



2012

Annual Report of the Commission Against Corruption of Macao

**Commission Against Corruption,
Macao Special Administrative Region**

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The Commissioner Against Corruption, Fong Man Chong, submitting the 2012 *Annual Report of the CCAC of Macao* to the Chief Executive, Dr. Chui Sai On

FOREWORD

Seasons come and go in the never-ending cycles of nature. Here comes the spring of 2013 – a time to review the past and look into the future.

In 2012, we saw a year-on-year increase in corruption reports and cases filed for investigation in the public sector. The areas most prone to corruption were procurement, public works contracting, expense reimbursement (involving document forgery) and other duty-related practices. Short of supervisory mechanisms, defective regimes and lax law enforcement have been some of the underlying reasons. As a law enforcement body, the Commission Against Corruption (CCAC) pledges to exert all efforts in graft fighting and remain punctilious towards minute details of each case.

When it comes to the private sector, corrupt practices were mostly found in procurement procedures involving commission acceptance against the interests of companies, tendering processes involving falsification of prices and documents to secure tenders, or situations where pecuniary advantage was solicited from workers by fraud. In 2012, the reports and cases in the private sector reached over 100.

On the ombudsman front, the CCAC handled nearly 1,000 cases last year. Due to rapid social development and the emergence of new problems, the complaints involved manifold aspects of people's livelihood, including medical service, public works, public security, economical and social housing, education and municipal affairs. All of these were largely concerned with government's policies and decisions rather than technical or execution matters.

Causes of the said problems can be concluded as follows:

- The mechanism building process is subject to unclear positioning, sluggish development and unpractical propositions. It fails to keep up with the rapid development of the Macao society. As a result, the existing mechanisms turn out to be outdated and necessary mechanisms have yet to come out;
- Administrative procedures have yet to be further streamlined and the theory of cutting administrative costs has yet to be applied in public administration;

- Timeliness is not valued in public administration, and therefore many plans have become empty talks;
- Administrative practices get stuck in a rut and there is still a lack of accountability in public administration;
- What should be done has been left undone and decisions are usually made much behind time.

Administration theories have already proved that omission of duty or failing to take prompt actions could even be worse than not acting sensibly.

Effectiveness depends totally on how strong the enforcement is, and therefore a sensible executor should never stop seeking improvement. As a matter of fact, winners are those who change methods but not goals, while losers often act the opposite. Things will hardly see real achievements unless they are done at a right moment. As a saying goes, “the easiness or difficulty is determined by whether something is done at a suitable time, not its complexity”.

Checks and balances are indispensable in the fight of corruption. The ultimate goal of mechanism optimisation is to limit the powers in an effective way. We should not neglect that any defect in mechanism building can have far-reaching adverse impact on society. The existence of outdated mechanisms is no better than the lack of them.

On the education front, the CCAC has continuously promoting the awareness of probity among all walks of life by holding training sessions and seminars. A total of 459 seminars were held in 2012, attracting 27,679 public servants, management personnel and employees of private institutions, teenaged students and association members. Various activities were also organised in collaboration with different associations to disseminate the message of integrity.

The CCAC proposed amendments to its organic law and the law of declaration of incomes and properties in 2012. In 2013, we will also put forward our suggestions to the SAR government about the establishment of two laws, namely, a legal regime against bribing foreign public officials and members of international organisations and a legal regime against trading in influence. They will serve as part of our initiatives to perfect the network of integrity building of Macao, and to develop an

effective checks and balances system – an obligation enshrined in the *United Nations Convention against Corruption*.

March 2013

The Commissioner against Corruption
Fong Man Chong

PART I

CASE PROCESSING SUMMARY



PART I

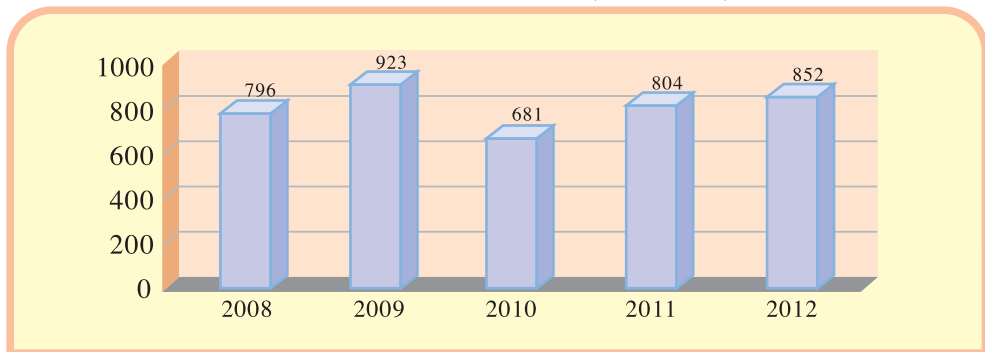
CASE PROCESSING SUMMARY

I. Number of reports

In 2012, the Commission Against Corruption (CCAC) handled 1,279 cases, namely the 852 complaints/reports recorded throughout the year and the 427 that were brought forward from 2011 or temporarily archived before. There was an increase in reports/complaints last year when compared with the 804 recorded in 2011.

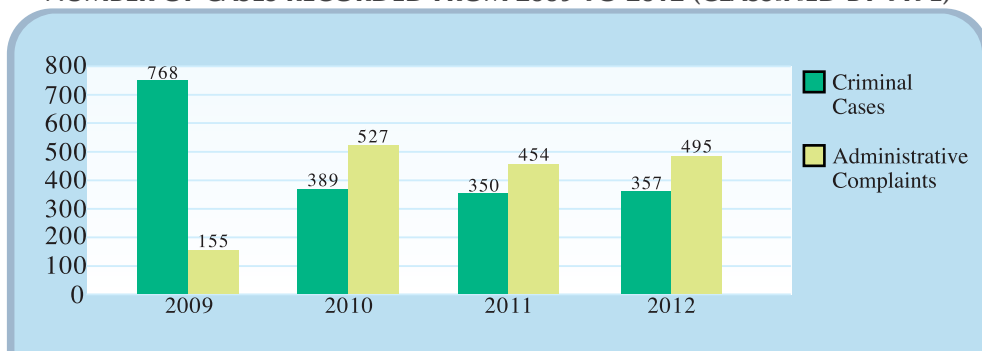
Last year also saw a growth in administrative complaints, a majority of them relating to livelihood issues. In view of the wider range of professional disciplines covered in the complaints, supervisory bodies must continuously upgrade their knowledge in order to deal with new challenges that come up in their work.

STATISTICS ON CASELOAD (2008-2012)



When handling the complaints, be they of criminal nature or about administrative illegalities, the CCAC always strives to perform its supervisory role in accordance with the law independently. Driven by the goal of exerting “supervision on integrity”, “supervision on law-enforcement” and “supervision on effectiveness”, the CCAC pledges to adhere to the principle of impartiality when investigating each case.

NUMBER OF CASES RECORDED FROM 2009 TO 2012 (CLASSIFIED BY TYPE)



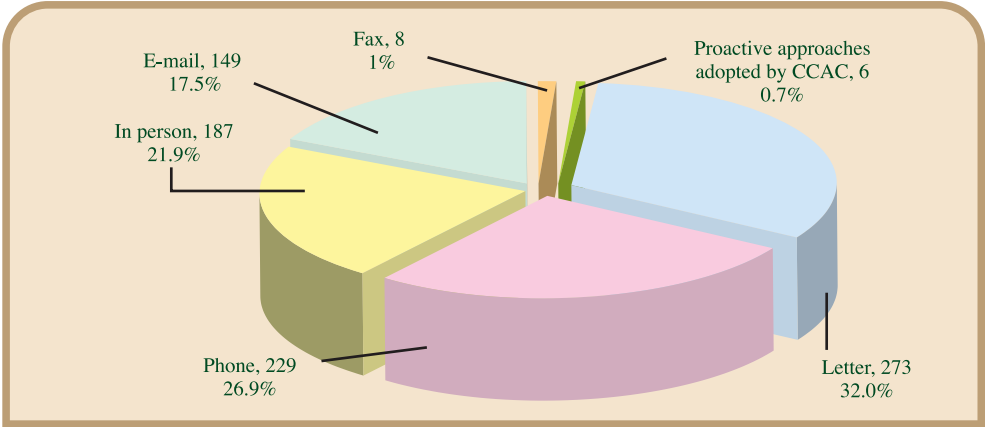
Among the 852 cases recorded in 2012, 6 were uncovered by the CCAC through proactive approaches and 6 required assistance requested by other law-enforcement agencies. The remaining were all reported by citizens, including 498 complaints lodged by identified complainants or those willing to provide personal data, 329 anonymous complaints or those requesting anonymity and 13 referrals made by other bodies. This shows citizens' increased willingness to report crimes and their heightened awareness of safeguarding their rights.

STATISTICS ON CASES RECORDED FROM 2010 TO 2012
(CLASSIFIED BY SOURCE OF CASES)

Source of cases		2010		2011		2012	
		Number	Percentage	Number	Percentage	Number	Percentage
Complaints received from citizens	Anonymous complaints or those requesting anonymity	385	56.5%	293	36.4%	329	38.6%
	Complaints lodged by identified complainants or those willing to provide personal data	275	40.4%	482	60%	498	58.5%
Referrals/reports by other public bodies		0	0%	11	1.4%	13	1.5%
Cases requiring assistance		17	2.5%	13	1.6%	6	0.7%
Cases uncovered by CCAC through proactive approaches		4	0.6%	5	0.6%	6	0.7%
Total number of cases		681	100%	804	100%	852	100%

In 2012, mail and telephone were still the main channels for residents to report cases to the CCAC, through which 502 cases were lodged, representing 58.9% of the total number of cases received in 2012; the complaints lodged in person reached 187, representing 21.9% of all the cases received.

STATISTICS ON CASES RECORDED IN 2012
(CLASSIFIED BY REPORTING METHOD)



STATISTICS ON CASES RECORDED FROM 2010 TO 2012
(CLASSIFIED BY REPORTING METHOD)

Reporting method	2010		2011		2012	
	Number	Percentage	Number	Percentage	Number	Percentage
Letter	256	37.6%	255	31.7%	273	32.0%
Phone	164	24.0%	235	29.2%	229	26.9%
In person	155	22.8%	197	24.5%	187	21.9%
E-mail	96	14.1%	106	13.2%	149	17.5%
Fax	6	0.9%	6	0.8%	8	1%
Proactive approaches adopted by CCAC	4	0.6%	5	0.6%	6	0.7%
Total	681	100%	804	100%	852	100%

II. Case processing

Among the 852 cases recorded in 2012, 48 cases were not pursuable due to the fact that they fell outside the jurisdiction of the CCAC or the information was not sufficient, representing less than 10% of the total number of cases in the year.

CASES HANDLED IN 2012

Type of cases		Number	Percentage
Pursuable cases	Filed for investigation	751	88.2%
	Handled by informal methods	53	6.2%
Cases not eligible for handling		48	5.6%
Total		852	100%

Of the 852 cases recorded last year, 297¹ criminal cases and 502² administrative complaints were eligible for preliminary investigation. Regarding criminal cases, investigations of 198 cases were completed by December 2012. Those cases were referred to the Public Prosecutions Office or archived accordingly.

On the ombudsman front, a total of 502 cases were filed for investigation in 2012. Together with the 427 that were brought forward from 2011 or temporarily archived before, the CCAC had to handle 929 cases in 2012, 563 of which were completed and archived. The departments being complained against in over 200 cases adopted improvement measures or accepted CCAC's recommendations on rectifying inappropriate and wrongful procedures (some of these cases were still under follow-up work).

Besides, the CCAC received 1,231 counts of requests and enquiries of different natures throughout the year. There were 645 counts of enquiries into criminal matters and 586 relating to the ombudsman aspect.

¹ The total number of criminal reports received was 477, many of which were also subject to ombudsman investigations.

² Another five complaints had been withdrawn by the complainants and were therefore archived.

PART II

ANTI-CORRUPTION



PART II

ANTI-CORRUPTION

I. Numbers of reports and cases filed for investigation

In 2012, the CCAC received a total of 477 criminal reports³, including 297 cases eligible for preliminary handling. Together with the 79 cases brought forward from the previous year⁴, the CCAC had to handle a total of 376 criminal reports in 2012.

The CCAC filed a total of 183 criminal cases for investigation in 2012, an increase when compared to 112 in 2011. The growth could be attributed to the increase of bribery reports received in the private sector, where 102 cases were filed for investigation.

Investigation of a total of 185 criminal cases was completed by December 2012, and the cases were referred to the Public Prosecutions Office or archived accordingly.

NUMBER OF CRIMINAL CASES (2010-2012)

Data	2010	2011	2012
All cases received	681	804	852
Criminal reports	389	398	477
Pursuable cases	133	182	297
Cases filed for investigation	88	112	183

³ As some complaints contained allegations of both criminal acts and administrative appropriation, they could be placed on different files for criminal investigation and ombudsman investigation respectively.

⁴ These cases were not recorded as those received and handled in 2012 due to the fact that the former involved special investigation measures and the outcomes of handling were quite different. Some of these cases were referred to the ombudsman department after relevant criminal investigation was completed.

II. Summaries of part of the cases investigated by CCAC

Case 1:

The CCAC received a report in December 2010, claiming that a chief of an adult education centre under a local civil association cheated the Education and Youth Affairs Bureau (DSEJ) out of education subsidies under the “Continuing Education Subsidy Scheme” starting from 2010. The illicit acts included making false reports on the numbers of students enrolled in relevant courses and forging their signatures.

Following investigation and evidence search, the CCAC’s investigators arrested the chief of the education centre surnamed Lai on 20th February 2012. Plenty of information and documents, along with approximately MOP100,000 in cash, were seized in the operation.

DSEJ usually evaluates if a course is eligible for the application of subsidies before deciding the subsidised quota and the subsidy amount. In order to make the numbers of their “students” look consistent with the subsidised quotas approved by DSEJ, the suspect would overstate the numbers of enrolled students by means of manipulating the personal data of members and staff of the civil association and other people. Allegedly, after DSEJ approved the subsidies, the suspect got the subsidies of those who did not actually enrol by forging their signatures upon receipt. It was discovered that, between 2010 and the first half of 2011, a total of 140 courses launched by the centre were subsidised by DSEJ, and the subsidised students were over 3,000. About 180 people were found to be falsely enrolled in the courses, involving a total subsidy amount of MOP68,000 or so.

The suspect allegedly committed acts of fraud (under Paragraphs 1 and 3 of Article 211 of the *Penal Code*). The case was referred to the Public Prosecutions Office.

Since the case involved education subsidy fraud against the government and the personal data of many residents, the CCAC sent letters to relevant departments to urge them to enhance supervision on granting of subsidy and personal data protection.

Case 2:

The CCAC received a report in December 2011, claiming that a Chinese citizen, when applying for the right of abode in Macao in 2005, submitted a forged certificate of no criminal conviction for his/her father so that the latter, who was once convicted for accepting bribes, could also be granted residency in the city. According to the informer, some public servant(s) might have helped to cover up relevant illicit act on the assessment and approval process.

After investigation, it was found that the suspect submitted a “Certificate of No Criminal Sanction” of his/her father to the Macao Trade and Investment Promotion Institute (IPIM) when making the investment residency applications in 2005. However, after communicating with the relevant department in mainland China, the CCAC verified that the suspect’s father was handed down a sentence of 3 years in jail (suspended for 4 years) by the Supreme People’s Court in 1998 for the conviction of bribery acceptance in commercial activities. The suspect was therefore believed to have submitted a forged certificate.

According to the requirements set forth by IPIM, criminal record certificate is a must for investment residency application. Applicants or their family members who are with a criminal record will not be granted residency in Macao.

The act of the suspect was believed to constitute forgery of documents of special value (under Subparagraph c) of Paragraph 1 of Article 244 and Article 245 of the *Penal Code*). The case was referred to the Public Prosecutions Office.

Case 3:

The CCAC received a report in September 2010, claiming that a person in charge of a construction company offered bribes to an engineer of the Land, Public Works and Transport Bureau (DSSOPT) in exchange for confidential information relating to a few tenders for construction works. The alleged public servant was suspected to have assisted the company in preparing tender documents and acquiring public works tenders in the process of tender evaluation.

After investigation, it came to light that a DSSOPT staff, who was an engineer cum president/member of the tender evaluation committee in the public works area,

started to receive bribes as rewards for assisting a company in preparing tender documents and acquiring public works contracts in 2008. The public servant even abused his/her authority by concealing relevant construction, quality and delay problems and even exerting pressure on the consultancies to let the problems pass or revise the construction plans.

At least three public projects were found to be involved in the case, totalling an amount of more than MOP100 million. Allegedly, 1-3% of the value of each project went to the said public servant as bribes. Of the more than MOP1.8 million bribes involved, some MOP1.2 million was already handed to the public servant, part of which was then converted into RMB and deposited in mainland China or used to buy luxury watches, furniture and the like.

The said public servant was charged with “accepting bribes to perform illicit acts” (under Paragraph 1 of Article 337 of the *Penal Code*), and his/her spouse was charged with “money laundering” (Paragraphs 2 and 3 of Article 3 of Law no. 2/2006 on *Prevention and Suppression of Crime of Money Laundering*). The case was referred to the Public Prosecutions Office in October 2012. The Court also imposed compulsory measures on the suspect, including prohibition to leave the territory, suspension from duties and provision of bail.

Case 4:

The CCAC received a report in March 2012, claiming that an assistant of a health centre under the Health Bureau drove a motorcycle to some legal translation company during working hours for a few times, and thus believing him/her to be taking part-time work without authorisation.

After investigation, it was found that the said public servant started to provide Portuguese translation and proofreading services for a funeral company in 2004. He/She received two job requests per month on average. Of MOP5,500 paid by the

funeral company to the translation company for each job, MOP1,900 would go to the public servant as a service fee.

The alleged act of the public servant, namely providing translation and proofreading services to the funeral company without approval of relevant department, had violated the principle of “exclusivity of duty” of Article 17 of the *Statute of Personnel of the Public Administration of Macao*. The CCAC already notified the Health Bureau of the situation so that relevant disciplinary action could be taken.

Case 5:

The CCAC received a report in April 2011, claiming that a deputy sheriff, who was responsible for immigration clearance at the Cotai border checkpoint, was engaged in outside employment activities.

After investigation, it came to light that the deputy sheriff registered a new limited company in July 2010 in Macao. Located at the Zhuhai Park of the Zhuhai-Macao Cross-border Industrial Zone according to the registration, the company operated businesses of import, export, manufacture and retail of audio communications equipment. The deputy sheriff was a shareholder who owned 50% of the company and also one of the administrators.

According to relevant travel records, the deputy sheriff travelled through the checkpoint at the cross-border industrial zone at least twice a month, which could prove that he frequently went to the Zhuhai Park to manage the businesses of the company. Furthermore, he was found to have directly participated in the meetings and operation of the company.

