsidies in order to verify whether the subsidized projects have been carried out. The current legislations prescribe that the subsidized entities shall submit reports on the subsidized

activities. Nevertheless, do the departments adopt measures to follow up on this in accordance with law after grant of subsidies? How they deal with the cases of subsidized entities which do not submit reports or carry out the activities according to the plans is very important, so it is necessary to conduct more in-depth analysis.

- 25. It is necessary to emphasize that many of the entities subsidized by the government are legal persons of public welfare. The law provides incentives including exemption of tax and administrative charges and other benefits for these private entities / fundations but also establishes obligations for them, such as "submitting annual reports and previous operating accounts" (under Article 11a) of Law no. 11/96/M). However, there are no relevant regulations in Macao about this aspect. Even the regulations on grant of financial support, (such as Order no. 54 / GM / 97) do not require the legal persons of public welfare which apply for subsidies to do so. In other words, such annual supervisory mechanism is not able to function due to lack of regulation. Although the competent authorities can request these legal persons to provide relevant information (under Article 11b) of Law no. 11/96/M) in order to verify whether or not the elements of such legal personality subsist, yet the existing regulations do not include specific norms in this respect. As legal persons of public welfare are considered as legal persons "which jointly promote ordinary social interest with the administrative authorities of Macao" and they have become beneficiaries of many public subsidies due to their functions of achieving public interest goals. This means there are always large amounts of funds circulating from the administrative authorities to these legal persons by ways of "subsidies". The public interest goals would then be fulfiled through the activities organized by these legal persons. Therefore, it is necessary to be aware of the way they use the funds received from the administrative authorities and whether or not the competent authorities have supervised them in practice.
- 26.To address the above issues, the CCAC make following suggestions to Chief Executive in order to hasten improvements of operation of the two foundations:
 - a. To provide guidance regarding the mechanisms and principles including recusation that should be abided by for the non-public servants who assume public positions in the two foundations.

- b. To adopt proper measures to enhance the transparency of subsidy assessment conducted by the Boards of Trustees of the two foundations; In particular, if they do not require recusation despite "dual capacities" which easily raise doubts, they should make the public understand their rationales in order to uphold the reputation and credibility of the administrative authorities.
- c. If it is considered to be necessary to advance the flexibility of operation of the Board of Trustees of the FM in order to ensure that the operation will not be impeded by the minority number of committee members present at meetings. It is possible to contemplate nominating the maximum statutory number of members of the Board and stipulating in the rules the minimum number of members present shall be the majority of the minimum statutory number. This solution leads to greater flexibility of operation as there is no need to nominate alternative members.
- d. To establish a consultation team under the FM according to the needs brought by assessments, so that the Boards may obtain professional opinions before making the decision. Also, records of the processes of obtaining opinions should be made in order to show that the reasons for the decisions and guarantee on the credibility of the use of funds. To set up assessment criteria in accordance with law and to list the reasoning in minutes of the meetings of resolution.
- e. The Committee of Project Consultants and the Administrative Committee of the FDCT should assess the applications according to statutory criteria and the basis of assessment should be recorded clearly in minutes (especially the minutes of meetings of the Administrative Committee); to improve the operational mechanism of Committee of Project Consultants and allow the consultants to classify their own comments; to consider setting a qualifying grade and introducing the grading explanation mechanism so that the consultants may have chances to explain their grading. Such records should be made as well so that assessments will be more objective, reasonable and effective.

Regarding the coordination between the subsidy-granting departments / entities and their follow-up and evaluation on the subsidized entities, further analysis and research will be conducted.

27. The two foundations accepted the CCAC's suggestions about improvement of operation. Currently, the Commission is still following up the new operational mechanisms of the collegiate panels, especially the Committee of Trustees in the FM.

File No. 03 / 2008

Subject: Establishment of an Elderly Home at a Commercial Unit

In 2007 and 2008, there were cases about private entities planning to establish elderly homes at the commercial units of residential properties. The CCAC has received complaints lodged by operators and proprietors of the units at those properties, alleging administrative illegalities and maladministration during the license assessment and approval procedures conducted by the Land, Public Works and Transport Bureau (DSSOPT) and the Social Welfare Bureau (IAS). Therefore, the CCAC initiated an investigation. The points below were made following investigation and analysis:

- 1. The use of property is subjected to its designated purpose. This restriction is related to the condominium regime adopted by developers. Since the proprietors of separate units of a condominium are neighbours to each other, the *Civil Code* in 1966 established special restrictions on proprietors' disposal (including use) of their own units, including the requirement not to use the units for the purpose different with its designated usage.
- 2. On the other hand, when the lawmaker formulated the *Regulation of Urban Buildings* (Decree Law no. 79/85/M) in the 1980s, the authorities were empowered to approve the "initial" constitutive title (the "Description of Separate Unit") which had been used for distinguishing each separate unit of a condominium. The specific purposes of buildings and the units within were

established through the license of utilisation issued by the authorities after the development of buildings has been completed. At that time, the lawmaker stipulated that the statutory purposes of urban buildings should be classified into 6 types only.