The alleged act of the deputy sheriff, namely engaging in administration of a company without approval of relevant department, had violated the principle of “exclusivity of duty” of Article 17 of the *Statute of Personnel of the Public Administration of Macao*. The CCAC already notified the Public Security Policy Force of the situation so that relevant disciplinary action could be taken.

Case 6:

The CCAC received a report in June 2011, claiming that a Macao resident A and his/her spouse B assisted their relatives in applying for investment residency in Macao through false property transactions several years ago. Some public servant(s), according to the report, attempted to cover up relevant illicit acts.

After investigation, it was discovered that families C and D, who are relatives of A living in mainland China, wished to settle in Macao but neither of them were able to invest in an immovable property worth MOP1 million or more as required for the investment residency application in the territory. In order to help C and D obtain the right of abode, A and B falsely sold their two adjoining flats to C and D, who promised that upon the completion of property ownership transfer, the ownership of the concerned flats would be returned to A and B through the signing of authorisation letters. At last, C and D successfully obtained the right of abode from the Macao Trade and Investment Promotion Institute (IPIM) through the said false transactions. In fact, the two families never lived in the aforementioned properties. The couple A and B used one of the two flats and rented the other to tenants. A and B were the recipients of the rent.

In the course of investigation, some confessed having conducted the said false transactions. The acts of the four people involved were believed to constitute forgery of documents of special value (under Article 245 of the *Penal Code*) and fraud (under Subparagraph a) of Paragraph 4 of Article 211). The case was referred to the Public Prosecutions Office.

There was no evidence showing any IPIM staff or other public servants were involved in the above offences.

Case 7:

The CCAC received a report in February 2011, claiming that A, a staff of the Cultural Affairs Bureau, started to apply for family subsidies in 2005 for his/her parents, who actually had stable jobs. A was therefore believed to cheat the government out of family subsidies and free health care service for his/her parents.

After investigation it was discovered that, when applying for family subsidies for his/her parents between 1998 and 2012, A falsely declared to the Cultural Affairs Bureau that they were jobless. But in fact, A's father worked for some construction companies and hotels starting from 1996 and the mother also had a job in some hotel. Both of them received a monthly salary equal to the value of over 50 points of the salary index of the public service, which exceeds the statutory upper limit for family subsidy application provided in Article 208 of the *Statute of Personnel of the Public Administration of Macao*.

During the investigation, A confessed defrauding the government of family subsidies and free health care service for his/her parents by falsely claiming that they were jobless on the statements. A total of some MOP80,000 and free health service were involved in the fraud. The alleged acts constituted document forgery and fraud (under Subparagraph b) of Paragraph 1 of Article 244 and Paragraph 3 of Article 211 of the *Penal Code* respectively). The case was referred to the Public Prosecutions Office.

Case 8:

The CCAC received a report in April 2012, claiming that the person in charge and a doctor of a clinic under a local association forged medical consultation records of patients in an attempt to cheat the government out of medical subsidies.

According to the medical service cooperation agreement entered into between the Health Bureau and the association in April 2010, patients who are over 65 years old or under the age of 10 and all primary and secondary school students are eligible for a subsidy of MOP80 for each medical consultation made at the clinic.

After investigation, it came to light that Leong, the said person in charge, in order to help Ng, a doctor of the clinic to whom he/she is related to earn more incomes and increase the revenue of the clinic, conspired with the latter to commit relevant subsidy scams starting from July 2011. The fraudulent acts involved adding eligible subsidy recipients who did not make medical consultation at the clinic and the elderly who went to the clinic just for checking blood pressure (i.e. without medication) to the list of subsidised patients in the computer system, submitting those false information to the Health Bureau, and including the said “patients” in the list of the treated patients of Ng. During the investigation Leong and Ng confessed conducting the aforementioned illicit acts, including forging medical consultation records for more than 300 times. Both of them were believed to commit fraud (under Article 211 of the *Penal Code*). The case was referred to the Public Prosecutions Office.

The CCAC already reported the case to the Health Bureau and requested the latter to take necessary measures to prevent similar incidents from reoccurring, such as improving the management on the relevant subsidy schemes and plugging possible loopholes for fraud.

Case 9:

The CCAC received a report in October 2011, claiming that some public servant(s) attempted to sell the worker badges to be used during the Grand Prix on the internet and therefore suspecting they were involved in power abuse.

After investigation, it was discovered that A, a staff of the Civil Engineering Laboratory of Macau (LECM), once put some worker badges used at the Grand Prix for sale online, but he/she stopped doing so at a later time. It was found that the worker badges were issued by the racing track construction contractor and were not for sale. In order to go near the raceway to watch the races for free, A and his/her colleague B asked the staff of the contractor they knew for six worker badges. As A and B’s work had nothing to do with the raceway examination and they did not make any agreement or guarantee that might have conflict with their duties with the staff of the contractor, their acts were not considered illegal.

Nevertheless, since LECM is a public institution established by the government, the said behaviours carried out by A and B without the authorisation of their superiors already violated the code of conduct of the institution. This could have adverse

impact on the image of LECM, in particular their credibility. The CCAC already notified LECM of the situation and requested that it takes necessary disciplinary action and enhance the code of conduct and work ethics for staff.

Case 10:

The CCAC received a report in June 2011, claiming that A, a principal of a local private school, helped his/her younger brother B to obtain residency under skilled worker class in Macao by illegal means. It also claimed that A conspired with a school coordinator C to get a 10% commission on the projects from some construction company.

After investigation, it was verified that B did meet the qualifications required for skilled workers and obtain the residency granted by the Macao Trade and Investment Promotion Institute by legal means. There was no illegality as claimed by the report and there was no public servant involved either.

Regarding the second allegation, investigation showed that the private school started to have the said construction company provide maintenance work in as early as 1997. Two previous principals of the school, D and E, used to received 10% and 5% of the construction fee of some projects from that company and put them in the teacher initiative funds. However, this practice no longer continued after A took over the position in 2005. Although the alleged acts were verified after investigation, since they took place before the entry into effect of Law no. 19/2009 (*Prevention and Suppression of Bribery in the Private Sector*) (i.e. before 1st March 2010), the CCAC archived the case.

Case 11:

In December 2011, a shareholder representative of some management company limited made a report to the CCAC, claiming that a driver of the company secretly asked for excess fare from passengers and kept the money for him/herself, which impaired the interest of the company and violated the law.

After investigation, it was discovered that the suspect intentionally violated the regulations of the company by carrying out the alleged acts, which constituted the offence of “abuse of trust” (under Article 199 of the *Penal Code*). The case was referred to the Public Prosecutions Office.

Case 12:

More than 10 mainland Chinese workers made a report to the CCAC in June 2011, claiming that A and B, the site supervisors of the construction company that they worked for, coerced them into giving up MOP100 of their wages per day, which would be collected at end of each month. According to the workers, A and B even took away their monthly accommodation allowance of MOP500. They were intimidated into paying the said MOP100/day by the threat of not receiving any work or even losing their jobs.

After investigation, it was discovered that, when applying for the quota for non-resident workers through a gaming company, the construction company promised that their Mainland Chinese workers would receive a daily wage of MOP450. However, a manager of the construction company, who oversaw the operation in Macao, asked A and B to have the workers pay MOP100 of their wages per day back at the end of each month. They even took away the monthly accommodation allowance of MOP500 for each of the workers. Knowing that the said gaming company had to declare the incomes of their workers to the Financial Services Bureau each year, the manager told his/her subordinates to file forged tax returns and provided them to the gaming company. The alleged acts of the suspects, including causing loss to others or this region intentionally (or obtaining illegitimate interests for themselves or others intentionally) and forging payroll documents and tax returns, constituted the offence of “document forgery” (under Article 244 of the *Penal Code*). The case was referred to the Public Prosecutions Office.

Case 13:

The CCAC received a complaint in April 2011, claiming that a staff of the Housing Bureau set up a construction company to provide maintenance service funded by the “Subsidy Scheme for Public Facilities of Low-Rise Residential Buildings”. Allegedly, the staff was also involved in the daily operation and affairs of the company.

After investigation, it came to light that, in order to obtain illegitimate interests for him/herself and the private company, the suspect intentionally acted against the obligations of his/her position by photocopying and appropriating the internal documents of the Housing Bureau to facilitate the operation and business promotion of the company. The alleged acts constituted the offences of “power abuse” and “breach of confidentiality” (under Articles 347 and 348 of the *Penal Code*). The case was referred to the Public Prosecutions Office.

Case 14:

The CCAC received a report in October 2011, claiming that the owners’ committee of some residential building applied for maintenance subsidies to the Housing Bureau for three times but some parts of the subsidised projects failed to be completed in accordance with the quotation documents. The complainant went further to claim that the president and the vice president of the committee accepted bribes from Company A to which they contracted the works.

After investigation, the CCAC found no evidence of the said two people taking bribes from the contractor. Nonetheless, between 2009 and 2011, the duo and another three construction company owners/shareholders plotted together to overstate the quoted costs so that they could get more subsidies from the Housing Bureau. The subsidy scam involved an amount of over MOP350,000. The five suspects were believed to have committed the offences of “fraud” and “document forgery” (under Articles 211 and 244 of the *Penal Code*).

Case 15:

The CCAC received a complaint from the director of Company A in July 2012, claiming that a former employee, who quitted his/her job for Company B, accepted “advantages” offered by Company B and helped it to steal the sales information of a product from Company A that had the distribution rights. As a result, Company B acquired the exclusive distribution rights for the product in Macao.

After investigation, it was discovered that the former employee of Company A did not work for Company B but for the manufacturer of the product directly. The staff did not provide Company B with any sales information of Company A to facilitate the acquisition of relevant distribution rights. In fact, the reason why Company A lost the distribution rights was that Company A, despite its continuous sales growth, disregarded the manufacturer’s request to adjust the profit distribution between them. As a result, Company B, who was willing to receive a far smaller portion of the profits than Company A did, became the new distributor of the product in the territory.

There was no evidence showing that the former employer of Company A handed its internal information to Company B to facilitate the acquisition of relevant distribution rights. Therefore, the case was archived.

Case 16:

The CCAC received a complaint in May 2011, claiming that some Chinese restaurant in Macao was granted 16 quotas for the employment of non-resident workers even though there was no business licence or any local workers working there. So the complainant suspected that the Human Resources Office (GRH) might have received advantages to approve the quota or the recruitment agency might have special relations with GRH.

Below are the findings of the investigation:

1. The restaurant did not obtain a food licence and was therefore believed to have engaged in illegal business operation;

2. According to the Declaration Form for Employer Registration submitted to the Social Security Fund in 2011, the restaurant had hired 10 local workers. However, it turned out that, among the 10 people, some had already retired and some were employees of other institutions, which means that most of them were not workers of the restaurant;

3. Although the restaurant had only 10 local workers and even refused to consider hiring any of the 82 local workers recommended by the Labour Affairs Bureau, the chief of the GRH still granted the restaurant 16 quotas for non-resident workers (while an GRH officer suggested not granting any at all). Therefore, there might have been administrative impropriety.

After investigation, there was no evidence showing the commission of illicit acts by any personnel of GRH. Therefore, the complaint regarding duty-related offences committed by the GRH personnel was archived.

At the same time, it was found that GRH could have been more careful when handling the approval of foreign worker employment applications and verifying the information submitted by applicants. Take this case as an example, despite the GRH officer's stated disapproval of relevant application on a report, the application was approved in the end.

Therefore, the case was referred to the Ombudsman Bureau for a follow-up investigation.

Regarding the alleged commission of document forgery (provision of wrong employee data) to cheat the GRH out of quotas on non-resident workers, since the suspected acts were not conducted by public servants, they did not fall under the jurisdiction of the CCAC. Therefore, the related matters have been referred to GRH.

Case 17:

The CCAC received a report in August 2012, claiming that a staff of the Macau Sport Development Board (MSDB) worked part-time for a frozen meat shop on holidays and after work.

Below are the findings of the investigation:

1. The said public servant started to work for MSDB in 2009.
2. According to the person in charge of the frozen meat shop, the public servant was once a full-time worker of the shop but he/she quitted the job after beginning the service at MSDB. Later on, due to a lack of hands in the shop, the person in charge contacted the public servant for help and the latter promised to provide delivery service on a part-time basis.
3. After investigation, it was verified that the public servant worked as a part-time delivery truck driver for the frozen meat shop.
4. The public servant admitted having worked for the shop four hours a day for about 25 days per month on a daily wage of MOP260. The monthly salary received from the part-time work was between MOP5,000 and MOP7,000.
5. The public servant also admitted that he/she did not make necessary declaration to MSDB or get the approval of his/her superior before engaging in outside employment activities.

The alleged acts of the public servant involved had violated the principles of “exclusivity of duty” and “no concurrent duty” defined in the *Statute of Personnel of the Public Administration of Macao* (Articles 17 and 19). The CCAC already notified MSDB of the situation and the latter gave a written reprimand to the concerned staff.

Case 18:

According to a complaint received by the CCAC, a public servant (with a rank equivalent to an inspector of police) of the Gaming Inspection and Coordination Bureau (DICJ) pretended to be sick so that he/she could be exempted from shift

work. However, the public servant was still receiving shift work subsidies. The public servant was suspected to have committed fraud.

After investigation, it was discovered that the public servant had a chronic respiratory disease and was certified unfit for carrying out shift work by the doctor. Therefore, he/she was exempted from shift work by his/her superior starting from 2009. However, due to negligence of relevant administrative department, the public servant still received the stated subsidy equal to the value of 17.5% of his/her salary index points between 2009 and May 2010.

In view of the fact that the public servant did not participate in shift work, he/she was not entitled to the subsidy described in Subparagraph a) of Paragraph 1 of Article 202 of the *Statute of Personnel of the Public Administration of Macao*. The CCAC already notified DICJ of the situation so that the latter could take necessary measures.

DICJ verified that the shift work subsidies were given to the public servant by mistake. It solved the problem and recovered relevant subsidies from the public servant already.

Case 19:

The CCAC received a report in November 2011, claiming that a staff of the Financial Services Bureau went back home to deal with personal affairs during working hours over a long period of time, and that the alleged acts might have been harboured by his/her superior.

After investigation, it was discovered that the said staff used “having outdoor tasks” as an excuse many times for leaving the office during working hours. He/She was found to deal with personal business (e.g. buying ingredients for meals or housewares) and even return home without the authorisation of his/her superior. The alleged acts contravened the obligations of “being conscientious and diligent” and “being punctual” described in Subparagraphs g) and h) of Paragraph 2 of Article 279 of the *Statute of Personnel of the Public Administration of Macao*.

Finding no corrupt acts involved in the case, the CCAC archived it and notified the Financial Services Bureau of the situation so that relevant disciplinary action could be taken.

Case 20:

The CCAC detected a bribery and fraud case in the private sector involving three suspects, including two chefs and a supplier. Allegedly, between 2011 and 2012, two chefs of a local Japanese restaurant breached the code of practice for food procurement by repeatedly taking bribes from a supplier, causing the restaurant to suffer a pecuniary loss amounting to over MOP2 million.

After the investigation of the CCAC, it came to light that the two chefs did not keep the copies of the invoices as required by relevant procedure upon receipt of goods. Instead, they allowed the supplier to take the carbonless invoices away, so the latter could put down what he/she wanted the quantities and prices of the supplies to look like. The two chefs were offered bribes by the supplier to facilitate the swindles. They have violated the provision of passive bribery defined by the law *Prevention and Suppression of Bribery in the Private Sector*.

In addition to an alleged offence of active bribery in the private sector, the supplier was suspected to have committed fraud through document forgery. Between 2011 and 2012, the supplier cheated the restaurant out of money by altering the invoices in different ways, including juggling the quantities of the supplies. His/Her acts allegedly constituted the offences of “document forgery” and “fraud” defined by the *Penal Code*.

In the course of the investigation, the supplier and the two chefs admitted having offered and accepted pecuniary advantage respectively between 2011 and 2012. After investigation the case was referred to the Public Prosecutions Office.

Case 21:

On 31st March 2011, the CCAC referred a case of power abuse involving a leader of the Cultural Affairs Bureau to the Public Prosecutions Office. During a follow-up investigation, the CCAC discovered that the suspect might have also committed power abuse in an outsourced electricity and monitoring system installation project and two leasing projects of the government. Moreover, the suspect allegedly violated Article 28 of the law *Declaration of Incomes and Properties* – “unexplained wealth”, and committed the offence of “false testimony” under Article 323 of the *Penal Code*.

During the investigation, the CCAC also discovered that a senior officer of the Cultural Affairs Bureau might have breached the obligation of secrecy of public servants and committed the offence of “breach of confidentiality” prescribed by Article 348 of the *Penal Code*. Allegedly, in spite of knowing a loss would be caused to a third party, the senior officer disclosed the quotation information of other bidders that came to his/her knowledge when performing his/her duties to a staff of a bidding company, so the company could give a more favourable quotation than other competitors.

The CCAC already notified the Cultural Affairs Bureau of the situation and requested the latter to take necessary disciplinary action against relevant wrongful acts.

Case 22:

The CCAC uncovered that 16 members of a team of the Auxiliary Medical Service hired by the Health Bureau to carry out duties at the Cotai Immigration Checkpoint (also known as Lotus Port) deceived remuneration over a long time by using the loophole of attendance tracking.

The main duties of the team at Lotus Port were to conduct temperature measurement and provide medical consultation services for people entering Macao.

After careful examination of a multitude of shift rosters, attendance sheets and payroll records, the CCAC discovered that between April 2007 when the Lotus Port was re-opened and June 2011 when the temperature screening measures at immigration checkpoints were discontinued, the said 16 suspects allegedly departed Macao without authorisation of their superior for many times when they should have been on duty, some of whom were even away for a whole month. In order to cover up their acts, pretend they had worked and obtain their salary, the suspects signed the attendance sheets beforehand or after they were back on duty, exploiting the loophole which allowed wages to be calculated by the Health Bureau based merely on their attendance records. It came to light that one suspect had even faked attendance records for as many as 181 times. The acts of the 16 suspects were believed to constitute the offences of “document forgery” and “fraud” defined under the *Penal Code*.

After investigation, it was verified that one of the suspects surnamed Ngan, who

was the team leader responsible for monitoring the members' attendance, neither reported the situation to the superior nor took any action despite knowing their forgery of attendance records over a long time. Therefore, he/she was suspected of harbouring the members' acts of obtaining salaries by deception, which contravened the obligations pertaining to his/her duties and constituted the offences of "power abuse", "document forgery" and "fraud" under the *Penal Code*.

In the course of investigation, some suspect(s) confessed committing the said fraudulent acts and deceiving the Macao SAR Government.

The illicit acts spanned four years and involved an amount of over MOP200,000. The CCAC notified the Health Bureau of the case and requested the latter to adopt proper measures to strengthen internal management and prevent similar cases from reoccurring.

Case 23:

The CCAC detected a case of power abuse involving a prison guard surnamed Wong, who allegedly smuggled contraband into the prison for inmates.

Based on the intelligence obtained, the CCAC carried out an operation in the evening of 28th July 2012 and caught the prison guard. During the frisk Wong was found to have a paper note from an inmate requesting him/her to bring forbidden items to the prison. Wong was therefore suspected to smuggle contraband into the prison for inmates by abusing his/her position. The alleged behaviour constituted power abuse.

With the assistance of the Macao Prison, the CCAC's investigators conducted a search in the prison cells and seized a variety of forbidden items, including blades, mobile phones, memory cards, SIM cards, batteries, guitar strings and paints.

Data showed the prison guard had large cash deposits in his/her bank account(s), and that he/she engaged in frequent and unusual betting activities, so he/she was also believed to be involved in illegal gambling.

During the investigation, the prison guard admitted having brought contraband into the prison according to the request of the inmate(s). The CCAC referred the case to the Public Prosecutions Office after the initial investigation was completed.

Case 24:

The CCAC discovered that a senior nurse at the Hospital Centre S. Januario allegedly cheated overtime pay by abusing the loopholes of the hospital's overtime work compensation system and the trust of doctors.

After investigation, it was found that between January 2011 to May 2012, the suspect surnamed Cheong exploited the hospital's overtime work compensation system (by which overtime pay was calculated according to the completion time of the last patient's consultation at the out-patient department recorded by the computer plus additional 20 minutes for clearing things up). Allegedly, after the doctors left the consulting rooms upon finishing the out-patient duties, Cheong deliberately kept the last patient's medical record open on the computer to make the consultation time look longer than it actually took. Cheong was found to have cheated overtime pay by such means for a long time. It also came to light that, on some of the days during the stated period, the medical records of some patients had even been left open for over four hours, close to the entire length of time of the doctors' daily service at the out-patient department. There were also computer records showing that some patients were still "under diagnosis or treatment" at the time when in fact they had already left Macao.

In the course of investigation, the suspect admitted having committed the said fraudulent acts and deceived the Macao SAR Government.

The CCAC already notified the Health Bureau of the situation and requested the latter to take necessary measures immediately so that factors that may cause illicit acts can be eliminated.

Case 25:

The CCAC detected a case of long-term appropriation of government's resources involving a senior public servant surnamed Chiang who worked for the Macao Foundation. The suspect, who did not have the legal right to use government vehicles for private matters, falsely claimed that he/she had to use them for work purposes while they were in fact for personal use. He/She even requested the government drivers to cover up the relevant records of vehicle use. The alleged acts constituted the offences of "document forgery" and "misappropriation of public property".

The CCAC discovered that the public servant, who was not entitled to the use of any public vehicle or driver for private purposes, used certain vehicles of the Macao Foundation for personal activities almost every weekday from January 2012, with a few drivers taking turns to give him/her the rides.

In addition to taking public vehicles to hospitals for consultation for many times, the suspect was also found to have asked the drivers to take him/her to beauty salons for beauty treatment during working hours. However, the said places were not often frankly recorded as they should have been.

During the investigation, some admitted that phrases like "go home" and "back to the Foundation" were put down as per instructions given by the superior, while places involving personal activities were intentionally left out on the vehicle use records. The suspect also admitted having frequently visited the hospitals for consultation by public vehicles.

III. Joint investigation into cross-boundary cases and judicial assistance

(1) Requests for CCAC's assistance from law enforcement agencies abroad

In 2012, the CCAC received requests to provide assistance in the investigations of 6 cases from law enforcement agencies abroad, including 4 cases from the ICAC of Hong Kong and 2 cases from the People's Procuratorate of Guangdong Province. The CCAC has completed the investigations of 3 of the cases, while the other 3 are still under investigation.

(2) Requests for assistance of law enforcement agencies abroad from CCAC

In 2012, the CCAC requested law enforcement agencies abroad for assistance in the investigations of a total of 7 cases. These agencies, including some procuratorates in Mainland China and the ICAC of Hong Kong, finished the investigations of 5 and 2 cases respectively.

PART III

OMBUDSMAN



PART III

OMBUDSMAN

I. Introduction

In 2012, the CCAC continued to play its important role as the ombudsman by overseeing the legality and rationality of administrative procedures carried out by public departments; and enhancing their administrative efficiency and legality.

Last year, there were over 500 administrative complaints against government departments, of which a majority was about dissatisfaction of law-enforcement approaches or administrative decisions. The followings are the features of the complaints in 2012:

- (1) Since the government launched the central recruitment system, many administrative departments recruited members on their own beforehand. However, inadequate considerations when handling the relevant problems led to large increase of complaints;
- (2) The complaints over law-enforcement and management mainly involved health care, law-enforcement by police, traffic offences, municipal affairs, housing and public works.

To sum up the data, it is not difficult to find out where the “dissatisfaction-prone” areas lie:

- (1) Administrative departments’ acts and law-enforcement standard;
- (2) Administrative departments’ management approaches;
- (3) Competent departments’ inadequate understanding of their own duties and functions and their incapability to make a timely, accurate and effective decision.

To conclude the categories and contents of the complaints, law-enforcement by police, health care, traffic affairs, economical and social housing and municipal affairs were complained about the most, while the problems reflected by the cases still related to wrong handling procedures and approaches, inadequate understanding

of law, wrong and delayed administrative decisions, and public works management procedures and decisions that did not meet the demands brought by social development. In some cases wrong decisions were fatal.

The report mainly analyses and summarises the works in the area of ombudsmanship that the CCAC conducted in 2012 in the following aspects:

(1) Number and nature of requests for help and consultation;

(2) To reveal some common or inspiring cases to the general public in order to awake citizens' awareness of protecting their rights and interests and urge public departments to improve themselves.

II. Number and nature of requests for help and consultation

In 2012, the CCAC handled:

- Enquiries: 586
- Complaints: 929

[Note: In 2012, the CCAC opened files for investigation of 502 cases. In addition to 427 cases carried over from 2011, the CCAC had to handle a total of 929 cases throughout the year, while 563 of them were concluded.]

In 2012, the CCAC received 586 requests for help and consultation, a remarkable increase compared to 433 requests in 2011. The requests mainly involved legal system governing public services, traffic affairs, illegal constructions, municipal affairs and labour disputes. In particular, there is a slight increase of enquiries on traffic offences, illegal constructions and the competence of the Civic and Municipal Affairs Bureau.

The administrative complaints handled by the CCAC in 2012 were related to the following issues:

Issue	Caseload	
Legal system governing public service		
▪ Personnel rights and interests	45	111
▪ Discipline	33	
▪ Recruitment	33	
Public procurement	2	
Land and public works		
▪ Illegal constructions	55	68
▪ Regulation on usage of property	13	
Labour affairs		
▪ Labour dispute	9	15
▪ Non-resident labour	4	
▪ Illegal labour ²		
Traffic affairs		
▪ Transportation/vehicles/driving licenses/violation	40	44
▪ Supervision on taxis	4	
Municipal affairs		
▪ Environmental hygiene	19	54
▪ Rearrangement of streets	12	
▪ Occupation of public land	3	
▪ Animals	3	
▪ Vendors	13	
▪ Others	4	
Management and law-enforcement of disciplinary forces		86
Social housing/economical housing		25
Health care		62
Government subsidies		10

Supervision on public utilities		6
Issuance of banknotes		8
Noise		5
Education		30
Personal privacy		5
Property administration/seepage		5
Tax affairs		4
Administrative licenses		4
Birth/property registration		2
Right of abode		2
Consumer rights and interests		2
Provision of data		2
Telecommunication affairs		6
Others		5
Total		563

In 2012, the issues which the requests for help were related to included:

Issue	Caseload	
Legal system governing public service		
▪ Personnel rights and interests	42	143
▪ Discipline	38	
▪ Public servant's obligations	24	
▪ Internal management	21	
▪ Recruitment	18	
Code of conduct		32
Public procurement		8
Traffic offences		55

Labour affairs/ Human resources		
▪ Labour dispute	18	21
▪ Illegal labour	2	
▪ Non-resident labour	1	
Land and public works		
▪ Illegal constructions	13	15
▪ Public works	2	
Municipal affairs		
▪ Environmental hygiene	19	41
▪ Administrative licenses	10	
▪ Vendors	8	
▪ Occupation of public land	3	
▪ Others	1	
Tax affairs		9
Traffic affairs		
▪ Transportation/vehicles/driving licenses	17	18
▪ Supervision on taxis	1	
Economical housing/social housing		11
Health care		9
Education		8
Government subsidies		7
Supervision on public utilities		5
Social Security Fund		5
Social assistance		3
Right of abode		2
Noise		2
Competence and function of the CCAC		24
Irregularities in other administrative procedures		34

Beyond the competence of the CCAC		
▪ Criminal cases	49	134
▪ Judicial affairs	25	
▪ Civil Law Issues	58	
▪ Personal disputes	2	
Total		586

When handling the complaints, the CCAC basically adopts various prompt and effective approaches, of which the most common is to examine related documents and bring up improvement measures directly in order to solve the problems as soon as possible. The public departments' attitude towards the analysis report, suggestions or recommendations made by the CCAC has changed as they have become more active and more likely to accept the suggestions. However, the real measures or solutions to the problems were not implemented immediately. In some cases, they even tried not to face the problems by making up excuses, thus worsening the conflicts. Sometimes the competent staff did not take up the responsibility for it.

The result of handling administrative complaints in 2012 is as follows:

Approach/Result	Caseload
Archived upon the CCAC's investigation and analysis	482
Archived after the relevant departments solved the problems on their own	33
Archived since the complaints were beyond the competence of the CCAC	48 ⁵

⁵ 16 of them are of criminal nature, while the remaining 32 cases are administrative complaints.

III. Investigation file, analysis and recommendation

The complaints that the CCAC has received are basically handled and analysed with simple and direct method – to handle the complaints as ombudsman cases or commence investigation under criminal law.

For the ombudsman cases, the CCAC always observes the principle of debate: to ensure that both the complainant and the department being complained about have the chance of pleading and explaining; and to request related parties to give explanation or clarification or submit supplementary materials to the CCAC according to the specialty of the case and the needs. Subsequently, the CCAC will conduct a comprehensive factual and legal analysis on the complaint. Finally, a conclusion will be made: if illegality exists, the CCAC will point them out clearly and request the relevant department to address the problems. Suggestion on improvement will also be made if needed.

Another possibility is that there is no sufficient basis and signs showing illegality and irregularity of administrative departments and the CCAC will archive the complaints.

Another situation is that in the complaint handling process, the relevant departments have solved the problems on their own and the complainants have agreed on and accepted the results. In this case, the CCAC will archive the complaints.

These are the approaches that the Commission always adopts to handle administrative complaints and the commonly seen results. Only in some special cases, the CCAC will adopt other approaches according to specific needs.

In the process of handling administrative complaints, the most important is to present clear and specific facts, relevant arguments with sufficient basis, clear and convincing legal viewpoint and accurate application of law. The ultimate purpose is to ensure legal administration and to protect citizens' legitimate rights and interests.

IV. Summary of some ombudsman cases

In order to enable the public to know how the complaints in the area of ombudsmanship were handled last year, a number of cases which are closely related to citizens' daily life and have aroused public attention were chosen to be analysed in this part, with the aim to enhance the public departments' sensitivity and law-enforcement standard, as well as to enable the public to know the defects in handling these cases by the departments, thus strengthening citizens' awareness of protecting their own rights and interests.

Case 1 – Raising objection in public bidding procedure

The complainant participated in the “Public Bidding for Taxi License” of the Transport Bureau (DAST) jointly with his/her relative in 2012 and filed a complaint to the CCAC in June 2012 due to dissatisfaction of the arrangements.

The complaint is about the followings:

1. About the bidding price stated in the bidding document, the rules stipulated that “*X' shall be put in the inapplicable part of the number*” and that “*bidding documents that do not meet the rules will not be accepted*”. However, their bidding document was accepted by the DSAT although they put “/” to omit the inapplicable part. The complainant thought that the bidding document should have been rejected.
2. The rules did not indicate that 10% tax should be paid. In response to the complainant's enquiry, the DSAT staff failed to reveal the period of tax payment.
3. The complainant also stated that the bidding notification from the DSAT did not mention the period and approach of raising objection.

Following the investigation and analysis of the points above, the CCAC considers that:

1. The bidding document of the complainant and his/her relative has clearly stated their willingness to bid for the license and the bidding price.
2. The DSAT accepted the bidding document which still clearly presented the

bidding price of which the inapplicable part was not shown with “X”. This was undoubtedly beneficial to the bidder and accorded with the “principle of moderation” under Article 5 of the *Code of Administrative Procedure*.

3. Under normal circumstances, bidder hopes to win the bid instead of hoping that his/her bidding application will be rejected.
4. The intention of not being accepted is illogical and contradicts the “principle of good faith” under Article 8 of the *Code of Administrative Procedure*, which should be observed by the individuals participating in administrative procedures.
5. Therefore, accepting the bidding document submitted by the complainant and his/her relative did not constitute any administrative illegality or misfeasance.
6. On the other hand, the DSAT has already pointed out in the announcement of public bidding, the bidding rules and the relevant briefing session that the winning bidders should pay a tax equal to 10% of the price of the license, while the period of tax payment will be specified in the notifications to be received by the winning bidders.
7. Finally, the rules stipulated that full presence at the bid opening meeting is bidder’s obligation. In fact, the president of the bid opening committee did announce the way and time limit of raising objection before it started and ended. Therefore, the DSAT has already fulfilled the responsibility to notify the bidders of the information.

Meanwhile, the CCAC found in the case that the DSAT can improve the relevant public bidding procedure because:

1. The current regulations (including Law no. 3/90/M of 14th May that regulates public service outsourcing system and the Chief Executive’s Order no. 35/2012) do not provide clear stipulations regarding the procedure of raising objection against bid opening.

2. The DSAT can refer to Paragraph 3 of Article 30 and Article 34⁶ of Decree Law no. 63/85/M of 6th July. However, due to the "principle of good faith" and the "principle of cooperation between administrative authority and individual", the DSAT could have indicated in the bidding rules the way and time limit of raising objection would be announced during the bid opening meeting so that the bidders would make it clear: If they do not fulfil the obligation to be present at the meeting, they will lose not only the right to make verbal offer but also the chance to raise an objection.

The CCAC rendered the suggestions above to the DSAT. Finally, since there were not any other matters to follow up in the case, the CCAC decided to archive the case and responded to the complainant.

Case 2 – Problems caused by incomplete information of property registration

In June 2012, the complainant told the CCAC that the Real Estate Registry did not mention the sealing up of a parking space at Tjoi Long Sea View Park in the real estate registration certificate of the parking space. As a result, the complainant was misled into buying it. Later, the parking space was auctioned off publicly by the court, leading to loss of his/her ownership. The complainant has already filed a claim for compensation to the court.

The complaint is mainly about the followings:

1. Chaotic and wrong registration made by the Real Estate Registry.
2. The Legal Affairs Bureau (DSAJ), the Real Estate Registry and the Notary Office were buck-passing.
3. The court only ruled the complainant's situation returned to the original status, i.e., to repay to the complainant the money paid for the purchase. However, it is impossible to purchase the same parking space at the same price, so the complainant considered that the Real Estate Registry should be

⁶ The content: "Article 34 (Resolution made by the committee) 1. Resolution made by the committee is based on the votes of the majority. In case of a tie, the president's vote prevails. 2. The committee can suspend the bid opening activity and have a closed-door meeting whenever it deems necessary, so as to make resolution to the objection raised. 3. The decision on objection shall be recorded in the minutes. 4. If any of the members is unsuccessful in making the resolution, it shall be recorded in the minute. They can express the reasons for the disagreement so as to have them recorded in the minutes."

held responsible. Especially the Secretary for Administration and Justice, Florinda da Rosa Silva Chan, who is the superior of the Registry, shall be held responsible for the mistake because it will directly affect citizens' interests regarding property.

For the first point, the failure to show the relevant record of sealing up in the registration of the parking space in 2002 is related to not only negligence and violation of discipline but also the defective computer system of the Registry in early stage. For the defects, the Registry already upgraded its computer system in 2006. Therefore, the risk of making mistake caused by the defective system has already been lowered or prevented. Moreover, the DSAJ commenced disciplinary procedure and took respective procedures against the staff who allegedly violated the disciplines after the case came to its knowledge. However, the staff has already been relieved from the responsibility since the prescription has expired. Therefore, the CCAC is not able to follow up the issue about disciplinary liability.

For the second point, the Real Estate Registry and the Notary Office reported the case to the DSAJ immediately after they knew it, while the DSAJ also notified the Secretary for Administration and Justice of the case and suggested various feasible measures, including studying on the feasibility of offering compensation by the Macao SAR Government to the owner of the relevant parking space directly. There is no sign of buck-passing so far. Nevertheless, since the case involved several interest parties (such as the selling party, the lawyer who handled the purchase agreement and the staff of the Registry who provided the property registration certificate with incomplete information), it is necessary to confirm the proportion of the compensation that the respective part shall pay in order to guarantee proper use of public fund. After obtaining opinions from her advisers, the Secretary chose to solve it by judicial means, i.e. to let the court judge the proportion of the compensation that the government should take up. Due to respect of the autonomy of management enjoyed by the responsible departments, the CCAC would not interfere into this point.

As to the third point, according to the current law, especially Article 2 of Decree Law no. 28/91/M of 22nd April, the entire public administration (not only the Secretary for Administration and Justice) shall take up the non-contractual civil responsibility for the loss caused by mistaken purchase of the sealed up parking case due to incomplete information shown in the property registration certificate. In fact, after hearing the case, the court ruled the amount of compensation that the public administration shall pay. If the complainant is not willing to accept the judgment, he/

she can file an appeal to the court. The CCAC does not have the right to interfere in it.

Therefore, the CCAC archived the case.

Case 3 – Internal promotion of public servant

According to a complaint filed in September 2011, the complainant, who was employed as assistant officer of 2nd class, 1st rank, under temporary contract in October 2008, was promoted to 2nd rank later. His/Her performance grades for 2008 to 2010 were 4, 4, and 5 respectively, but he/she was not promoted to a higher class.

The CCAC realised that the relevant authority considered that before Administrative By-law no. 23/2011 of 8th August, *Recruitment, Selection and Training for Promotion of Public Personnel*, entered into effect, even if the staff has met the requirements for promotion, the law did not stipulate that promotion of class shall necessarily be given. Therefore, the authority only renewed the complainant's contract without giving him/her promotion of class.

The CCAC considered that although Paragraph 3 of Article 25 of the *Statute of Personnel of the Public Administration of Macao* stipulates that the promotion of staff employed on temporary contract shall meet the general requirements for promotion of staff on permanent contract, the provision neither requires the staff on temporary contract to follow the requirements and rules regarding examination for promotion nor further defines the rules for promotion of staff on temporary contract. In reality, a procedure of standard promotion of those who meet the requirements for promotion is not compulsory for the staff on temporary contract, whose promotion is done through adding a note on the employment contract signed by both sides. Therefore, whether they are promoted depends on the decision made by the departments they serve.