- 3. In 1999, the lawmaker formulated Law no. 6/99/M which further regulated the utilisation of urban buildings, stipulating that if a property, whether in law or in fact, is used for a purpose different from that indicated in its license of utilisation or the activity allowed under the administrative license, summary infringement would be constituted. The authorities (i.e. the DSSOPT and the competent department which is empowered to issue administrative licenses for the activities carried out at the buildings / units), under the law, should supervise any misuse of property.
- 4. By then, the purposes of urban buildings established by the lawmaker (including 1. as residence or dwelling; 2. industrial use; 3. commercial use; 4. for service, office work and freelance; 5. as hotels and for activity of the similar nature; 6. as social, collective or public facility; and for vehicle parking) basically coincided with those provided by Decree Law no. 79/85/M, yet the lawmaker allowed properties to be designated for other legitimate purposes other than the ones designated above.
- 5. Nevertheless, it is worth pointing out that neither Decree Law no. 79/85/M nor Law no. 6/99/M has specified the kinds of business/activity suitable to be operated in the properties of designated purposes and whether or not these statutory purposes are compatible. Therefore, in reality, defining whether or not a proprietor has used his/her own unit differently from its designated purpose leads to controversy easily.
- 6. It is true that ambiguities do exist in the provisions, but the law enforcement agencies have been lacking criteria to define the scope of legal business activities to be carried out at the buildings, bringing further confusion to citizens. As a result, the controversy has become a high-profile focus in the society.

DSSOPT's Discharging of Duties on Supervision Against Misuse of Property

7. According to the dossiers provided by the DSSOPT concerning licenses for the construction of elderly homes, the CCAC discovered the problems below concerning the Bureau's handling of the cases:

(1) Longstanding lack of law enforcement criteria and not having a standardized stance and assessment criteria regarding the purposes of property

- 8. In fact, even though Decree Law no. 79 / 85 / M has come into effect for years, the DSSOPT has never conducted analysis on the relationship between the assessment and approval of application for licenses of constructions and the supervision on use of property so as to establish a standard for the technical staff to abide by.
- 9. The DSSOPT assessed case no. XXX/93/L between December and June in 1993. At that time, the Bureau approved the construction project without considering whether or not the purpose of building (i.e. for residential purpose) was applicable to the establishment of an elderly home.
- 10. While assessing case no. XXX/96/L (between May and December in 1996), there were suggestions inside the Bureau that the construction plans which involved change of property use should not be approved and hence legal opinions were sought. As the legal opinions indicated that the Decree Law no. 90/88/M on 27th September empowered the licensing department, the IAS, to issue licenses for social facilities (including elderly homes) established at units not used as social facilities, the DSSOPT should only verify whether or not the project met the standards of passage, hygiene and safety of social facilities under the decree law while assessing the applications for the construction licenses and should not reject the project solely because those facilities were not established at units of social purpose. Therefore, the DSSOPT changed its stance and issued the licenses.
- 11. However, after obtaining the abovementioned legal opinion, the DSSOPT only treated the opinion as a solution of that particular case but not a criterion for the assessment and approval of the same kind of applications. Also, it did not further explore and set up the standard for the assessment and approval of various kinds of constructions, nor did it further clarify the scope of each purpose on use of properties.

12.In fact, while assessing similar subsequent cases, the staff of the DSSOPT again disputed over whether or not establishment of elderly home at commercial unit constituted change of use. Some perceived that it had changed the use of property (because elder home contains bedrooms and its purpose does not accord with the nature of commercial purpose), but others thought that it had not (since elderly home operates in a commercial way).

(II) DSSOPT's decisions were often based on the leadership's "arbitrariness" and lacked justification

- 13. When the DSSOPT was assessing case no. XXX/00/L (during which Law no. 6/99/M had come into effect) between October 2000 and April 2001, some experienced public servants thought that the establishment of elderly home at commercial unit constituted change of purpose. Therefore, the applicant should embark on the procedure of modifying the constitutive title in order to obtain a construction license. However, the then Head of the Urbanization Department thought that commercial unit met the technical requirements for establishing elderly home, so it was feasible to establish elderly home at commercial unit in principle. However, he neither pointed out the relevant rationale nor explained why the Bureau was only required to verify whether or not the amenities of the facilities were technically applicable for the purpose when approving the projects after Law no. 6/99/M had come into force. It is necessary to point out that the authorities' supervision on use of properties, as required by Law no. 6 / 99 / M, did not only lie on the issue whether the unit had been used for purposes the amenities might not endure, but also centred on the question whether the units had been used for purposes different from that indicated in the "licenses of use."
- 14. The case was then passed to the Deputy Director for comments. He thought that the social facility purpose was not totally incompatible with commercial purpose, so the project could be approved without modifying the constitutive title. It seemed that the Deputy Director had brought up an opinion different from that of the department head yet the former only stated "not totally incompatible" was obscure. In addition, the fact that he had not stated any reasoning undoubtedly

reflected the "arbitrariness" of this opinion. Nevertheless, in this case, the Director of the DSSOPT eventually agreed with the Deputy Director's opinion and approved the project subsequently.