After Law no. 14/2009 of 3rd August, *System Governing Ranks and Classes of Public Personnel*, entered into force, public department shall hold examination of promotion for the personnel who have filled the requirements for promotion regardless of whether they are employed on permanent or temporary contracts. Nevertheless, the supplementary regulation on examination and training for promotion - Administrative By-law no. 23/2011 of 8th August, *Recruitment, Selection and Training for Promotion of Public Personnel* – did not enter into force at the same

time. This means that in the period after Law no. 14/2009 became effective but before Administrative By-law no. 23/2011 entered into force, there were no regulations on examination and training for public personnel on temporary contract.

Under the above circumstances, it is necessary to make it clear: For the staff employed on temporary contract, can the authority decide whether to promote them based on their situations under the old legal system? Or shall they promote them once they have met the requirements for promotion?

The stance of the Public Administration and Civil Service Bureau (SAFP) on this issue is: Before Administrative By-law no. 23/2011 entered into effect, promotion of staff on temporary contract shall accord with the promotion system under the *Statute of Personnel of the Public Administration of Macao*. Those who have met the requirements for duration of service and performance grading will be qualified for promotion. What the SAFP said does not come to a conclusion that the department shall promote the complainant.

Later, due to the implementation of Administrative By-law no. 23/2011, the Health Bureau promoted the complainant together with some other staffs on 1st October 2011.

As the case has been resolved, the CCAC archived the case.

Case 4 – Complementary measures for temporary prohibition of parking

In June 2012, a complainant told the CCAC that he/she had been fined by the police for illegal parking, but for the other two cars parked on metered parking spaces which were temporarily closed, the police did not lay any charges, raising doubts of double standard in law-enforcement. Moreover, the complainant received another fine notification after he/she had received one for accusation of “no paying the parking fee”, so he/she also doubted that the police treated him/her unfairly and wasted public money.

The CCAC realised that the Civic and Municipal Affairs Bureau (IACM) had to carry out construction at the relevant road and thus requested the Transport Bureau (DSAT) to close the two metered parking spaces by blocking the relevant section and covering the logo of “parking available” with black plastic bags. On that day, after receiving a complaint, the police dispatched officers to the site to follow up and

verify the situation mentioned in the complaint. However, the police stated that those cars did not obstruct the traffic and therefore there was no ground for prosecution. Finally no charge was laid.

The CCAC considered that although there are stipulations that clearly define the locations and situations that allow and disallow parking, in fact, there were no other measures to ban parking at the site apart from blocking the road and covering the logo of “parking available”, making it no ground for the police to lay charge against the drivers who parked those cars. Therefore, it is difficult to consider that the handling was administratively illegal.

On the other hand, the CCAC found that when requesting for temporary close of the metered parking space, the DSAT did not clearly request the IACM to place the label of “parking prohibited”. As the purpose of this request was undoubted for banning parking in order not to obstruct the construction nearby, the CCAC sent a letter to the DSAT to urge it to adopt measures to avoid the same case from happening. Hence, the DSAT promised that it would request the relevant department to place the signal of “parking prohibited” at the relevant roads so that the police would be able to enforce the law.

For the repeated sending of fining notice, the police explained that malfunction of the computer system when identifying the relevant data resulted in sending two fining notifications to the complainant in a short time. The police has requested technical department to follow up and reminded its staff to pay attention to the operation of the computer system in order to prevent the same from reoccurring.

Therefore, the CCAC archived the case.

Case 5 – Certificate issuance by government department

In November 2011, a complainant told the CCAC that a nurse of the vaccination room of the Health Care Centre of Fai Chi Kei did not tell him/her that doctor’s reference was required for rubella vaccination. Moreover, the Centre refused to issue any “certificate for the complainant’s presence to seek service at the Centre” since the complainant did not receive any health care treatment. Therefore, the complaint considered that the Centre mishandled the case.

Following investigation and analysis, there was no information proving that the nurse had given wrong instruction to the complainant, but in view of the incident, the Health Bureau stated that it would keep the replies of enquiries about vaccination in record in order to prevent misunderstandings of the relevant issue.

Meanwhile, the fact that the complainant requested the Centre to issue the certificate of seeking service reflected that the complainant must be a public servant. The certificate would be used for the purpose of justifying his/her absence from work.

According to Article 108 of the *Statute of Personnel of the Public Administration of Macao*, statement of medical consultation serves as the proof for justifying public servant's absence for medical reasons. Public servants only have to submit statements of medical consultation and there is no need to make any other explanation. The complainant, in fact, did not receive any medical consultation and health care services. Therefore, the Centre did not issue any statement of medical consultation.

In this case, the complainant has to make an explanation to the department he/she serves according to Paragraph 1 of Article 90 of the *Statute*. If the department accepted it, the absence will be justified. In other words, the complainant can explain the reason for his/her absence to the department through self declaration. If the department has doubts about the explanation and needs to consult the Health Bureau for verification, then the latter will be obliged to provide the information about the complainant's request for medical service at the centre.

To conclude, the CCAC considered that issuing the certificate for the complainant's presence to seek service at the Centre was not the only way to justify his/her absence. Moreover, the complaint letter did not mention that his/her absence was considered by the department as unreasonable due to this reason.

Therefore, the CCAC archived the case.

Case 6 – Duties of supervisory authority

In August 2011, a citizen made the following complaint:

1. The Education and Youth Affairs Bureau (DSEJ) did not immediately open a file to follow up the case after the complainant filed a complaint over a tutorial centre that had left little children alone at the lobby of the building and ignored their safety;
2. The reception staff of the DSEJ refused to reveal the complaint file number and his/her name;
3. The DSEJ only admonished the tutorial centre by sending a warning letter but did not impose any severer punishment and reveal its name to the public. The complainant thought that the DSEJ neglected its duty.

As to the first point, the DSEJ replied that after receiving the complaint by phone, the DSEJ recorded it in the complaint system and dispatched staff members to follow up the case. Later, the complainant was invited by the DSEJ to give testimony. Although the complainant did not sign the testimony for the reason that he/she had already reported it to the police, the DSEJ did not stop following up the case. Due to improper care of children, the DSEJ sent a warning letter to the tutorial centre. Based on analysis, there is no information proving that the DSEJ did not follow up or handle the case after receiving the complaint.

In response to the second point, the DSEJ stated that it had already provided the complaint record number to the complainant and the relevant staff also had given his/her name and name card. There is no objective information proving the mishandling.

For the third point, in fact, under the contract of tutorial service, tutorial centre is obliged to ensure students' safety. If their safety is endangered or threatened, it shall bear civil or even criminal responsibilities. However, since there is no administrative rules regarding punishment for neglect of child caring committed by tutorial centre defined by the law, the DSEJ has no power to impose administrative punishment on the tutorial centre except giving warning. According to the reply from DSEJ and the information it provided to the CCAC, the DSEJ is drafting a bill to introduce punishment for physical and mental damages to students committed by tutorial centres.

Based on analysis, although the aforementioned measure will facilitate the improvement of regulation on tutorial centres, it still takes time to finalise the bill. During this period, as the supervisory department, the DSEJ has to implement transitional measures such as formulating guidelines on protection of students' safety, enhancing promotion and education, and reminding tutorial centres the outcome of neglect of care, in order to urge them to ensure protecting for children's safety and avoid similar case from occurring.

Moreover, the warning letter sent by the DSEJ only generally pointed out that the tutorial centre should ensure students' safety, but it did not clearly indicate the legal responsibility for neglect of care. The contents were inadequate.

Therefore, the CCAC rendered the above suggestions to the DSEJ through a letter. Subsequently, the DSEJ replied that it would accept the suggestions and send relevant guidelines to tutorial centres in order to make them understand the obligations and duties to take care of students and the legal liabilities for neglect of care.

Case 7 – Measures against discrimination

In April 2012, a complainant told the CCAC that the Institute for Tourism Studies (IFT) disallowed people with Hepatitis B to enrol in the bachelor degree programmes in culinary arts management, hotel management and tourism event management in the academic year 2012/2013.

The complainant stated that on 7th July 2011, the Health Bureau issued guideline aiming at eliminating discrimination against of people with Hepatitis B. Therefore, he/she considered that the ban contradicted the aim and hoped the CCAC to intervene into the case.

According to analysis, Article 26 of Law no. 2/2004 of 8th March, *Prevention and Cure of Infectious Disease*, states that people shall not be discriminated in the aspects of education, employment, selection of residence and acquisition of service for the reason that they have infected, are suspected to have infected, or are at risk of infecting any infectious disease. The relevant guideline issued by the Health Bureau indicates that engaging in service sector and receiving education are not the factors in increasing the risk of infecting Hepatitis B and stressed that infection with Hepatitis B cannot be the reason for refusal of employment or admission to schools.

Following the CCAC's intervention, the IFT resolved to cancel the relevant restriction and the resolution took effect immediately after referring to the written suggestion by the Health Bureau in early 2012.

Since the IFT had already adopted measures to handle the relevant matters, the CCAC archived the case.

Case 8 – Wrong and inappropriate tax recovery

In January 2012, a complainant told the CCAC that he/she worked for a local hair salon on full-time basis in 1991 and 1992 and did not take up any part-time job, but the Coercive Collection Bureau of the Financial Services Bureau (DSF) requested him/her to repay the occupation tax in default on his/her jobs in five different companies during the said period and blocked the refund of occupation tax and cash he/she was supposed to receive under the Wealth Partaking Scheme.

The complainant sent a statement to the Director of the DSF to request for repealing the decision on the recovery of the said tax, but was subsequently rejected.

The CCAC discovered in an investigation that the Chinese and Portuguese versions of the name of the street written in the column of address in the occupation tax registration form of class 1 (M/2) were inconsistent and seemed not to have been filled in by the same person. There might be human negligence. Therefore, the CCAC notified the DSF of the problem and requested it to follow up the complainant's case. Later the DSF replied that the said the Portuguese address should have been filled in by its staff, but the inconsistency was caused by inaccurate translation.

In fact, in the past, tax recovery notice issued by the DSF was sent based on the address in Portuguese. As a result, the complainant did not receive the relevant notice on time. Therefore, the Director of DSF issued an order to approve the repeal of the decision of tax recovery. Moreover, as occupation tax for 1991 and 1992 is beyond the time limit for accounting, the accounting procedure will not be re-commenced.

Since the case was solved finally, the CCAC archived the case.

Case 9 – Grievance caused by administrative omission

In July 2012, a complainant stated that between 2010 and 2012, there were cars illegally entered and were parked at Largo do Lilau, affecting surrounding residents' relaxation. In 2010 and 2012, the complainant made suggestions to the Civic and Municipal Affairs Bureau (IACM) of building fence to avoid entry of car, but did not see any follow-up measures ever taken, doubting that there was administrative misfeasance. The complainant hoped the CCAC to intervene into the case.

The CCAC realised that the IACM adjusted and made changes in the adjustable fences in early August 2012 in order to prevent entry of car.

Since the IACM has already adopted appropriate measures to handle the relevant matters, the CCAC archived the case.

Case 10 – Problem concerning distribution of commercial name cards

In May 2011, the CCAC received a report indicating that X, a staff member of a disciplinary force, was suspected of taking up outside job illegally, as he distributed name cards of company A, which contained X's name and contact number.

According to one of the name cards enclosed with the report, X might be engaging in private business. If it had not been approved by the competent authority, X might violate the stipulation of exclusiveness under Paragraph b) of Article 16 of the *Statute of Militarised Personnel of the Public Security Forces of Macao*. As the security force that X worked under had the disciplinary power and was more able to judge whether X had violated the discipline, the CCAC referred the case to the authority and requested for the handling result.

Later, the CCAC received a response from the Public Security Police Force (PSP), which indicated that the PSP proved that the company was owned by X's wife, but X was not involved in the business, nor had he taken up any position. The name cards were to promote his wife's company, so it considered that X did not illegally take up outside job.

However, the CCAC considered that promotion of shop or company aims to seek business opportunities and profits. Exchange of name cards with name, position, organisation, company and contact methods is generally considered as activity of

business connection. Although the name cards distributed by X did not indicate his position in company A, the receivers might perceive that it was possible to contact X through the contact methods shown by the name card in order to discuss the business related to company A directly or indirectly. In other words, printing and distributing name cards are ways of engaging in business activities, so it shall be considered as engagement in private business. Therefore, X shall be deemed as engaging in outside job illegally. At least it has affected public servant's image of neutrality.

The CCAC declared its stance to the PSP and requested it to adopt follow-up measures. Finally, it commenced disciplinary procedure against X and considered his/her behaviour as engagement in private business. Since prior approval by competent authority was not granted, he/she has violated the provision regarding the obligation of exclusiveness. Following scrutiny of the facts, X was given a warning letter.

As the PSP has already handled the problem according to the law, the CCAC archived the case.

Case 11 – Wrong prosecution for illegal parking

In July 2012, a citizen complained to the CCAC that he/she had been wrongly prosecuted for illegal parking, causing waste of time to collect registered ticket, request for the CCTV record of relevant parking lot to prove the error and submit a plea to the Traffic Department. Finally the charge was revoked.

However, after a period of time, the citizen was wrongly charged again.

The citizen was very dissatisfied with the police's repeated errors and considered that it had wasted the prosecuted people's time as they were forced to go through every step of relevant procedures to protect their own rights and interests. If there is no CCTV system installed in the parking lot, the prosecuted will find it difficult to prove his/her innocence. Therefore, the complainant requested the CCAC to intervene into the case in order to urge the authority to improve the prosecution procedure, for example, taking photos of illegally parked cars to keep the record of the plate number and the date and time of the violation in order to keep innocent people from unnecessary troubles caused by police officers' mistakes.

Information shows that since October 2009, some of the traffic police officers

have been using 10 electronic ticket issuing devices introduced by the Traffic Department. As street names, relevant laws, record of lost cars and information about cars (such as brand, model, colour) are saved in the computer terminal, the information of car will be displayed by inputting the plate number. Then the ticket will be printed out by a mobile printer carried by the police officer, aiming to decrease the mistakes caused by writing tickets by hand and inputting the data into computer system afterwards.

As many of the police officers responsible for prosecuting still do not use the device, i.e. handwritten tickets are still common; the CCAC referred the complainant's suggestion to the PSP.

The PSP replied that the Traffic Department would calculate, monitor and review the errors in prosecution and replace the traditional way by gradual utilisation of the electronic device. Moreover, as the PSP found that the ticket issuing device introduced at the beginning was not good enough, it has been replaced by a newly developed electronic device which has the functions including identifying the information of cars through 2D barcode, GPS system, photo taking (to verify the violation), transmitting the information of violation to the computer database immediately and uploading the tickets to the internet payment system.

As the new electronic device is used more commonly, such errors are likely to decrease. Therefore, the CCAC archived the case but will continue to pay attention to the use of the device.

Case 12 – Handling of labour dispute

In November 2012, X, a person-in-charge of a company, complained to CCAC against the Labour Affairs Bureau (DSAL) for the approach and result of handling a labour dispute.

After being dismissed, a non-local employee of the company, Y, filed a complaint to the DSAL against company A for default in payment of salary and compensation for over-time work and weekly day-off when he/she was working for the company (between September 2009 and June 2011) and suspension of payment of salary after he/she stopped working.

The DSAL proved the illegal behaviour following investigation and considered

that those illegalities committed before Law no. 21/2009, *Law on Employment of Non-resident Workers*, entered into effect on 26th April 2010 only involved civil responsibilities, so company A was responsible for compensation but not subject to punishment. The DSAL only issued a “notification of voluntary correction” to the company. If the company failed to do so, the DSAL would refer the case to the Public Prosecutions Office for handling.

The illegal behaviours committed after the said law entered into effect constituted slight violation and were punishable. Therefore, the DSAL sent company A a “notification of payment of fine and remuneration in default to non-resident employee”, which indicated that the company should deposit the fine and payment in default into a designated bank account and submit the payment invoice within the following five days to the DSAL. Otherwise, the case would be referred to the judiciary. However, if the payment in default was deposited in the designated bank account before the case was referred to the judiciary, company A would be exempt from fine.

In August 2012, A received the said two notifications from the DSAL and filed two appeals to the DSAL in early September. According to the appeals, A denied having requested Y to stop working; Y was absent from work on the relevant days without justified reason and taking leave and the way to calculate Y’s weekly day-off adopted by the DSAL was wrong, but A agreed on the amount of compensation for over-time work listed by the DSAL.

In late October and early November, the DSAL made responses to the said appeals respectively, pointing out that the company did not present any proof for Y’s unjustified absence but admitted the suspension of work during the mediation meeting. Moreover, the compensation for weekly day-off was calculated based on the terms that “Y will enjoy the weekly day-off on the seventh day of a week following six consecutive days of work” under the employment contract. The calculation was correct and therefore the DSAL rejected the appeals.

X was dissatisfied with the DSAL’s handling approach because:

1. The basis for the rejection was unconvincing and unclear. The DSAL believed that the arrangement of having Y stopped working was true but did not clearly point out who made the arrangement and when and where it was made;
2. Although the reasons including “raining” and “compensatory time off” were

recorded on the attendance record, the DSAL still insisted that the days off were due to suspension of work. Moreover, the standards of calculating the compensation for weekly day-off adopted by the DSAL were inconsistent;

3. The complainant received the notification of attending to the hearing on slight violation of labour laws from the court in mid-October. This reflected that the DSAL referred the case to the court during the period for voluntary correction or handling appeal;

4. The DSAL handled the matters about voluntary correction in an “inclusive” way. As a result, A was not able to make the voluntary correction on the parts agreed by all in the table of calculations done by the DSAL and handle the controversial ones separately.

For point 3, since Law no. 7/2008, *Labour Relations Law*, which is applicable to Law no. 21/2009, *Law on Employment of Non-resident Workers*, entered into effect on 1st January 2009 and defined the period of “voluntary correction” of the administrative illegal acts recognised by the latter, “voluntary correction” is not applicable to case of slight violation. However, the employer will be exempt from fine if he/she voluntarily repays the remuneration in default to the employee within the designated period. Otherwise, the DSAL shall refer the case to the judiciary immediately under Paragraph 4 of Article 11 of Administrative By-law no. 26/2008, *Rules of Operation of Labour Inspection*.

Since the “notification of payment of fine and remuneration in default to non-resident employee” sent by the DSAL to A indicated this provision, referring the case to the judiciary was not inappropriate.

For point 4, since all the illegal behaviours in the case constituted slight violation, according to the provision mentioned above, the DSAL shall only refer the case to the judiciary if it did not receive the proof of repayment from the employer after sending out the notification. The law does not provide any other approach to handle such case. Moreover, A did attend the mediation meeting on the labour dispute held by the DSAL. Therefore, A should have realised the fact that it had violated labour laws. In other words, it had the chance to make correction promptly on its own. However, it did not take the chance.

For points 1 and 2, for the illegal behaviours committed after the *Law on Employment of Non-resident Workers* entered into effect, the DSAL has referred

them to the judiciary and the latter has already commenced proceedings of slight violation of labour laws. Therefore, the judgment shall be made by the judge and the court ruling shall prevail over any decision made by any other authority. The CCAC shall not intervene into the case. Meanwhile, since those committed before the law entered into force only involved civil responsibilities and are not related to administrative illegalities or misfeasance, the CCAC did not need to intervene into them and thus archived the case.

Case 13 – Grievance against score of examination of recruitment of public service post

In January 2012, a complainant told the CCAC that he/she participated in the recruitment of a post of officer of public department A in mid-2011 but was eliminated in the stage of written exam.

The complainant, who considered that he/she should have passed the exam, requested for a meeting with the chairman of the panel and review of his/her exam paper. Then he/she found that he/she did not get any point from the question that required for quoting laws, though he/she had already cited laws in the answer.

The complainant suspected that the grade was given unfairly and requested the CCAC to intervene into the case in order to request A for relevant information and viewing his/her exam paper.

In fact, citing laws in the answer does not guarantee score, which depends on whether the laws are cited correctly or not. Moreover, personal judgment without proof and basis is not sufficient to constitute the ground for unfair grading. Therefore, the CCAC archived the case. Apart from explaining its stance to the complainant, the CCAC told him/her that if there was any proof of unfair grading, he/she could file an appeal to protect his/her rights and interests.

The complainant was dissatisfied with the CCAC's decision and thought that this would make it impossible to seek the truth. He/She pointed out that the chairman of the panel "looked guilty and prevaricated" in the meeting and reiterated that the score was given unfairly and the CCAC was the authority of the "statutory system of complaining".

The CCAC is conferred upon by its organic law the duty as ombudsman – to

ensure legal administration and fair and correct procedure, and to enhance public department's effectiveness.

For the reports and complainants in this aspect, the CCAC has to conduct preliminary analysis first. If any signs of illegality or irregularity are found, CCAC will commence preliminary investigation, and will request for relevant information and response from the department being complained about or invite relevant staff to the CCAC to give testimony. Then the case will be either handled based on the results of the investigation or archived. This case was archived since no signs of illegality or irregularity were found in the analysis by the CCAC.

The second statement made by the complainant to the CCAC was only about subjective descriptions which were not backed by any objective facts. Following in-depth investigation, no signs of illegality or irregularity were found. Therefore, the CCAC insisted in the conclusion of archiving the case.

The “statutory system of complaining” adopted in the recruitment examination refers to Article 68 of the *Statute of Personnel of the Public Administration of Macao* also applicable to the recruitment, which stipulates that interest party is entitled to file an appeal within 10 days upon the announcement of the final results.

The CCAC explained to the complainant again and told him/her that if he/she still failed to submit any supplementary information that could prove the illegality and irregularity in A's handling, the CCAC would archive the case again.

Since the complainant did not contact the CCAC within the 10 days, the CCAC archived the case finally.

Case 14 – Problems caused by distribution of gift bags

[Although this is a first-of-a-kind case which has been archived finally, there are some similar cases being analysed for the time being and many problems have been discovered in the analysis. Therefore, we will conduct a thorough analysis in other cases being followed up.]

In January 2012, a citizen reported to the CCAC that among the civil associations that cooperated with the Macao Foundation in the activity of distribution of gift bags to the elderly living alone, a certain number of them only distributed gift bags to those

who were willing to flatter them, while those who were unwilling to do so, those who did not have any relatives and those who did not receive household assistance were not given the gift bags. Therefore, the citizen suspected that the distribution by those associations was arbitrary and inconsistent and therefore requested the CCAC to investigate into the case. Moreover, the citizen also complained that it was too difficult to meet the requirements for the household assistance offered by civil associations.

According to local press, during the Chinese New Year, the Macao Foundation co-organised a gift giving activity with 20 civil associations which have been providing service and assistance to the grass-root and disadvantaged for a long time. The associations distributed festive gift bags to over 10,000 people, including elderly living alone, chronic patients, disabled, orphans, widows and those who suffered from severe difficulties in living, aiming to provide extra care for them for the festival.

The different requirements for receiving gift bags adopted by different associations might cause problems concerning unfairness. Moreover, there were opinions that those who had joined more than one association received more than one pack of gifts, while those who did not join any associations received nothing.

Since it involved use of public resources, the CCAC sent a letter to the Macao Foundation to ask whether it had issued any guidelines for the associations and conducted any supervision.

The Macao Foundation replied that the activity aimed at giving small gifts to the disadvantaged through civil associations' service networks in order to extend seasonal greetings to them. The qualifications depended on the associations' experiences, so there were differences. The Macao Foundation issued "General Guidelines on Distribution of Gift Bags 2012" and held meetings to explain the relevant arrangements to the associations that participated in the activity. The rules included: The activity should target the disadvantaged people that have been receiving services and those who most in need. The associations should guarantee that the receivers were not the beneficiaries of the same activity held by another association and that one beneficiary should be given one gift bag only. The value of each gift bag was MOP500. The administrative expense shall not exceed 10% of the value. Each association shall submit the evaluation of effectiveness of the activity, the financial report and the acknowledgement of receipt forms.

The CCAC also requested the Macao Foundation for the documents mentioned above, the detail about the Macao Foundation's spending on the activity, and final report and other relevant information.

After analysing the information provided by the Macao Foundation, the CCAC considered that: Since the authority does not have specific registration data of disadvantaged people, if the authority wants to distribute gift bags to every one of them, it has to clearly define the details including requirements and qualifications, application procedures, assessment and approval. Doing this will cost the authority a lot of manpower and resources. For distributing gift bags valued MOP500 for each, such doing seems to violate the principle of moderation.

In reality, the Macao Foundation cooperated with some civil associations. The former sponsored the activity, while the latter was responsible for the planning and operation. The associations listed the beneficiaries according to their experiences and then gave them the gift bags. The administrative costs involved were under controlled, thus saving the resources. Therefore, despite of the shortcomings (the possible difference in defining the disadvantaged which cause inconsistent standard of the distribution), the activity accorded with the principle of moderation and was therefore acceptable.

Based on the final report of the Macao Foundation, the CCAC realised that the cases of one person's receiving gift bags from more than one association had already come to its attention. Therefore, the Foundation plans to request the associations to enclose a soft copy of the list of beneficiaries, which should include their names and identification card numbers, with the application documents when co-organising similar activities in the future, so that the Foundation can solve the problem. In fact, this measure was implemented for the gift-giving activity for mid-autumn festival later. Therefore, the problem has been solved.

As to the problem concerning the disadvantaged people who cannot be benefited from such activities since they are not connected with any associations, the Macao Foundation did request the Social Welfare Bureau for relevant name lists, but the latter refused to do so due to protection for personal data. Therefore, the Macao Foundation has come up with the idea "to encourage the disadvantaged people who do not join any associations to request for gift bag from any of the associations".

Among the associations that co-organised the activity, many serve their members only, while some of them also provide service to non-members. A few

associations purely provide assistance to the people in need, such as Macau Tung Sin Tong Charitable Society and Caritas Macau. Therefore, the saying that the disadvantaged people who did not connect with any association would lose the chance to receive gift bag is not absolutely correct, despite the fact that there are less chances and ways for them to receive gift bag. The aforementioned idea of the Macao Foundation can increase the chances and ways. However, if the applicants are not the target beneficiaries of the associations, it will be difficult for the latter to judge whether they are disadvantaged people. Therefore, the CCAC suggested the Macao Foundation setting practical criteria in advance in order to facilitate the works of the associations and prevent unnecessary doubts.

The CCAC discovered in the financial documents provided by the Macao Foundation that the value of gift bags from some associations exceeded the designated amount, while some gift bags contained one or two items that were “specifically for somebody” (such as a correction pen, a deodorant spray, a box of Lingzhi mushroom, a box of plastic wrap, three boxes of Cattle Gallstone Pills). Although this doing was not prohibited, the items contained in gift bags were not indicated in the acknowledgement of receipt forms, therefore, it was difficult for the Macao Foundation to conduct supervision and would raise doubts that such special gifts were given to some particular recipients.

Later, the Macao Foundation requested the association that co-organised the gift-giving activity for mid-autumn festival to submit the lists and photos of the items contained in the gift bags in advance in order to ensure the value and quality of the gifts. This measure enabled the Macao Foundation to follow up the suspicious cases or alleged violations. Therefore, the CCAC did not intervene into this issue.

Moreover, the CCAC also found that some associations did not enclose the invoices of purchase of gifts with the activity reports submitted to the Macao Foundation. Some of them submitted the receipts issued by the shops instead. Since invoice indicates the name of the shop, description of items, quantity and unit price, while receipt only indicates the names of the payer and the recipient and amount without any information of the items which hinders the supervision. Therefore, the CCAC declared its stance to the Macao Foundation and suggest requesting the relevant associations for invoice. The suggestion was accepted.

For the qualification for household assistance provided by associations, Article 3 of Law no. 2/99/M, *Regulation of Rights of Association*, the relevant associations can define the qualification on their own and the authority shall not intervene into it. Therefore, the CCAC did not intervene into this issue.

The CCAC archived the case but will continue to pay attention to the implementation of the measures “to encourage the disadvantaged people who do not join any associations to request for gift bag from anyone of the association” in such activities in the future.

PART IV

OTHERS



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OTHERS

I. Declaration of incomes and properties

Since 1998, the *Law of Declaration of Incomes and Properties* has already entered into force for 14 years. Thanks to active communication and coordination between government departments and public servants' awareness of law-observance, the CCAC has run the work smoothly.

Over the 14 years, no case was found for any legal responsibilities due to arrears of declaration form or improper submission of declaration. In 2012, the CCAC collected declaration forms from a total of 12,452 public servants. Details are listed below:

STATISTICS OF DECLARATION OF INCOMES AND PROPERTIES IN 2012

Appointment	3,035
Renewal	4,802
Termination of position	1,885
5-year renewal	1,057
Voluntary renewal with that of spouse	519
Pursuit of data-provision duty	1,083
Voluntary renewal	71
Total	12,452

Meanwhile, the CCAC continued to hold “briefing sessions on declaration of incomes and properties” for a number of public departments in order to enable the new recruits to understand the significance and importance of the obligation to declare their incomes and properties and the relevant legislation and correctly fill in the forms and fulfil the obligation.

Moreover, under Law no. 11/2003, *Law of Declaration of Assets and Interests*, public departments and institutions shall notify the staff obliged to submit the declaration through a “notification”, of which the copies shall be sent to the two depositary entities, the CCAC and the Secretariat of the Court of Final Appeal, simultaneously. Under the implementation of the policy of e-government, in 2012 the CCAC developed a programme for delivery and receipt of notification between public departments and the depositary entities by electronic means in order to reduce administrative cost, enhance efficiency as well as prevent delay or lost. The programme is expected to start running in early 2013 with an aim to enhance administrative efficiency and improve administrative procedure.

II. Training and exchange programmes

1. Professional training for personnel

In order to enhance CCAC staff’s understanding of corruption fighting and prevention in mainland China, the CCAC organised the seminar entitled “Functions of National Bureau of Corruption Prevention of China” as a part of internal training. The Chief of Office of Supervision of the Liaison Office of the Central People’s Government in Macao SAR, U Ke Chao, was invited to conduct the seminar.



U Ke Chao exchanging views with CCAC staff

Mr. U, who has engaged in graft-fighting works for many years, introduced the background of the establishment of the National Bureau of Corruption Prevention, its functions and the main tasks designed based on internal and external situations of the country. He also compared the supervisory mechanisms of mainland China with that of Macao and even western countries, analysed them and explored the challenges brought out by enhancement of corruption prevention and the directions of improvement in this aspect. The seminar has deepened the staff’s understanding of integrity building efforts in mainland China and they were much benefited from it.

Moreover, in order to further enhance the investigators’ skill of criminal

investigation, as well as to deepen the knowledge and understanding of the operations of public security institutions in Mainland, in early December 2012, the CCAC dispatched another 15 investigators to Beijing to participate in the training course jointly organized by the CCAC and the Chinese People's Public Security University. The Commissioner, Fong Man Chong, and Principal of the Chinese People's Public Security University, Cheng Lin, attended and presided over the closing ceremony of the training course.

2. Recruitment of anti-corruption investigators

In order to enhance the capacity of investigation, the CCAC launched another recruitment drive for investigators in August 2012. After the strict screening process, 16 out of some 3,000 candidates were selected to enter the 9th training session for investigators held by the CCAC. Addressing the opening ceremony of the training programme, the Commissioner, Fong Man Chong, noted that due to the specialty of the work of the anti-corruption investigators, they need to master various specialised knowledge. The trainees will take part in the intensive and arduous training, he hopes that the trainees will be courageous and accept the challenges and devote themselves whole-heartedly and try their best to learn and assimilate different knowledge and skills, so that they can enrich themselves and be prepared for joining the anti-corruption work in the future.

The arduous training programme, which lasts for 4 months, covers knowledge of legislation and administrative procedure, investigation techniques, complaint handling skills, firearms training and team work. During this period the investigator trainees will also go through professional training overseas. The trainees need to attend all the training session and pass the examinations before they officially become investigators of the Anti-Corruption Bureau and members of the CCAC.



The Commissioner, Fong Man Chong, encouraged the trainees to embrace challenges during the opening ceremony of training session

3. Meeting with Central Government delegation of the implementation review affairs coordination unit of the *United Nations Convention against Corruption* in Macao



The Chief Executive, Chui Sai On, met with the Central Government delegation of the implementation review affairs coordination unit of the *United Nations Convention against Corruption*

The Central Government delegation of the implementation review affairs coordination unit of the *United Nations Convention against Corruption*, led by the Deputy Director-General of the Department of Treaty and Law of the Ministry of Foreign Affairs, Chen Peijie, arrived in Macao on 12th September 2012 and held a meeting with the “implementation review affairs coordination unit” of the Macao

SAR at the CCAC. During their stay, the Chief Executive, Chui Sai On, met with the delegation and exchanged views on clean government, anti-corruption work and the follow-up work of the application of the *Convention* in the Macao SAR.

Since the *United Nations Convention against Corruption* applies to Macao on 12th February 2006, the SAR government has been adopting various measures to fulfil the obligations of the *Convention*. The *Convention* stipulates an implementation review mechanism, a regular review of the implementation of the *Convention* of the States parties. According to the review mechanism and its resolutions, China will be the review country for the years of 2011 and 2012 to review the implementation of the *Convention* in other countries. In 2014, China will be reviewed by other country concerning the implementation of the *Convention* and Hong Kong and Macao SAR will be reviewed as well.

The CCAC is recorded in the Secretariat of the United Nations as a unit in the implementation of the *Convention*, and took part in the implementation review with the status of an expert. Based on the instruction of the Chief Executive, the CCAC will fully cooperate and actively take part in the relevant work to ensure the smooth completion of the work.

4. IOI Regional Training Programme

In order to enhance the level of expertise of the members of the International Ombudsman Institute (IOI), the CCAC of Macao and the Office of the Ombudsman of Hong Kong co-organised the IOI Regional Training Programme in the two cities in late May. As the first joint event ever held between the two agencies, the programme gathered 50 representatives from 11 countries and regions in the Asia and Australasia & Pacific Region.

Tailored for the frontline and middle-level complaint handling staff of the ombudsman agencies within the region, the programme aimed to explore techniques of complaint handling, mainly in the aspects of managing the clients and the workers, use of information, communications and technology as well as reception skills, especially for the handling of irrational complaints.

The Commissioner Against Corruption, Fong Man Chong, stated that the programme was a part of the professional training plan of the IOI, that has been striving to provide platforms to bring together Ombudsman staff from different jurisdictions and to enhance the exchange among them. He believed that the problems faced by many countries and regions in handling complaints are similar, which justifies the need to build and develop a common pool of resources, of which training is one of the effective ways. With experts and scholars sharing their expertise and experience, he believed that the programme would be beneficial and helpful to the participants.



Representatives from Asia-Pacific Region participating in IOI Regional Training Programme

The experts who conducted the training include: Bruce Barbour and Chris Wheeler, Ombudsman and Deputy Ombudsman of New South Wales, Australia, Naehee Lee, Deputy Director General of Anti-Corruption & Civil Rights Commission, Korea, and Cecilia Chan, Professor at the University of Hong Kong. The participants included representatives from China, Hong Kong, Macao, Iran, Malaysia, New Zealand, Japan, Pakistan, Indonesia, Korea and Thailand.

5. The 8th Seminar on Mutual Case Assistance of Guangdong, Hong Kong and Macao

The 8th Seminar on Mutual Case Assistance of Guangdong, Hong Kong and Macao was held in Macao between 28th and 30th November 2012, gathering representatives of the Hong Kong and Macao Affairs Office of the State Council, the Supreme People's Procuratorate, the Guangdong Provincial People's Procuratorate, the ICAC of Hong Kong and the CCAC of Macao.

The topics discussed in the seminar included: Cross-border testimony by witnesses and assistance provided by law-enforcement agencies; cross-border fugitive recovery and cooperative system; exchange of criminal information and its system; evidence search measures and operation mechanism for cross-border case investigation.

The representatives made conclusions on their experiences, thoroughly explored the common problems concerning case assistance and exchange their views on the combat of cross-border crimes.

Every year anti-corruption agencies of Guangdong, Hong Kong and Macao hold the seminar, through which a efficient and effective communication mechanism has been established to enhance the efficiency and quality of mutual case assistance.



The 8th Seminar on Mutual Case Assistance of Guangdong, Hong Kong and Macao

III. Revision of *Organic Law of the Commission Against Corruption of Macao Special Administrative Region* approved by Legislative Assembly

Law no. 10/2000, *Commission Against Corruption of Macao SAR*, has been in force for over 10 years. In order to enhance the capability of the CCAC to meet social demands and strengthen its power, especially in the aspect of ombudsman, and given the implementation of Law no. 19/2009, *Prevention and Suppression of Bribery in the Private Sector*, the Macao SAR Government proposed amendment to

the law. The bill was generally passed by the Legislative Assembly (AL) on 19th July 2011. Following deliberation by the First Standing Committee of the AL, the details of the bill was unanimously passed on 29th February 2012.

The amended *Organic Law of the Commission Against Corruption of Macao SAR* (hereinafter abbreviated as *Organic Law*), mainly stipulates that the CCAC's jurisdiction covers both public and private sectors and clarifies its duties as the ombudsman, as the law empowers the CCAC to render recommendation against "omission" by administrative departments, that shall specify the reason for non-acceptance when they do not accept or partly accept the recommendation. The time limit for them to respond to the recommendation has shortened from 90 days to 15 working days.

Moreover, the *Organic Law* strengthens the CCAC's initiatives in the aspects of law-enforcement and legislation, specifying the period of case investigation as well as expanding the scope of supervision conducted by the Monitoring Committee on Discipline of the CCAC Personnel, which used to deal with only disciplinary complaints but now also supervises "problems related to non-criminal nature complaints". The law also stricter regulates the staff's duties, as the special responsibilities of the assisting staff of the Commissioner Against Corruption are clarified. When performing their duties, they shall strictly respect human honour and dignity, observe the principle of non-discrimination and declare themselves as staff of the CCAC. The law also provides that when carrying out their functions, the staff who bear the "special identity card" issued by the Chief Executive or the Commissioner Against Corruption can circulate freely and to have free access to all places of work of the Administration of Macao SAR.