- 15. Similar situation also took place in case no. XX / 02 / L. (The Deputy Director adopted "not totally incompatible" as the reason for approval.)
- 16.It is worth pointing out that the *Code of Administrative Procedure* requires the authorities to clarify the administrative acts carried out and its legal basis expressly (obligation to "explain") in order to ensure the justice and legality of the administrative decisions. In the aforementioned case, although the Bureau finally made the beneficial decision to the applicant (i.e. approved the application of construction license), it does not imply that the Bureau's decision could be based on the decision-maker's "arbitrary" opinion. Moreover, the proprietors of other units at the building where the elderly home was established also had the right to raise objection against the decision to the Bureau for the reason that the approval had caused detriments to their interests. Under such situation, the Bureau had the responsibility to explain the basis for the approval. If its decision was merely based on the "arbitrary" opinion of the decision-maker, it would be unconvincing indeed or even damage the Bureau's image of impartiality and objectivity.
- 17.In the case of H Garden (case no. XXX/06/L), when the DSSOPT first received the application of a refitting project, the application was passed to specialized technicians of the Bureau for comments. However, the staff did not analyze on the matters concerning whether or not the purpose of the proposed project had conflicted with the designated purpose as in the cases no. XXX/00/L and no. XX/06/L. Whereas the then Head of the Urbanization Department agreed to refer the application to the superior for approval without requiring the staff to supplement with analysis and finally it approved the application. Only after some proprietors' queries about a change of purpose in the project, the Bureau sought internal legal opinions about this issue and required the applicant to submit the letter of consent signed by other proprietors.

(III) Contradiction between the legal opinions in 1996 and 2007

- 18.It is worth pointing out that concerning the assessment and approval of construction of elderly home at unit of non-social purpose, the legal opinion in 2007 was different from that of 1996. It merits emphasis that in 2007, the legal department of the DSSOPT asserted that under Law no. 6 / 99 / M, the use of urban building should conform to the purpose stated in the constitutive title; otherwise, summary infringement could be constituted. Therefore, while assessing application for administrative license of elderly home, if the IAS found that this type of activity was not allowed under the license, the applicant should be requested to change the purpose of the property first. According to the comprehension above, unless the legal department construed that Law no. 6 / 99 / M had already repealed the IAS's power, which had been conferred upon by Decree Law no. 90 / 88 / M, to issue licenses for social facilities not established at units of the public utility purpose, its legal opinion in 2007 would contradict with that brought up in 1996.
- 19. <u>However</u>, <u>Law no. 6/99/M does not repeal the IAS's "exceptional licensing power" conferred by Decree Law no. 90/88/M.</u>
- 20. One thing which shall not be neglected is that although Law no. 6 / 99 / M defines "using the landed property for a purpose different from that indicated in its license, whether in fact or in law" or "for activity which is different from that designated in the administrative license" to be "misuse" and stipulates that the public works department and the relevant licensing departments shall conduct supervision on the "misuse" of property. However, under Decree Law no. 90 / 88 /M, the establishment of a social facility (such as an elderly home) at a unit which is not to be used as a "social, collective or public facility" (hereinafter simplified as "social facility") is legally allowed if it is licensed. This is a special provision concerning the social facility licensing system formulated by the lawmakers. Since special law is prioritized and Law no. 6/99/M does not repeal the relevant regulations by Decree Law no. 90/88/M, the IAS may still "exceptionally" ignore whether or not the property where the social facility is located is designated as "public utility" during the assessment and approval of license. At the same time, the operator of social facility licensed by the IAS shall not be charged with "misuse" due to violation of Law no. 6/99/M, as the use of property as a "social facility" conforms to the purpose designated in the administrative license.

21. Therefore, this standpoint would not be sufficiently justified if the contradiction between the DSSOPT's legal opinions in 2007 and that in 1996 was based on the assumption that Law no. 6 / 99 / M had repealed the IAS's power to "exceptionally" approve the establishment of social facilities at units which were not designated for public utility. In other words, the DSSOPT's legal opinions in 2007 and 1996 are intrinsically contradictory.