Kwan Chui Hang, President of the First Standing Committee of the AL, which was responsible for the deliberation of the details of the bill, stated that the newly revised *Organic Law* facilitates the CCAC's works on ombudsmanship and protection for basic rights. The time limit for investigation provided by the law not only satisfies the urgent demands of the society over recent years but also protects the basics rights of the parties being investigated, boosting the CCAC's investigative ability and standard. She praised the legal techniques employed in the bill, which clearly provides the fundamental principles which structure the system of rights enjoyed in Macao SAR, especially the most important principles of equality and non-discrimination. The statement of reason in the bill, which specifies the legislative purpose and principles and thoroughly lists the amendments, is sincere and serves as a good reference for other government departments.

PART V

**INTEGRITY PROMOTIONS
&
COMMUNITY RELATIONS**



PART V

INTEGRITY PROMOTIONS & COMMUNITY RELATIONS

I. A series of activities commemorating “20 Years of Integrity Building of Macao”

Year 2012 signifies the integrity building in Macao has been on the path for 20 years since 1992. The CCAC organised a series of activities under the theme of “20 Years of Safeguarding Honesty and Integrity” in order to call for the public’s attention to the work of integrity building. The activities included themed seminar, publication of readers for teenagers, organising sharing session on integrity and comic drawing contest for teenagers, as well as outdoor variety show, etc.

1. Seminar “Integrity Management and Clean Business Environment”

The CCAC held the seminar “Integrity Management and Clean Business Environment” on 20th September 2012 at the Macau Tower Convention & Entertainment Centre to commemorate the 20th year of integrity building of Macao. Experts and scholars from China and overseas were invited to share their experiences



Guests of honour officiating at the opening ceremony

in corruption prevention in the private sector, thus promoting ethical governance and the development of business ethics, as well as enhancing the sound operation and competitiveness of enterprises.



Chief Executive, Chui Sai On, CCAC leaders and guests

The opening ceremony was officiated by the Chief Executive, Chui Sai On, Deputy Procurator-General of Supreme People's Procuratorate of China, Sun Qian, Standing Member of Sichuan Provincial Party Commission and Secretary of Sichuan Provincial Commission for Discipline Inspection, Wang Huai Chen, Prosecutor General of Public Prosecutions Office, Ho Chio Meng, Commissioner Against Corruption, Fong Man Chong, President of Monitoring Committee on Discipline of the CCAC Personnel, Leong Heng Teng, and Vice-President of International Association of Anti-Corruption Authorities, Eduardo Vetere.



Chief Executive, Chui Sai On, delivering a speech

The seminar was hosted by Member of Legislative Assembly of Macao and Professor of Faculty of Law of University of Macau, Tong Io Cheng. Guest speakers including Vice-President of International Association of Anti-Corruption Authorities, Eduardo Vetere, Deputy Procurator-General of Guangdong Provincial People's Procuratorate, Ou Ming Yu, Director and Chief Executive of Serious Fraud Office

of New Zealand, Adam Feeley, Deputy Director of Corrupt Practices Investigation Bureau of Singapore, Choong Mann Wong, Professor of School of Criminology and Criminal Justice of Northeastern University of U.S.A., Nikos Passas, Acting Director of Corruption Prevention of Independent Commission Against Corruption of Hong Kong, Mok Wah Hoi, and Deputy Commissioner of Commission Against Corruption of Macao, Kuan Kun Hong, shared valuable experiences in corruption prevention in the private sectors with the participants. Over 500 representatives of government departments, local business circles and counterparts of mainland China, Hong Kong and other countries attended the seminar to exchange views on promoting ethical governance in the private sector.



Commission Against Corruption, Fong Man Chong, delivering a speech



Guest speakers sharing experiences in corruption prevention in the private sector

2. Commemorative stamps “20 Years of Safeguarding Honesty and Transparency”

In order to commemorate the 20th year of integrity building of Macao, the Macao Post has issued a set of commemorative stamps entitled “20 Years of Safeguarding Honesty and Transparency”. The Chief Executive, Chui Sai On, the Commissioner Against



Stamp issuing ceremony of “20 Years of Safeguarding Honesty and Transparency of Macao”

Corruption, Fong Man Chong, and the Director of Macao Post, Lau Wai Meng, officiated the stamp issuing ceremony at the seminar “Integrity Management and Clean Business Environment”.

3. Publication of *Collection about Integrity* and organised “A Journey to the World of Integrity: *Collection about Integrity* New Book Sharing Session”

To tie in with the activities commemorating the 20th year of integrity building in Macao, the CCAC published a book entitled *Collection about Integrity*, which gathered articles written by 31 local writers, figures in educational and cultural sectors and outstanding students. Their fine and appealing words guide the teenagers to the value of honesty, righteousness and law-observance, aiming to inspire them to understand the importance of personal integrity.

The CCAC held the “*Collection about Integrity* New Book Sharing Session” on 6th December 2012. Four of the writers, including Tang Hio Kueng, Lei Chin Pang, Chan Chi Fong and Ng Man Un, were invited to share their views and own experiences and stories about integrity. Over 80 teenagers and representatives of the educational sector were attracted to the event and the atmosphere was harmonious. Other writers of the book *Collection about Integrity* including Lam Chong Ieng, Lio Chi Heng, Kong Weng, Chan Im Wa, Lei I Leong, Tam Mei Leng, Chek In and Sam Kin also attended the event. The young people raised their personal opinions on integrity and interacted with the speakers enthusiastically.



Four of the authors of the *Collection about Integrity* sharing their views about integrity with teenagers



Chief of the Cabinet of the Commissioner, Sam Vai Keong, and some of the authors who attended the sharing session, including Lam Chong Ieng, Lio Chi Heng, Kong Weng, Chan Im Wa, Lei I Leong, Tam Mei Leng, Chek In and Sam Kin

4. 4-Panel comic drawing contest – “Draw Your Dreams about Integrity”

In August 2012, the CCAC joined hands with the General Association of Chinese Students of Macao to organise a 4-panel comic drawing contest, entitled “Draw Your Dreams about Integrity”, aiming to enable the contestants to understand the importance of personal integrity and building of a clean society and thus nurture moral value in youngsters.

The contest consisted of three categories: the senior secondary group, the junior secondary group and the senior primary group. Featuring such themes as “uprightness”, “fair competition”, “law-abidingness” and “clean elections”, the contest attracted a total of 230 pieces of works from 22 schools. According to the panel of judges, there were many outstanding works in the contest, which reflected the high expectations of Macao’s young people for individual uprightness and a graft-free society.



Deputy Commissioner, Kuan Kun Hong, presenting a prize to a winner



Selected works on display

5. Event - “20 Years of Safeguarding Honesty and Transparency”

With collaboration of the Macao Youth Foundation, the Youth Committee of Macao Federation of Trade Unions, the Macao New Chinese Youth Association, the General Association of Chinese Students of Macao, and the Youth Affairs Committee of General Union of Neighbourhood Associations of Macao, the CCAC held an event entitled “20 Years of Safeguarding Honesty and Transparency” and the awarding ceremony of the 4-panel comic drawing contest – “Draw Your Dreams about Integrity” on 1st December 2012 at the Park of Iao Hon Market to promote the

message of integrity and law-abidingness to the residents. The event attracted a large number of residents.



CCAC leaders with co-organisers officiating at the opening ceremony



Citizens at the event

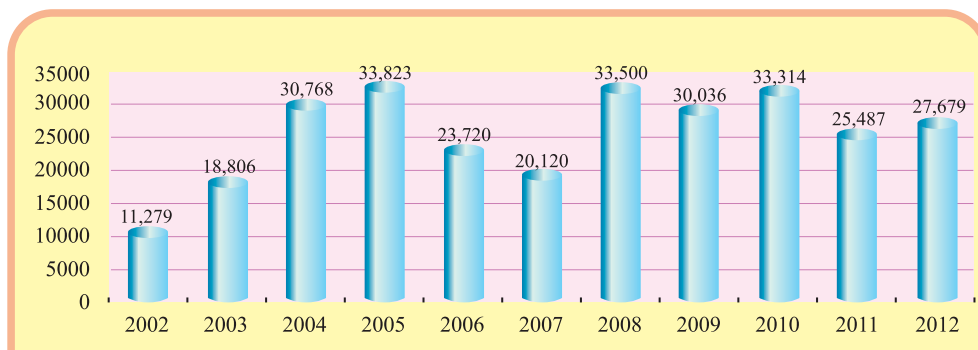
II. Integrity education

To carry out integrity promotion activities, promote the awareness of honesty and integrity and strive for the support and participation of society in integrity building has been one of the priorities of the CCAC. In 2012, a total of 459 seminars and symposia were organised, with 27,679 participants which covered different sectors including public servants, management and employees of the private sector, teenaged students and members of civil associations.

STATISTICS OF SEMINARS AND SYMPOSIA IN 2012

Topic	Target	No. of Sessions	No. of Participants
“Noble Character, Righteous Conduct”, Declaration of Assets and Interests, Integrity and Observance, Public Procurement	Public servants	103	5,170
Integrity Awareness	Civil associations	11	433
Seminars on the law <i>Prevention and Suppression of Bribery in the Private Sector</i>	Civil associations, private entities, public sector	70	3,996
Integrity Education	Teenaged students	275	18,080
Total		459	27,679

NUMBERS OF PARTICIPANTS OF SEMINARS FROM 2002 TO 2012



1. Integrity education of public servants

The CCAC continued to carry out systematically the integrity education work targeting public servants to further strengthen the awareness of law-abidingness of public servants and promote the construction of a clean public service through organising various types of seminars on integrity. In 2012,



Seminar on “Integrity and Observance” for public servants

the CCAC organised a total of 103 themed seminars for the staff of the public administration, with 5,170 participants. The contents of the seminars cover areas including the professional ethics and code of conduct that public servants should possess and observe, the handling of conflicts of interests in the execution of functions and the issue of outside employment, the guideline to abide by in public procurement and the declaration of assets and interests, etc.

STATISTICS ON SEMINARS FOR PUBLIC SERVANTS IN 2012

Subject	Department	No. of sessions	No. of participants
“Noble Character, Righteous Conduct”	Macao Prison	2	40
	Academy of Public Security Forces	4	295
	Housing Bureau	2	228
	Health Bureau	3	620
	Land, Public Works and Transport Bureau	2	70
	Education and Youth Affairs Bureau	1	60
Integrity and Observance, Declaration of Assets and Interests	Academy of Public Security Forces	2	214
	Macao Customs Service	2	130
Integrity and Observance	Civic and Municipal Affairs Bureau	5	210
	Labour Affairs Bureau	1	43
	Public Security Police Force	33	990
	Judiciary Police	1	70
	Training Course for Trainees of Judicial Office	1	120
	Basic Training Course for Public Servants	36	1,800
	Promotion Training and Targeted Promotion Training Course for Public Servants	8	280
Total		103	5,170

2. Corruption prevention education in the private sector

Throughout the year, the CCAC has organised seminars on the law *Prevention and Suppression of Bribery in the Private Sector* for private organisations, civil associations and public departments. At the seminars, the relevant provisions of the law are explained in detail using cases specially designed for different industries. Besides, the CCAC aims to explore how to strengthen the integrity management of corporates and promote the establishment of a clean and fair business environment through the interaction and exchanges with the participants.



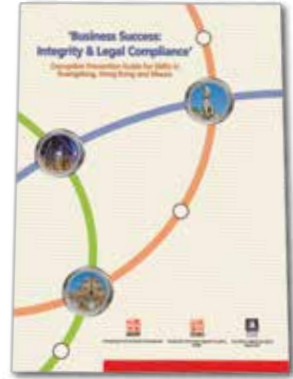
Seminar explaining the stipulations of the law for private institutions

SEMINARS ON THE LAW *PREVENTION AND SUPPRESSION OF BRIBERY IN THE PRIVATE SECTOR* IN 2012

Name of Organisation/Institution	Target	No. of Sessions	No. of Participants
The General Union of the Neighbourhood Association of Macao	Members	5	420
Cheng I Integrated Service Centre for Seniors	Elderly members and staff of the association	1	90
Workers' Support Centre in North Area of the General Workers' Union of Macao	Members	1	100
The Macao Chamber of Commerce	Members	1	150
ADA Administration of Airports Ltd.	Management, Staff	2	40
Macau International Airport Company Limited	Management, Staff	2	90
Macau International Airport Security	Management, Staff	7	470
The Landmark Macau	Staff	1	60
Esprit Macao Commercial Offshore Limited	Staff	2	70
Wynn Macau	Staff	1	30
CLP Engineering (Macao) Limited	Staff	1	15

Name of Organisation/Institutions	Target	No. of Sessions	No. of Participants
The Macao Water Supply Company Limited	Staff	1	50
Otis Elevator Company (HK) Limited	Staff	1	20
Shun Tak Holdings (Macao) Limited	Staff	1	30
Chubb (Macao) Limited	Staff	1	30
Nam Kwong Natural Gas Company Limited	Staff	1	40
Tai Fung Bank Limited	New recruits	1	100
L'Arc Macau	Staff	1	30
China Life Insurance Company Ltd	Staff	1	30
Weng Hang Bank	Staff	2	130
Bank of Communications Macau Branch	Management, Staff	1	50
CEM	Staff	1	60
Sacred Heart Canossian College (Chinese Section)	Teachers and staff	1	40
Escola Estrela do Mar	Teachers and staff	1	150
"Integrity Management and Clean Business Environment" seminar	Representatives from various sectors of society	1	500
Institute for Tourism Studies – Refresher Seminar for Tour Guides	Tour guides	21	710
Maritime Administration	Staff	1	40
Transportation Infrastructure Office	New recruits, Contractors	4	131
Education and Youth Affairs Bureau	New recruits	1	50
Consultative Committee of Community Service	Members of Committee	1	30
The School of Business of Macao Polytechnic Institute	Students	1	60
Fire Services Bureau	Staff	1	80
Land, Public Works and Transport Bureau	Management, Staff	1	100
Total		70	3,996

In 2012, the CCAC, the Guangdong Provincial People's Procuratorate and the Independent Commission Against Corruption of Hong Kong cooperated to compile *Integrity and Law Observance Bring Fortune: Corruption Prevention Guide for Small and Medium Enterprises in Guangdong, Hong Kong and Macao* which aims to provide a practical reference of corruption prevention for business people in Guangdong, Hong Kong and Macao. The *Guide* indicates the corruption prevention laws of the three places and reference for enterprises that run cross-border businesses, aiming to keep them away from unnecessary dispute and lawsuit. With various case studies and examples, the *Guide* also discusses the preventive measures the businesspeople have to take when they are solicited or given bribe as well as the skills to manage staff's conduct, in order to effectively prevent the hazards of corruption, enhance the standard of integrity management of SMEs and help to build a clean and fair business environment.



Integrity and Law Observance Bring Fortune: Corruption Prevention Guide for Small and Medium Enterprises in Guangdong, Hong Kong and Macao

The CCAC and the Macao Chamber of Commerce co-organised the launching ceremony of *Integrity and Law Observance Bring Fortune: Corruption Prevention Guide for Small and Medium Enterprises in Guangdong, Hong Kong and Macao* at the Memorial Hall of Ho Yin at the building of Macao Chamber of Commerce on 1st November 2012. A Seminar entitled “Integrity, Law Observance and Clean Business Environment” was held at the same time in order to enable local SMEs to clearly understand the *Guide* and deepen their understanding of the legislation against corruption in the private sector of Macao. The seminar was hosted by President of the Macao Chamber of Commerce, Ma Iao Lai while the Commissioner Against Corruption, Fong Man Chong, serves as the speaker. The event has gathered around 150 representatives from various sectors, including tourism, service, MICE, banking, logistics and catering.

The CCAC attaches great importance on maintaining close ties with various sectors and industries. Throughout the year, the CCAC has liaised with a number of associations from different industries, including the Macao Chamber of Commerce, the Association of Owners' of Maritime Navigation and Agencies of Macao, Long Hap Tong, the Association of Advertising Agents of Macau, Macao Pastry Specialty Association, the Macau Economic Association and the Service Sector Employees' General Association of Macau, etc., in order to collect their opinions,



The Commissioner, Fong Man Chong, and President of the Macao Chamber of Commerce, Ma Iao Lai, co-hosting the seminar "Integrity, Law Observance and Clean Business Environment"



The Commissioner, Fong Man Chong, and some of the representatives of business circles

explore areas of cooperation and promote the compilation of corporate corruption prevention guidelines. Meanwhile, the CCAC continued to team up with a number of associations in Macao to organise a touring exhibition to further enhance the community awareness of the corruption prevention law in the private sector.

3. Integrity education for teenaged students

In 2012, the CCAC has finalised the compilation and editing of the teaching materials on integrity education for secondary schools entitled *Learn and Think*. In addition, the CCAC took the initiative to visit a number of secondary schools to gather opinions and suggestions on the integrity education programmes launched by the CCAC from the education sector, so that strategies could be timely adjusted to enhance the effectiveness of integrity education for teenagers. Besides, the CCAC also organised a wide range of activities to promote the awareness of honestly and law-abidingness, of which a total of 275 sessions of seminars on integrity for primary and secondary students were held, with 18,080 participants.

(1) *Learn and Think* – Integrity education teaching materials for secondary schools

The CCAC cooperated with the moral education teachers of a number of local secondary schools and compiled the teaching materials on integrity education for secondary schools entitled *Learn and Think*. The teaching materials consist of eight units with themes including "Value of Money", "Honesty", "Integrity", "Clean Election", "Friendship and Justice", "Responsibility", "Fairness" and "Law Observance". The CCAC expects the application of the teaching materials could

guide secondary students to gradually establish the correct values of honesty and law-abidingness.

To tie in with the teaching materials, the CCAC plans to develop the online “integrity materials database” that could provide more timely information in form of lesson plan to teachers of moral education to meet their teaching needs, thus enhancing the effectiveness of integrity education.



Integrity education teaching materials for secondary schools *Learn and Think*

(2) Visiting schools to collect opinions

In 2012, the CCAC has visited 13 local secondary schools, including Colégio Mateus Ricci, Macau Baptist College, Escola Católica Estrela do Mar, Pui Va Middle School, Kao Yip Middle School, Xin Wa School, Yuet Yah College, Escola Do S.S. Rosario, Saint Paul School, Colégio Diocesano de Sao José, Kwong Tai Middle School, the Affiliated School of the University of Macau and Lingnan Middle School,



Exchanging views on integrity education with school representatives

to listen to opinions and suggestions from the principals, supervisors, moral education teachers and social workers on the integrity education work of the CCAC. The schools recognised the CCAC’s efforts on integrity education for teenagers, as the integrity education activities were tailor-made, basing on the school’s own conditions and characteristics. During the activities, examples of daily life were adopted to gradually arouse the students’ interest in participating and also guide them to independent thinking. The strategy and positioning of the activities were highly complimented and the activities received good effect. The schools overall agreed that the teaching material *Learn and Think* compiled by the CCAC could assist the teachers in promoting moral education in the school. It is hoped that the CCAC could produce more local integrity teaching material so as to continue to enhance the effect of integrity and honesty education of the teenagers.