(IV) Insufficient justification for making decisions without applying legal opinions

- 22.In the cases of H garden and K building, the legal department of the DSSOPT thought that construction of elderly homes at commercial units had constituted an alteration of purpose, so the applicant should have obtained other proprietors' consent before issuance of construction license. However, the DSSOPT eventually did not adopt this opinion but agreed on the one made by the then Head of the Urbanization Department, who indicated that the issuances of construction license and administration license were two different administrative procedures, so the DSSOPT was only responsible for the assessment of the construction project from a technical perspective.
- 23.It is necessary to point out that, as to the application for construction license by applicant who intends to operate a business subject to the administrative license, if the DSSOPT only assesses the project from a technical perspective based on the assumption that the assessments of construction license and administrative license are two different administrative procedures, then the Bureau, in principle, shall not need to check whether or not the project will occupy the public areas of the property or require the applicant to submit the letter of consent signed by a sufficient number of proprietors when the project is discovered to be occupying public areas of the building. However, licensing a project that occupies the public area at the building touches upon the issue that using of public area is not permitted without proprietors' consent. This applies identically to cases involving licensing a project of alteration of purpose, which is not related to engineering technically. That is, without proprietors' consent, change is not permitted. In this sense, the department head's argument of "two different procedures" is apparently untenable.

- 24. It is important to emphasize that when applicants apply for undergoing constructions, the units usually have not yet been used for the purposes scheduled after constructions have been completed. Strictly speaking, the applicants "have not yet" used the properties for purposes different from that indicated in their licenses of use or the activities allowed under the administrative licenses; therefore, misuse of property "has not been constituted". Based on this premise, if the DSSOPT thought that the applicants could "legalize/legitimize" the misuse by obtaining other proprietors' consent in the course of construction and hence issued the licenses before submission of consent, it should unequivocally notify the applicants and the relevant licensing departments of whether or not "potential" change of purpose existed. The DSSOPT should not change its standpoint when some proprietors opposed to the projects after issuance of construction license and shift the responsibility of supervising misuse of properties to the licensing departments.
- 25. Therefore, the CCAC advised the DSSOPT to adopt the measures below to rectify the illegality and impropriety in its operation:
 - a. The DSSOPT should conduct a research on the classification of business activities to be engaged in according to the statutory purposes (especially the activities restrained by the administrative license) stipulated by Law no. 6/99/M and the compatibility between different purposes in order to establish the criteria adopted to carry out the duties to supervise the use of property within its scope of duty (especially the power to assess and approve the applications for construction licenses).
 - b. As to the "potential" alteration of purpose acknowledged in the course of assessment on application for construction project, if the DSSOPT thinks that it is possible to first assess the application from a technical perspective so that the applicant may obtain other proprietors' consent in the course of construction, the DSSOPT should explain the situation clearly to the applicant and notify the relevant licensing department.
 - c. In the cases of applications for licenses of construction projects which are exempted by special law from conforming to the requirements of property use, such as the

development of elderly home, the DSSOPT should also clearly notify the applicants of whether or not "potential" alteration of purpose exists, so that they will realize about the risk of objection filed by other proprietors by civil means.

IAS's Handling of Applications for Administrative Licenses for Elderly homes

- 26.According to the information provided by the IAS, the CCAC realized that it had been allowing establishment of elderly homes at commercial units, but the basis had changed. Initially, the approvals were based on the fact that the DSSOPT had not raised any objection to the establishment of elderly homes at commercial units. Later, the IAS stated that operation of an elderly home was a commercial activity due to reasons such as its profit-making nature or the levy of business tax; therefore elderly homes could be established at commercial units.
- 27.Although these bases were untenable, the IAS, in the course of the CCAC's investigation into this case, finally declared that its permission of establishment of social facilities at units of non-public utility purpose was founded on the prerogative conferred upon by Law no. 90/88/M and this power was not repealed by Law no. 6/99/M. Therefore, the CCAC concluded that the IAS's ultimate standpoint was not illegitimate.
- 28.It should be emphasized that though the lawmaker's conferment upon the IAS regarding the power to exempt in the relevant administrative procedures did not rule out the proprietors' right to object to misuse of property via civil means. In fact, under the *Civil Code*, modification of constitutive title, in principle, has to be passed unanimously by all proprietors of the units at the building. Even consent of majority (two-thirds) has been obtained, the remaining proprietors' consent is still replaceable only by legal proceedings. In this sense, if a proprietor does not use his/her own unit according to the registered purpose, modifies the constitutive title without other proprietors' consent or allows any activity different from the registered purpose to be carried out the unit, other proprietors have the right to raise objection against the misuse of the property by civil means. Therefore, the authority's administrative decision to issue an administrative license, without the involvement of interested parties, cannot totally override the proprietors' power of disposition regarding the use of property.

29.As a result, although the IAS has the discretion to allow social facilities establishment at units of non-public utility purpose, it shall remind the applicants about the "potential" change of purpose of the units so that the applicants may either obtain consent from sufficient proprietors of the units at the same buildings regarding the alteration or find another location. Otherwise, they may face the risk of objection raised by other proprietors against the misuse of properties by civil means.

30. For this reason, the CCAC also provided recommendation to the IAS to urge the Bureau to take measures to improve the procedures of assessment and issuance of the relevant licenses.

In fact, the CCAC perceives that the administrative illegalities or improprieties existed in the aforementioned case are related to the deficiencies existing in the current law. Especially, the law does not lucidly define the various types of statutory purposes of urban buildings and the compatibility between them but stipulates that the authorities have the power and responsibility to conduct supervision against the misuse of properties. Hence, the CCAC commenced and completed the examination and research on system *Analysis on Current Regulations on Use of Property and the Relevant Supervisory Mechanism* last year, clarifying the deficiency in the current regime and making recommendations for improvement through in-depth analysis on the relationship between the current regulations on use of property, the construction license and other kinds of administrative licenses.

According to official information, in early January 2009, the DSSOPT and the IAS had a meeting with some of the parties concerned (representatives for the proprietors of the units at H garden). At the meeting, the representatives of the authorities pointed out that there was certain extent of compatibility between commercial units and the purposes of public utilities and offices, so the establishment of "social facilities" (such as elderly homes) at "commercial units" did not constitute alteration of purpose. Due to the reality in Macao, the IAS would exercise the power of exemption conferred upon by Article 5 of Decree Law no. 90/88/M to approve the establishment of this kind of facilities at commercial units once the technical requirements of the elderly homes, including the conditions of hygiene, fire control and structure, are met.

This demonstrates that the DSSOPT has "conducted research on problems concerning whether or not different purposes are compatible" according to the CCAC's recommendation. The result of the research shows that "some of them are compatible."

After analyzing on the authorities' standpoints mentioned above, the CCAC concluded that the current specific regulations on the purpose of property (Decree Law no. 79/85/M and Law no. 6/99/M) do not clearly delineate whether or not there is compatibility between different purposes. According to the documents about the legislation, the legislative intention of Law no. 6/99/M did not totally deny the compatibility which could exist among the purposes. While in practice, (whether before and after the commencement of Law no. 6/99/M) the authorities' enforcement of law has long been demonstrating the existence of the "compatibility" (though lacked criteria for objective law enforcement). For example, some elderly homes were established at units bearing the "public utility" purpose, while others were established at commercial units. The same situation occurs in other businesses as well. Due to the reasons mentioned above, the CCAC thought that there were no sufficient signs showing that illegalities exist in the results of the DSSOPT's research on the compatibility between the commercial purpose and the "public utility" purpose. However, it is still necessary to comprehensively follow up on the Bureau's research on "compatibility" according to the results of the examination and research on system conducted by the CCAC.

As the DSSOPT did not respond to the CCAC to declare its rejection of the advice and the relevant rationale for over 90 days since it received the advice, according to the inverse interpretation of Article 12, Section 5 of Law no. 10 / 2000, the CCAC considered the advice as accepted.

File no. 18/2008

Subject: Inappropriate Land Grant Procedure Concerning Travessa do Fogo

In the course of handling a complaint over the occupation of government land, the CCAC discovered that the former Secretary for Transport and Public Works had permitted an individual to return a $21m^2$ site within a piece of land leased by the government on a long term basis so that the site will be developed as part of a public road. Then the government, in return, granted a $23m^2$ site which constituted part of a public street to the individual so that he could jointly develop the site and the adjoining land. However, the former Secretary

had not altered the nature of the 23m² site from public land to private land in accordance with the current land law before he approved the land grant. Also, there was no cadastral information showing the legal status of the land, the CCAC hence commenced investigation. After verifying and establishing the facts, the CCAC rendered advice to the Secretary for Transport and Public Works, requesting him to take appropriate measures for remedy and suggesting the Director of Land, Public Works and Transport Bureau (hereafter referred to as the DSSOPT) to pay attention to the handling of land grant procedures in order to avoid the same kind of mistake in the future.

Thereafter, the Secretary for Transport and Public Works redressed the defect in the procedure by categorizing the public land involved in the case to be private in accordance with law. Also, the DSSOPT reached an agreement with the Cartography and Cadastre Bureau to indicate the legal status of lands while drawing the cadastre. The CCAC subsequently filed this case.

File no. 29/2008

Subject: No Renewal of Employment Contracts of Teaching Staff of the Education Bureau and Youth Affairs Bureau.