(3) “Education Programme on Honesty for Teenagers”

The CCAC continued the work of “Education Programme on Honesty for Teenagers”, representatives of the CCAC were sent to secondary schools to explain integrity-related topics to secondary students. The theme of integrity and honesty was discussed through the illustration of daily life examples so as to guide teenagers to develop correct values of honesty and integrity. In 2012, a total of 17 schools participated in the “Education Programme on Honesty for Teenagers”, with 8,455 participants in 90 sessions of seminars.

(4) “Integrity Week” for secondary school

In 2012, the CCAC has co-organised the “Integrity Week” with 5 secondary schools including Yuet Wah College, Santa Rosa de Lima College (Chinese Section), Choi Nong Chi Tai School, Macau Baptist College and Our Lady of Fatima Girls’ School. A number of activities were designed base on the features of the students in the said schools, including picture book design, drama contests, video clip competitions and campus broadcasting, etc. During the period of Integrity Week, display boards were set up in the campuses to briefly introduce the integrity building of Macao, so as to enhance the students’ understanding and awareness of the work of fighting and preventing corruption. Meanwhile, the CCAC also sent staff to hold 36 seminars at these schools, where they had discussions with students on topics such as values of money and the importance of integrity, a total of 4,586 students attended the seminars. The CCAC has specially organised the representatives of the students who participated in the activities of the “Integrity Week” to visit the Hong Kong ICAC in order to broaden their views and deepen their understanding of the importance of integrity building and personal honesty to the healthy development of society.



Drama contest during the “Integrity Week” activity



Students visiting Hong Kong ICAC

(5) “A Talk on Integrity for Secondary School Graduates”

The CCAC has organised seminar entitled “A Talk on Integrity for Secondary School Graduates”. Through introducing the practical integrity guidelines, students can clearly understand the current anti-corruption laws and the legal regimes of preventing corruption before they graduate and take their first step into society which enables them to observe the law and live a healthy and abundant life. In 2012, the CCAC has organised 34 sessions for the graduates of 19 secondary schools with a total participant of 3,340 students.



“A Talk on Integrity for Secondary School Graduates” guides secondary school graduates to understand anti-corruption laws and the legal regimes of corruption prevention

(6) “Act on Integrity”

The programme “Act on Integrity” aims to convey the correct value of honesty and the spirit of law-abidingness to secondary students through interactive drama performance. In 2012, the CCAC has organised 12 sessions of performance for third-year junior high to all senior high school students of nine secondary schools, with a total participant of 1,968 students. Dishonest behaviours of teenagers’ everyday scenarios, such as examples of acts violating honesty and integrity, were showcased in the drama so as to draw their attention to circumstances where corruption can be easily induced. The aim of the activity is to increase teenagers’ alertness against the trap of committing unlawful acts. The activity has achieved good results with the students being attentive during the performance and participated actively in the discussion and shared their ideas.



Interactive drama performances to promote honesty and integrity

(7) Integrity education for primary schools

The “New Generation of Integrity – Education Programme on Honesty for Primary Students”, targeting at Primary 4 to Primary 6 students, was conducted at the “Paradise of Integrity” in the Branch Office in Areia Preta. The programme aims to cultivate the correct moral values of primary students. Through telling a small story by means of puppet shows, computer animation or videos to bring out the great moral of safeguarding fairness and justice of society and building personal integrity. There were a total of 24 primary schools participated in this programme and a total of 126 sessions were held, with 3,911 participants.



Primary students having a pleasant learning experience at the “Paradise of Integrity”

During the period of Children’s Day on 1st June, the CCAC organised the special activity entitled “Celebrate Children’s Day with William the Integrity Bear” for Primary 3 to Primary 6 students. The theme of the activity this year is “Be a person of honesty since young”. 273 primary students from 7 schools joined the activity and learned about the importance of personal integrity.

4. Integrity education for general public

The CCAC always attaches great importance to the corruption prevention training of employees of gaming industry. Throughout the year, integrity awareness seminars were organised for dealer trainees of the Gaming Teaching and Research Centre to strengthen their self-discipline, adhere to honesty and refuse the temptation of undue advantages. In addition, the CCAC also carried out integrity education promotion targeting the general public, a total of 11 sessions of integrity awareness seminars were organised in 2012, with 433 participants.

STATISTICS ON SEMINARS FOR ASSOCIATIONS IN 2012

Name of Association	No. of Sessions	No. of Participants
"Praça de Ponte" Family Service Centre - Bosco Youth Service Network	1	12
"Taipa" Family Education and Support Centre - The Methodist Church Macau	1	12
Sheng Kung Hui Gambling Counseling and Family Wellness Centre	1	13
Areia Preta Pastoral Centre	1	50
Macao Community Services Association	1	150
Macao New Chinese Youth Association	2	70
Salesians of Don Bosco	2	41
Association of Mutual Aid covering the District of S. Lourenço	1	40
Elderly Health Centre of 4 Neighbourhood Associations of Southern District	1	45
Total	11	433

5. Promotion and education on clean election

The 5th Legislative Assembly Election will be held in 2013, in order to promote the message of clean elections to the general public, starting from 2012, the CCAC has carried out various promotional and educational activities. Seminars on clean elections were organised to introduce the relevant stipulations and penalties of the *Legislative Assembly Election Law*, and explain with concrete examples the importance of a clean and fair election to individuals as well as society to call on the citizens to work together and support clean elections. In addition, the CCAC has joined with the Public Administration and Civil Service Bureau in organising the activity entitled "Happy Day of Voters Registration" to encourage qualified residents to actively fulfil their civic obligations and register as voters. Besides, they shall abide by the laws and regulations during the voter registration and the election campaigns, so as to safeguard the integrity, fairness and justice of the elections.



The CCAC promoting clean election to the residents at the "Happy Day of Voters Registration"



Seminar on "Clean Election" for teenagers

III. Promotion in the community

1. Complaint, report and help/consultation received in the Branch Offices

The Branch Office in Areia Preta and the Branch Office in Taipa continued to carry out their designated functions to provide a convenient channel for complaint, report and consultation. In 2012, the branch offices received a total of 808 complaints/ reports, requests for help/consultation and simple enquiries, an increase compared to 639 counts in 2011. Details are listed below:

NUMBERS OF COMPLAINTS, REPORTS AND REQUESTS FOR HELP AND CONSULTATION RECEIVED BY THE BRANCH OFFICES IN 2012

Complaints/Reports			Requests for Help/Consultation	Simple Enquiries	
In person	By telephone	Written complaints		In person	By telephone
51	2	28	35	324	368
Subtotal: 81			Subtotal: 727		
Total: 808					

2. Expanding community relations

The CCAC has always put great emphasis on the exchange and liaison with civil associations to approach the community to promote the message of integrity and law-abidingness while collecting public opinions and suggestions, so as to enlist the community's support and participation in building a clean society. In 2012, the CCAC has carried out liaison and exchanges with 23 local associations

including visiting them and co-organising programmes with them, in order to listen to the citizens' opinions and suggestions of the work of integrity building and to disseminate the message of integrity and law-abidingness to the general public.



Integrity awareness seminars organised for civil associations

The civil associations expressed their recognition and support to the work carried out by the CCAC in recent years and the identification of the importance of the work of integrity education and promotion. They hoped that the CCAC will strengthen its capacity in law-enforcement and deepen the effectiveness of promotion and education with a wider range of coverage of the message of integrity through more diversified channels. The representatives of the civil associations believed that through the visits paid by the CCAC to the civil associations and carried out exchanges, it could help the citizens' to enhance their knowledge and understanding of the functions of the CCAC, thus recommending the CCAC to continue to maintain close ties with different sectors of society.



Visiting civil associations to gather information and collect opinions

3. Other education and promotion work

(1) "Let's Support a Clean Society" – A Computer Animation and Comic Competition for Youth from Guangdong, Hong Kong and Macao

In order to enhance the corruption prevention awareness of teenagers in Guangdong, Hong Kong and Macao, the CCAC has co-organised with the Guangdong Provincial People's Procuratorate and the ICAC of Hong Kong the "Let's Support a Clean Society" – A Computer Animation and Comic Competition for Youth from Guangdong, Hong Kong and Macao. The competition consists of two categories, namely the "animation group" and the "comic group"; each of them is sub-divided into three groups, including the "secondary group", the "tertiary group" and the "open group". The competition accepts entries based on real cases or original stories in animation or comic that carry messages of anti-corruption and promote social values of integrity and honesty that are recognised by society, hazard effects that corruption has on the public and society, and the pursuit of abundant life and positive moral values, etc.

The competition was launched by end of 2011 and the final deliberation was carried out in 2012. The Procurator-General of the Guangdong Provincial People's Procuratorate, Zheng Hong, the Commissioner Against Corruption of the CCAC, Fong Man Chong, and the Commissioner of the Hong Kong ICAC, Peh Yun-lu officiated the opening ceremony at the award ceremony held in Guangzhou. The Commissioner, Fong Man Chong, noted in his speech that the success of organising this competition has proven once again the achievements in integrity building of the three places, on one hand, the exchanges and friendship among the personnel of the three places were strengthened and on the other hand, the level of education and promotion was greatly enhanced as well. It managed to awaken the younger generation to the importance of honesty and integrity, spread the anti-corruption message to every corner, and increase the impressiveness and penetration of the message, thus laying a solid foundation for integrity building. He also expressed that



The jury panel deliberating the entries



The Commissioner, Fong Man Chong, members of jury panel, Chou Cheong Hong (3rd from left) and Michael Wong (4th from right), the Chief of Office of Supervision of the Liaison Office of the Central People's Government in Macao SAR, Yu Kechao (3rd from right) and winning students

the entries of the competition are of very high standard which further revealed the creative thinking of the younger generation and witnessed the contribution of the youngsters on the road of building a clean society

The competition is the second cooperation between the anti-corruption entities of the three places - Guangdong, Hong Kong and Macao - after the TV commercial competition in 2010. The competition received even greater response from society, with more than 3,000 entries being collected. The teams from Macao has achieved satisfactory results, in the animation group, the Kao Yip Middle School was awarded gold award in secondary students group, regional grand award, most popular award and most creative award for on-line voting, a total of four awards; in the comic group, Tong Sin Tong School was awarded bronze award in secondary students group, regional grand award and most creative award for on-line voting while the Macau University of Science and Technology was awarded regional grand award and most popular award for on-line voting.

(2) “Puppet theatre on integrity” in community

In order to strengthen community integrity education, the CCAC sent staff to civil associations to conduct “puppet theatre on integrity”. The activity aims to bring the puppet show on honesty and law-abidingness into the community to enhance the publicity of integrity to the citizens. The targets of the activity are mainly primary students who could enjoy the story of integrity and at the same time gave some thoughts on the topic and actively answered questions. The children devoted themselves greatly in the activity and the result is satisfactory.



Children and their parents enjoying the “puppet theatre on integrity”

(3) Regular promotion

In order to enhance the effect of anti-corruption promotion and dissemination, the CCAC continued to carry out various types of publicity and promotion work such as producing various advertisements, publishing articles in all local Chinese press in the column “Clean Administration Forum”, presenting on TV information programme “Enquiry and Reply” to disseminate information concerning the work of

the CCAC and the publishing of the semi-annual *CCAC Bulletin*, etc.



Bus advertisements



The semi-annual *CCAC Bulletin*

IV. Contacts and exchanges

1. Receiving visitors

Upon the invitation of the CCAC, the member of the Standing Committee of Guangdong Provincial Party Committee and Secretary of the Provincial Commission for Discipline Inspection, Huang Xianyao, led a delegation and visited the CCAC in October 2012. The Commissioner Against Corruption, Fong Man Chong, met with the delegation and the two parties exchanged opinions about the works on integrity building in the two places.

The Commissioner, Fong Man Chong, welcomed the delegation and introduced to the delegation the CCAC’s efforts in graft-fighting, ombudsman and integrity education, as well as the concrete measures of the system of declaration of public servants’ incomes and properties. Secretary Huang Xianyao expressed that the main purpose of the visit was to know about the mechanisms of the anti-corruption work and perfection of rules and regulations in Macao. He placed affirmation and appreciation on the concept of the integrity building and the spirit of exploration and innovation of Macao. Following the commencement of the Guangdong-Macao cooperation projects such as the Hengqin New Area and the Hong Kong-Zhuhai-Macao Bridge, it is hoped that cooperation and exchanges could be further strengthened between the two places to jointly promote the work of integrity building. The two parties also

exchanged views and opinions specifically on some issues including synchronised prevention on major construction projects, the setting up of the property declaration system of officials as well as the laws and regulations in corruption prevention, etc.

The CCAC also received a number of delegations including the delegation led by the Standing Member of Sichuan Provincial Party Commission and Secretary of Sichuan Provincial Commission for Discipline Inspection, Wang Huaichen, the delegation led by the Deputy Secretary of CPC Zhuhai Municipal Committee and Secretary of Zhuhai Municipal Commission for Discipline Inspection, Wang Yanshi, the Independent Commission Against Corruption of Hong Kong, the People's Procuratorate of Guangdong Province, Serious Fraud Office of New Zealand, the Corrupt Practices Investigation Bureau of Singapore, the Anti-Corruption Bureau of the Anti-Corruption and Civil Rights Commission of Korea, Ministry of Justice of Mongolia, the Casino Regulatory Authority of Singapore, the Australian Consulate-General Hong Kong and Macau, the Consulate General of Canada in Hong Kong and the Health Supervision Department of East Timor.

2. Visits and meetings abroad

In 2012, the CCAC made the following visits abroad:

- The CCAC delegation visited Shanghai upon the invitation of the Commission for Disciplinary Inspection of Shanghai to know about and study the public procurement system in Shanghai and visit the "Shanghai Land Transaction Centre" to learn more about the system, relevant regulations and process of the transaction of state-owned land in Shanghai.
- The 4th Seminar of International Association of Anti-Corruption Authorities (IAACA) in Dalian, China. The Commissioner Against Corruption, Fong Man Chong, delivered a speech about recovery of illicit gains. He pointed out the key issues about asset recovery, the trend and methods of solution and then introduced the relevant laws of Macao. Dr. Fong noted that the right to recover illicit assets is the embodiment of the power of judicial judgment of a country or region. In fact, it is not possible to exercise the power unilaterally across borders. Therefore, to establish bilateral or multi-lateral agreements is the only effective way to prevent conflict, and also one of the main tools to implement Articles 53 and 54 of the *United Nations Convention Against Corruption*, enabling effective suppression of cross-border transition of illicit gains, enhancing regional and international

cooperation and facilitating the construction of a clean and fair society. He suggested drawing on the experience of the Interpol and establishing a regular system of coordination and liaison.

- Upon invitation, the delegation of the CCAC, as specially-invited representatives, attended the “Fifth Workshop of Corruption Prevention for Developing Countries” held in Beijing by the National Bureau of Corruption Prevention. A total of 25 government officials, with rankings of vice director or above, from 14 Asian, African and European countries attended the workshop. At the workshop, the Commissioner Against Corruption, Fong Man Chong, introduced to the attendants the work experience and practices of the Macao SAR in the area of corruption prevention.
- The Board of Directors’ Meeting of the Asian Ombudsman Association (AOA) in Baku, Azerbaijan to fulfil the duties of being a board member.
- The 6th Annual Conference & General Meeting of the International Association of Anti-Corruption Authorities in Kuala Lumpur, Malaysia. The Commissioner Against Corruption, Fong Man Chong, delivered a speech at the conference and introduced to the participants the trend of development of international judicial cooperation, including the expansion of the scope of judicial cooperation, the possibility for elevating international cooperation, strengthen efforts to combat crimes and promote cooperation. In addition, he also briefly introduced the legal regime of judicial collaboration in Macao, as well as the regional judicial cooperation between Macao and other parts of China under the prerequisite of “One Country, Two System”.
- The 10th World Conference of the International Ombudsman Institute in Wellington, New Zealand. Luís Rôlo, legal advisor of the CCAC, delivered a speech on behalf of the CCAC. Entitled “methods for ensuring sound public administration, raising standards of integrity and preventing corruption”, the topic focused on how the two roles of an agency – as an ombudsman and a corruption fighter – can complement each other, and how to effectively reduce corruption risks by improving the transparency and efficiency of public administration.
- The 17th Steering Group Meeting of the ADB/OECD Anti-Corruption

Initiative for Asia and the Pacific and the 11th regional seminar on anti-corruption in Hanoi, Vietnam. At the seminar, Luís Rôlo, legal advisor of the CCAC, delivered a speech on the recent developments of asset declaration by public servants in Macao and amendments to be made to the system. He stressed that the declaration of assets and interests plays a crucial role in corruption prevention as it helps increase the transparency of public administration and prevent conflicts of interest.

- The “Seminar on Theories and Practice of Fostering a Culture of Integrity in Cities and the 5th West Lake Forum on Integrity” held by the Research Centre of Central Commission for Discipline Inspection and the Research Centre of Integrity Theories of the Ministry of Supervision in Hangzhou, and the “Haining Forum on Integrity Building” held by the Jiaxing Municipal Discipline Inspection Committee, the Department of Publicity of Jiaxing Municipal Party Committee, the Haining Municipal Party Committee and the Haining Municipal People’s Government in Haining. The Head of Community Relations Department, Tang Shu Qing, delivered speeches at the forums and shared with the participants the experience of integrity building of Macao.



Huang Xianyao, Member of the Standing Committee of Guangdong Provincial Party Committee and Secretary of the Provincial Commission for Discipline Inspection led a delegation and visited the CCAC



The Commissioner, Fong Man Chong, introducing the work experience and achievements of Macao in corruption prevention to the attendants from Asia, Africa and Europe at the "Fifth Workshop of Corruption Prevention for Developing Countries"



The Commissioner, Fong Man Chong, giving opinions about the operation of the AOA at the Board of Directors Meeting



The Commissioner, Fong Man Chong, at the 6th Annual Conference of the IAACA



Delegates of Ministry of Justice of Mongolia paying a visit to the CCAC



The Commissioner, Fong Man Chong, presenting a souvenir to the Ombudsman of Hong Kong, Alan Lai

PART VI

APPENDIX



APPENDIX I

LEGAL COMMENTARY REPORTS SUBMITTED TO CHIEF EXECUTIVE BY CCAC IN 2012

Paragraphs 9 and 10 of Article 4 of the *Organic Law of the Commission Against Corruption of Macao SAR*, approved by Law no. 10/2000 of 14th August (amended by Law no. 4/2012 of 26th March), stipulate that:

“The Commission Against Corruption is entitled to:

(...)