1. In mid-September 2008, L and C, who were employed as teachers of a public school (hereinafter designated as P school) on non-permanent terms, lodged a complain to the CCAC, stating that after they criticized the principal at a teachers' meeting in the presence of the Director of the Education and Youth Affairs Bureau (DSEJ), the principal therefore proposed the DSEJ not to renew their contracts and his proposal was accepted. Both of them thought that the principal did not recuse himself from the case in accordance with law and made the proposal for "not renewing contracts" without the involvement of the two vice-principals. Also, the Director of DSEJ decided not to renew the contracts without obtaining evidence from L and C or stating any reasons. Therefore, they questioned the sufficiency of the basis of the decision. Contract renewal involves the exercise of discretion, which was solely for the purpose of fulfilling the objective of the power-conferred law - the public interest of "official education", but one of the reasons publicized by the DSEJ was that "the two did not agree on the sponsoring

philosophy". However, the philosophy itself was not substantial enough to have influence on the public interest of fulfilling "official education", resulting controversy on the aforementioned reason. Therefore, the CCAC commenced investigation on the case in order to further analyse any possible administrative illegalities or improprieties.

- 2. According to the information provided by the complainants, they openly criticized the principal at the meeting between the teachers of P school and the Director in November 2007. L also pointed out that the expert who was responsible for student-based education acted inappropriately and expressed his negative perception about this.
- 3. Later, the DSEJ further consulted L about his statement. The principal of P school also requested detailed information about some of their opinions from the two. As they were fear of vengeance afterwards, they sought help from the Association of Public Education of which they were members. The association intended to mediate in the matter but was refused by the Director.
- 4. In July, the two were notified by the DSEJ that their contracts, which were due 31st August, would not be renewed.
- 5. According to the information which the DSEJ provided for the complainants and the public, the bases for a public school's proposal for the renewal of employment contract of a teaching staff included: (1) the number of students; (2) the teaching staff's performance; (3) recognition of the sponsoring philosophy and compliance with the work schedule of the school. The DSEJ would decide whether or not to renew the contract according to the proposal. Moreover, the reasons for not renewing the contracts publicized by the DSEJ included: C has been advocating admitting students with distinctive conduct and academic results, yet his opinion was against the sponsoring philosophy of public school education for all. As the representative of the school's music department, the teacher had never arranged for or led students to join any external musical contests and were absent from duty in the previous academic year and no improvements were made after exhortation. While L had been opposing the student-based education implemented in the school and even

overtly questioned the qualification of an eminent expert of student-based education during a seminar. He lacked basic respect for others in academic discussion and even sneered at students.

- 6. L admitted saying that student-based education was not effective in mathematics, but he had been implementing the plan earnestly and his personal record had been satisfactory. On the other hand, he was unable to recall whether he had sneered at students. C asserted that he had been teaching according to the arrangements made by the school. The opinion about admission of students was brought out only at a discussion about the future development of public schools. Also, the school had never requested him to arrange for students to participate in contests and had never given him any suggestion or warning regarding this issue. C also pointed out that the duty arrangements were improper. His workload of the day would be excessively heavy on duty. At that time, one of the vice-principals expressed his understanding after knowing his reason of not working on duty and submitted a report to the principal. However, the school had not given any response.
- 7. According to Article 2, Section 4 of the *Code of Administrative Procedure*, the general principles of administrative acts provided by the Code are applicable to all acts carried out by the authorities. In this sense, the general principles, such as the principle of legality, impartiality and good faith, bind the recruitment by public departments / bodies. Article 26, Section 4 of the *General Regulations of the Public Administration of Macao* (hereafter known as "the Regulation") is also applicable to the teaching staffs employed by the DSEJ on non-permanent terms. It stipulates that "if the administrative authorities do no express the will of contract renewal 60 days before the contract is due, the contract shall expire when it is due". Therefore, as to the personnel who are employed in this way, if the authorities do not intend to renew their contracts, they need not do anything or bear the responsibility to explain the reasons to the party concerned.
- 8. It is not difficult to understand that as the personnel employed on non-permanent terms are not indissolubly connected with the administrative authorities, the lawmaker considered the department employing them as the most competent one

to determine whether or not the need for the personnel still exists and define the circumstances which determine the contract renewal. Therefore, the administrative authorities are conferred upon the discretion to make the decision and hence there is no regulation that concretely defines under what situations or conditions will the contract not be renewed.

- 9. Nevertheless, discretion, a power originated from law, is only exercised for fulfilling the objective of the power-conferring law, while the exercise of discretion should be fettered by the general principles of administrative activities. Regarding the employment of staff on non-permanent terms and the renewal of their contracts, though discretion is conferred upon the authorities, since the purpose of employment is fulfilment of relevant needs with public interest, the renewal should centre on the public interest underlying in the staff's position and duties and is subject to the general principles of administrative activities such as the principles of legality and good faith.
- 10.In fact, the DSEJ was not obliged to explain the reason for not renewing the contracts, though it had indeed. As the Bureau should take responsibility for its open speech, its public statement of the reasons for not renewing the contracts should certainly be trusted. These reasons should be considered as the rationale for the Bureau's exercise of discretion of "the decision of not renewing contracts," so the rationale should not exceed the restrictions on the exercise of the discretion.
- 11.Undoubtedly, employment of the complainants by the Bureau was due to the need to fulfil the public interest of "public education". Since the number of students had direct influence on the need while the teachers' performance was a key to effective fulfilment, the first two reasons provided by the DSEJ did not go beyond the intended objective of the power-conferring law regarding the contract renewal. As for the third reasons, it is necessary to point out that if the teacher was unable to comply with the work schedule of the school due to his disagreement on the sponsoring philosophy, then it should be attributed to his performance. If the teaching staff merely expressed his different concept but has duly fulfilled his duties, the Bureau should not impose any restriction or exploitation on him by any means (including the exercise of discretion). This is due to the application

of Article 27 of the *Basic Law of the Macao Special Administrative Region (the Basic Law)* and Article 19 of the *International Covenant on Civil and Political Rights* which protect the freedom of speech, an entitled basic right. Article 40, Clause 2 of the *Basic Law* stipulated that basic rights can only be fettered by law. Therefore, listing the teaching staff's disagreement on the sponsoring philosophy as one of the rationales deviated from the purpose of the law which conferred discretion.

- 12.In this case, the DSEJ listed L's objection to student-based education implemented by the school and C's favor on admitting students with distinctive conduct and academic results which conflicted with the school's philosophy education for all, as one of the rationales for not renewing their contracts. However, the Bureau did not indicate any breach of duty by the two. Though L admitted expressing his objection, he stressed that he had been implementing the plan earnestly. C also asserted that he had also been teaching according to the arrangements made by the school. Therefore, the aforementioned rationales provided by the Bureau is suspected to be merely based on ideological values, illegally restricting or even depriving them of the basic right of freedom of speech, which went beyond the restriction on exercise of the relevant discretion.
- 13.Regarding the accusation that C had never arranged for students to join any external musical contests, it is important to point out that the DSEJ had not mentioned its stance on C's not making such arrangements over the years (such as pointing out that C did not make any improvement despite repeated warnings in order to show the Bureau's negative attitude towards his "omission"). Moreover, the DSEJ did not reflect this in C's performance appraisals, while C pointed out that the school had never made such request and that his superior had never given him any suggestion or warning in respect of this. In the sense, C believed that the school had agreed on or did not mind about his arrangement and hence continued this "omission", but the school only declared its negative stance on his not arranging any students participation in contests several years after by using its discretion regarding contract renewal. Such practice has breached the principle of good faith.
- 14.L did not deny that he had openly queried the qualification of a student-based education expert and sneered at students as pointed out by the DESJ. As to the

Bureau's accusation that C did not carry out his duty in the previous academic year, although C declared his "ineffable difficulties", he admitted that it was true. According to this, C had been aware of the job arrangement. Though difficulties of execution (not inability in execution) existed, C's decision of not carrying out the duty jobs without the school's consent or rearrangement, allegedly constituted breach of academic staff's duty to obey. As the behavior of criticizing experts at seminars, sneering at students and non-execution of duty jobs affected the appraisal of the complainants' performance, the authority's evaluation on the necessity of their service in achieving the public good based on their performance did not surpassed the restriction on exercise of discretion.

- 15. Therefore, part of the rationales for the DSEJ's decision not to renew the complainants' contracts might have overstepped the restriction on exercise of discretion, yet it could not be considered to be revocable. As the decision was still supported by other rationales that did not go beyond the restriction.
- 16. The complainants stated that the proposal about the non-renewal was made by only one of the members of the leadership, the principal, who had not recused himself from the case as required by law. Also, the Director of the DSEJ did not obtain evidence from them. It is necessary to point out that even if the complainants' statement about "the proposal was made solely by the principal" was true, since the current legislations governing public services did not consist of any requirement for "fact-finding" from parties concerned regarding the proposal/suggestion for the contract renewal of the staffs employed on non-permanent terms, which caused the "proposal from the school" to be dispensable. In other words, the Bureau was at liberty to decide whether this procedure was necessary and the person to make the proposal.
- 17.As for the question of whether the proposal by the principal involved recusation, it is necessary to point out that the principal's involvement in the non-renewal of their contracts was not under the circumstances of mandatory resusation under Article 46 of the *Code of Administrative Procedure*.
- 18.After the complainants openly criticized the principal at the meeting between the Director of the DSEJ and the teachers of P school, the authority and the school took follow-up measures respectively. However, the hierarchical seniors had the inherent

powers and obligations to arrange the juniors' works and supervise their fulfilment of duties in order to make evaluation, guidance and correction. Therefore, as a member of the leadership of P school, the principal should supervise the performance of the teachers and other subordinates. If he should not exercise the powers or fulfil the obligation, such as arranging for his subordinate's works and making evaluation, guidance and correction, merely because his subordinate had openly criticized him at an internal meeting, the juniors' criticism of the superiors would be considered as the basis for the existence of "confrontation" or "antagonism" between them. In a society that protects freedom of speech, this would provoke a trend of disaggregation of the hierarchical structure, which is the main structure of public administration, hindering the administrative authorities from fulfilling their statutory duties which should be carried out by their personnel at different hierarchical level.

- 19.In fact, even though the principal's proposal of non-renewal of their contracts was considered to be giving rise to suspicion about his impartiality or justness of his conduct, the Director of the DSEJ, present at the meeting at which the complainants expressed their opinions about the principal, should have knowledge about the course of the case. Therefore, it was unnecessary for the principal to notify the Director of "the circumstance of recusation". In other words, the principal needed not recuse himself from the case under Article 50 of the *Code of Administrative Procedure*. Moreover, if the Director considered that the principal's proposal might constitute breach of the principle of impartiality, he should have arranged another person to make the proposal. However, the Director did not do so. Hence, the principal's act of making the proposal about the renewal of the complainants' contracts could not be construed as a breach of the provisions of "self-recusation" or an illegality of the Director's implied decision on the principal's exemption from recusation.
- 20.On the other hand, according to the information provided by the complainants and possessed by the CCAC, the DSEJ had never conducted appraisal on teachers' performance. The basis was Article 14, Section 4 of the *General Principles Governing Teaching Personnel of the Education and Youth Affairs Bureau* (hereafter referred to as the *General Principles Governing Teaching Personnel*) which stipulated that "when there is no regulation for the appraisal procedure, for all of the effects, a

teaching staff's performance is considered to be satisfactory if there is no disciplinary record unfavourable to the teaching staff." The regulation for the appraisal procedure refers to the "regulation for the appraisal procedure established by the Governor through administrative orders" stated in the Section 3 of the same article, but such regulation had not yet been formulated.

- 21.In fact, as teaching staff's performance appraisal, according to law, aims to "enhance the quality of teaching and learning through teaching staff's personal and vocational development and enable the organization of the educational system to respond to the public need in educational field", "facilitate the improvement of their teaching activities and working efficiency", "facilitate their self-improvement and self-perfection", "facilitate the investigation into their need for training and changing of duties", "explore the factors that influence the effectiveness of teaching staff's performance" and "provide guidance for teaching staff's management of their work", for a long period of time the authority has been using Section 4 of Article 14, which was a transitional presumption (the General Principles Governing Teaching Personnel has been promulgated for almost 9 years), and hence did not regulate the teaching staff's appraisal procedure. As a result, this certainly impedes the fulfilment of the aforementioned aims. In the case of C, one of the reasons for not renewing his contract as publicized by the DSEJ was that "he had never arranged students to participate in external musical contests". If the authority had conducted performance appraisal, its negative attitude towards C's "omission" should have been reflected in the appraisal and the case would not have evolved into this state. Therefore, the DSEJ should adopt measures to facilitate the formulation of regulations on the appraisal procedure of teaching staff's performance.
- 22. As to the teaching staff employed on non-permanent terms, the renewal of their contracts depends on the "act" of the administrative authorities in accordance with law, which expresses the intention to renew the contracts. Regardless of the length of time of their service, the authorities only have to make unequivocal expression when they have the intention to renew the contract. The authorities would bear the duty of elucidation if they decided not to renew the contract. Nevertheless,

as for the teaching personnel of private schools to whom the *Labour Law* was applicable, even though they are employed on fix term contracts, they will be considered as permanent personnel as long as their contracts are renewed thrice. Moreover, if their contracts are terminated by the schools with reasons which are not attributable to them, they are entitled to receive compensations according to law. In other words, in reality, protection for non-permanent teaching staffs of public schools is weaker than that for teachers of private schools.

23. Nevertheless, while introducing the policy for 2008, the Secretary for Social Affairs and Culture stated that the government would continuously increase educational resources, improve the benefits for teachers and enhance the quality of education. Though the "teachers" mentioned on it should be referring to those of private schools, if it has only taken the benefits for private school's teachers into account while the vocational protection for the non-permanent staff of public schools, who undertook the responsibility for public education, was ignored, it would demonstrate unfairness. Based on this, the government should not neglect providing vocational protection for non-permanent teaching staff of public schools as well as adopting a mechanism to guarantee their performance by "performance appraisal".

24. Therefore, the CCAC has taken the following measures:

- (1) To make an advice to the DSEJ, urging it to pay attention to the restrictions on the exercise of discretion in order to avoid making any decisions on renewal of the contracts of teaching staff employed on non-permanent terms based on their ideological values, such as "recognition on the sponsoring philosophy".
- (2) To make a proposal to the Secretary for Social Affairs and Culture to evoke formulation of provisions on the procedure of teaching staff's performance appraisal and conducting studies/researches on how to enhance the necessary protection for non-permanent teaching staff of public schools, especially the regulations on contract renewal.
- 25. The DSEJ accepted the CCAC's advice.



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