9) With regard to any shortcomings it finds in any legal provisions, namely those involving rights, freedoms, safeguards or any legitimate interests of the individuals, formulate recommendations or suggestions concerning their interpretation, amendment or repeal, or make suggestions for new legislation. When, however, the matter falls within the powers of the Legislative Assembly, it shall merely inform the Chief Executive in writing on its position;

10) Propose to the Chief Executive the enacting of normative acts which may improve the work of the public institutions and enhance the respect for legality in the administration, particularly by eliminating factors which may facilitate corruption and illicit practice or ethically reproachable practice;

(...).”

In 2012, the CCAC submitted a number of commentary reports to the Chief Executive, with the aim to enhance system building and administrative efficiency, exerting the Commission’s functions in implementing the policy plan. It also provides useful reference for decision-making departments. The following are some of the commentary reports submitted by the CCAC:

- 1) – Legal opinion on the amendment of grant conditions and transfer regarding a lot in the south of Estrada do Istmo to develop into hotels (including the transfer of equity by the owners) (brief analysis);
- 2) – Legal opinion on the “Pre-qualification of international tender regarding

the reclamation of land in a particular district and construction of the dike of the new development zone” (Report no. 2);

- 3) – Opinion concerning the bill of *Legal Regime of Urban Construction*;
- 4) – Opinion concerning the bill of *Legal Regime of Urban Construction* – Supplementary part;

* * *

Among the aforementioned reports, we chose to publish two of them here for the knowledge of the public due to the fact that the contents of the reports are with greater social impact and will draw great attention among the population.

**Legal opinion on the “Pre-qualification of
international tender regarding the reclamation of
land in a particular district and construction of the dike of
the new development zone”**
(Report no. 2)

Part I: Preface

- 1) On 11th January 2012, the Commission Against Corruption (CCAC) received documents (official letter no. 232/GDI/2012) sent by the Infrastructure Development Office, including:
 1. **Notice** — Pre-qualification of international restricted tender regarding the reclamation of land in a particular district and construction of the dike of the new development zone (Chinese and English version);
 2. **Tender** — Pre-qualification of international restricted tender regarding the reclamation of land in a particular district and construction of the dike of the new development zone (Chinese and Portuguese version).
- 2) Due to the reports and opinions submitted previously by the CCAC, much improvement has been made in the tender documents.
- 3) As the documents received by the CCAC were incomplete, among which the “bidding rules” were missing, and there was hardly any supplementary information, such as proposal, among others, and therefore the CCAC’s scope of analysis was restricted and opinions could only be given on several issues of greater importance.
- 4) Upon requesting instructions, the CCAC will submit the commentary reports to the Cabinet of the Chief Executive for reference.

* * *

Part II: Analysis

- 1) Why is the term “international tender” used?
 1. In fact, the term “international tender” **is never directly introduced in Decree Law no. 74/99/M of 8th November, and this possibility is only mentioned in its Paragraph 2 of Article 63.**
 2. The issue related to the so-called "international tender" is never directly mentioned in Decree Law no. 122/84/M of 15th December and the possibility of acquiring goods outside the Macao SAR, excluding contracting of work (empreitada), is only mentioned in its Article 22.
 3. Even though the reclamation of land may need enterprises which are established outside the Macao SAR to participate, the adoption of “international tender” is deemed unnecessary.
 4. It is not convincing enough to determine this tender as an "international tender" due to the reason that it is open to Mainland enterprises.
 5. It is worth noting that for the tender to open to enterprises outside the Macao SAR, it should be backed by adequate reasons and approval should be gained from the competent authority (Paragraph 2 of Article 63 of Decree Law no. 74/99/M of 8th November⁷). However, in the submitted document, **there is neither related approval mentioned nor proposals sent for approval attached.**

* * *

7 The contents of the respective Paragraph: “2. Due to the characteristics of the construction projects, professional enterprises established outside the region can be accepted in the bid. However, this circumstance shall be subject to the order made by the authority competent to accept the enterprises and shall be presented with reasons.”

2) Why is pre-qualification of restricted tender adopted?

1. In the documents submitted, **reasons for adopting the aforementioned type of tender are not presented**, i.e. not clearly pointing out the difference between “pre-qualification” and “non pre-qualification”.
2. **Pre-qualification, being an exceptional regime, should be adopted with adequate reasons** to show to the public the interests the administrative authority seeks for and for the sake of the transparency and fairness of the bidding process.
3. Pre-qualification should only be adopted when it is unable to acknowledge whether the bidders can meet the technical requirements.
4. **Under normal circumstances**, the nature of the construction work and the need to introduce enterprises outside the Macao SAR including those from the Mainland to participate in the bid are **all the more reasons to adopt other types of tender instead of open tender**.
5. Considering the scope and professionalism of this reclamation of land project, **there may be justifiable reasons for the Infrastructure Development Office to adopt “Pre-Qualification of Restricted Tender”, the CCAC thus does not express its stance regarding this issue.**

* * *

1) Objective of tendering

1. Paragraph 2 of the tender documents states that:

“2. *Objective of tendering*

- 2.1 *This tendering aims at assessing candidate bidders and eight prospective candidates will be invited to submit bidding proposals for the construction with regards to “Pre-qualification of international restricted tender regarding the reclamation of land in a particular district and construction of the dike of the new development zone”. In the event of equal points scored in the eighth place, more prospective candidates, instead of the total mentioned above, shall be selected.*

2.2 *The principal reserves the rights to cancel this tender and the prospective candidates have no rights to ask for any compensation.”*

2. This statement is incorrect. The objective **should be contracting construction project** instead of selecting bidders as mentioned;
3. What the above paragraph indicating is the types of tenders instead of the objective of tendering. Amendment should be made accordingly.

* * *

2) Evaluation criteria

1. Qualified bidders should be invited to submit bidding proposals according to the law.

Paragraph 2 of Article 109 of Decree Law no. 74/99/M stipulates:

“Article 109 (Tendering system)

(...).

2. *Regarding the pre-qualification of restricted tender, entities which fulfil **professional, technical, economic and financial conditions** or other conditions required in the notice as stated in Paragraph 1 of Article 110 can raise the request for candidacy.*

(...).”

In addition, Paragraph 3 of the same Article states that:

**“Article 109
(Tendering system)”**

(...).

3. The principal should invite prospective candidates who meet the qualifications in the pre-qualification process based upon the information stated in Sub-paragraph c of Paragraph 1 of Article 110 to submit the bidding proposals.”

To sum up the aforementioned two Paragraphs, only the contents of Sub-paragraph c of Paragraph 1 of Article 111 could be the evaluation criteria, which stipulate that:

**“Article 110
(Launch of tendering process)”**

1. The process of pre-qualification of restricted tender starts from publishing notice, in which the content should include:

(...);

c) Information concerning requirement of candidacy includes documents or declarations stating the candidate’s status and whether the candidate meets the conditions required in the aforementioned sub-paragraph. Such documents or declarations could be verified afterwards;

(...).”

A number of data which can be quoted are listed throughout; other evaluation criteria cannot or should not be adopted.

2. According to Sub-paragraph c of Paragraph 1 of Article 110 of Decree Law no. 74/99/M, upon setting out the requirements for the bidders, the principal shall invite qualified ones to submit bidding proposals.
3. To adopt the pre-qualification of restricted tender is for the sake of curbing unqualified contractors to submit bidding proposals, but not for the convenience of bid evaluation.

This could be inferred in Sub-paragraph g of Paragraph 1 of Article 110, in which the contents include:

***“Article 110
(Launch of tendering process)***

1. The process of pre-qualification of restricted tender starts from publishing notice, in which the content should include:

(...);

g) The number of entities invited to submit bidding proposals.

(...).”

4. In addition, Paragraph 2 of Article 112 of the same Decree Law stipulates:

***“Article 112
(Criteria for award of contract)***

(...).

2. If conditional tenders or drawings made by bidders or revised versions are involved, or the number of entities who have made requirement of candidacy equals to or is below the number of invited entities stated in the tender notice, the acquisition shall follow the stipulation stated in the public tender.”

Pre-qualification here refers to assessing the qualification of bidding companies based on the above indicators and all bidders who are evaluated as qualified will then be invited to submit bidding proposals.

In the course of pre-qualification, the principal shall lay down standardised evaluation criteria for all bidders and merely select bidders who are placed in higher positions to participate in the next round of bidding.

Sub-paragraph 10 in the tender documents states that:

“10. Criteria for selection and award of contract

10.1 Selection criteria: When assessing the qualification for candidacy, the first eight candidates whose scores are equivalent to or exceeding 65% of the total score will be selected. In the event of equal points scored in the eighth place, more prospective candidates, instead of the total mentioned above, shall be selected.

10.2 Criteria for award of contract: In the stage of bid evaluation, the bidding company which offers the lowest price quote in its bidding proposal shall be awarded the contract.”

Why are eight qualified bidders selected to submit bidding proposals? Under normal circumstances, all qualified bidders are entitled to submit their bidding proposals.

What if all of the eight invited companies do not submit their bidding proposals, what will the next step be? Is it a must to restrict the number of bidders? Why is the number restricted to eight, but not five or three? Will it be better if the number of bidders is not restricted?

* * *

3) Evaluation criteria and selection of bidders (Sub-paragraph 19 of bidding rules)

The Sub-paragraph stipulates:

“19. The evaluation criteria and weighting of the criteria in the application form of qualification for candidacy, selection criteria for the candidates

Evaluation criteria and weighting of the criteria in the application form of qualification for candidacy is as follows:

<i>Evaluation criteria</i>	<i>Weighting</i>
<i>Professional and technical conditions</i>	
- Construction plan	25%
- Sand provision plan	20%
- Equipments	8%
- Similar construction experience	25%
<i>Economic and financial conditions</i>	
- Price of completed construction project	10%
<i>Integrity and honesty</i>	12%

Selection criteria: When assessing the qualification for candidacy, the first eight candidates whose scores are equivalent to or exceeding 65% of the total score will be selected. In the event of equal points scored in the eighth place, more prospective candidates, instead of the total mentioned above, shall be selected."

1. In this type of tender, there are two time slots that require choices and decisions making:
 - (1) The first one is to determine whether the bidders meet all requirements of technical, economic and financial conditions;
 - (2) The second one is to invite qualified bidders to submit bidding proposals in order to award the contract.
2. In the first time slot, various technical parameters stipulated in law are considered.
3. In the second time slot, the contents of the bidding proposals are considered and the one with the lowest price quote will be awarded the contract. This has to be mentioned in the bidding documents in advance. Compared to the last proposal, the scoring descriptions in this proposal are significantly more balanced and justifiable, despite that we are still reserved regarding some details.

With regards to whether integrity and honesty should be included in one of the evaluation criteria, as the public works department has long

been quantifying this vector, in order to keep the consistency of the administrative regulations and conventions, we are not going to give any consideration and analysis in this aspect.

* * *

4) Other aspects in the bidding documents

Based on the structure, wordings, expressions and regulatory contents of the whole tender documents, there is still much room for perfection and improvement. Due to time constraint, we will not make analysis here.

* * *

Part III: Conclusion

Upon analysing the bill, the CCAC believes that:

1. Due to limited information on hand, opinions are only given on several issues of greater importance.
2. By analysing the contents and structure of the tender documents, there is still much room for improvement. However, due to time constraint, we are not giving any opinions here.
3. The issues raised in this report and the relevant analysis serve as reference for the relevant entity, what options to take depends on the decision of the competent authority.

* * *

The above opinions serve as reference only.

* * *

Commission Against Corruption, 2nd February 2012.

The Commissioner Against Corruption
Fong Man Chong

Opinion concerning the bill of
Legal Regime of Urban Construction

* * *

Part I: Preface

- 1) On 13th January 2012, the Commission Against Corruption (CCAC) received the bill of *Legal Regime of Urban Construction* transferred by the Cabinet of the Chief Executive which is currently under discussion in the Executive Council. The CCAC is requested to give analysis and render opinions on some contents in the bill.
- 2) Other documents sent to the CCAC included the reasons for legislation and comparison tables between the old and new regimes.

* * *

Part II: Analysis

Paragraph 9 of Article 4 of Law no. 10/2000 of 14th August (*Organic Law of the Commission Against Corruption of the Macao SAR*) stipulates:

“Article 4
Powers

The Commission Against Corruption is entitled to:

(...);

9) With regard to any shortcomings it finds in any legal provisions, namely those involving rights, freedoms, safeguards or any legitimate interests of the individuals, formulate recommendations or suggestions concerning their interpretation, amendment or repeal, or make suggestions for new legislation. When, however, the matter falls within the powers of the Legislative Assembly, it shall merely inform the

Chief Executive in writing on its position;

(...).”

Thus we have made a brief analysis on the bill.

1. The bill of *Legal Regime of Urban Construction* (hereafter the bill) is divided into seven chapters, in which Article 1 stipulates:

***“Article 1
Objective***

It is a legal regime that regulates the activities of civil engineering and safeguards the structural safety of urban construction in the Macao SAR.”

Upon analysing the bill, it is not difficult to find that **the technical contents contained in Chapter two to five** (which are also the key contents) of the *General Regulations on Urban Construction* (approved by Decree Law no. 79/85/M of 21st August) **are not enclosed in the bill, thus we have the following doubts:**

- 1) **Is the government’s intention to put forward the bill to comprehensively amend the current *General Regulations on Urban Construction*?**
- 2) **Or does the legislature merely aim at strengthening the supervision on construction and engineering and therefore supervisory measures are introduced in the bill?**
- 3) The contents (or most of the articles) of the entire bill are **incompatible** with the objectives mentioned in Article 1; or be frank, **the contents are inconsistent with the objectives, and incompatible with the name of the bill.** Thus we suggest making the following adjustment:
 - a) Alter the name of the bill to ***Supervisory System on Urban Building and Construction*** and meanwhile make amendment on the contents of Article 1 of the bill because most of the contents of the bill are not as the contents described as in Article 1.

- b) Keep the current *General Regulations on Urban Construction* effective and do not immediately repeal it. If there is contradiction with this bill (if it will become the future law), regard this bill as the priority.
- c) Make adjustment to other contents of this bill based on the above opinions.
- d) Start to formulate the new *General Regulations on Urban Construction* – especially the parts involving technical contents.

Otherwise, this bill has become just a name and has not stipulated any technical regulations concerning construction and formulated relevant execution and supervisory system.

2. The *Structural Safety Protection of Urban Construction* mentioned in Article 1 of the bill **seems to be misleading because the bill does not regulate this content. In fact, we can hardly find any related article concerning this content in the bill** – even though Chapter 2 of *General Regulations on Urban Construction* is kept in Article 34 of the bill, the act of just keeping Chapter 2 and repealing the rest of the articles is very risky. **Chapter 3 to 5 of *General Regulations on Urban Construction* involves a lot of technical criteria, once they are repealed without any new rules immediately implemented, chaotic situation will occur and criticism will be faced, surely retarding the development of the construction industry.**
3. In addition, there are some other legislations concerning urban construction and safety, such as:
 - Decree Law no. 60/96/M of 7th October;
 - Decree Law no. 42/97/M of 13th October.
4. Article 2 of the bill also leads to other problems: **numerous concepts/definitions are listed throughout, but articles relating to these concepts in the main content could hardly be found.**
5. Paragraph 3 of Article 8, Paragraph 1 of Article 9 and Paragraph 3 of Article 12 of the bill stipulate, “(...) which also do not affect the sanctions imposed in accordance with the stipulation in this provision or other current legislations.”

However, concrete sanctions have never been mentioned in this bill.

6. Article 24 of the bill stipulates:

***“Article 24
Illegal Acts***

1. *Violation of this law constitutes administrative illegality, in exception of the cases where this law is applicable.*
2. *The sanction policy and procedure of administrative illegality as stipulated in the previous paragraph are formulated by complementary legislation, without affecting the application of the next article.”*

Law no. 13/2009 of 27th July stipulates: the amount of administrative fine shall not exceed \$500,000;

This bill violates Paragraph 3 of Article 3 of Law no. 13/2009.

It is the law which determines violation, but it would be inappropriate if sanctions are imposed by administrative regulations.

7. Notification is mentioned in Articles 25 and 28 of the bill, but the contents are incomplete. These legislative approaches have to be improved.

* * *

8. Article 32 of the bill stipulates:

***“Article 32
Delegation of powers***

The powers of the Director of the Land, Public Works and Transport Bureau, as pointed in this law, shall not be delegated to the others, in exception of the powers for determining the order of suspension of construction and that of prohibition of construction.”

However, Article 20 of the bill stipulates:

**“Article 20
Supervision of powers**

1. ***The Land, Public Works and Transport Bureau is entitled to supervise the compliance of this law and relevant complementary legislations.***
2. *In executing the supervisory powers, the Land, Public Works and Transport Bureau shall request other public departments and entities to provide all necessary collaboration or assistance.*
3. *For the effect of Paragraph 1, the staff of the Land, Public Works and Transport Bureau are entitled to the powers of the authority to enter the following places for supervision, particularly concerning the work of inspection:*
 - 1) *The common parts of a condominium based upon the condominium regime;*
 - 2) *Places open to the public, including the ones need to be charged.”*
1. Why is the director not entitled to delegate the powers to his/her subordinates?
2. **The scope and content of supervisory powers are very vague; the objectives are not clear as well.**

* * *

Similarly, Article 33 is also vague. The content of the article is:

**“Article 33
Succession of supervisory authority**

Through administrative regulations, the powers of the supervisory authority stipulated in this law shall be transferred to the current or future entity.”

* * *

9. The concept of public authority, which is a term used in Penal Law – see Articles 312, 319, 320 and 321 of the *Penal Code*, is adopted in Paragraph 3 of Article 20.

The purpose for permitting the public authority to enter some places is to inspect some objects and observe some situation in person. The personnel on site have the obligation to collaborate and launch relevant administrative investigation procedure.

It seems inappropriate to permit the staff of the Land, Public Works and Transport Bureau to enter private places without setting some pre-requisites or conditions. This privilege lacks rationality, what if there is abuse of powers? Moreover, considering the current organisation structure and operation of the Bureau, is it able to enforce the law?

Similar problems also appear in Article 21 in which the contents are vague and not clear.

Anyhow, it should be like Paragraph 6 of Article 9 in which on-site record should be made.

* * *

10. Article 23 stipulates that:

**“Article 23
Judicial writ**

1. *If there is an illegal construction undergoing in a condominium or an independent unit which, as shown by strong and apparent signs, severely damages or will severely damage the structure of the condominium whilst the inspection staff of the Land, Public Works and Transport Bureau are unable to enter the condominium or independent unit for investigation, **the Director of the Bureau shall make a formal request with reasoning to the judge of the Criminal Court to obtain the judicial writ issued by the Court to enter the condominium or the independent unit.** The stipulation of Paragraph 1 of Article 162 of the Code of Penal Litigation shall be applied necessarily to the judicial writ.*

2. *For the effect of the above stipulation, construction which may cause collapse and danger to a condominium is considered construction which will cause severe damage to the structure of the condominium.”*

Administrative activities and penal litigation activities are mixed up in the bill.

Please refer to Sub-paragraph f of Paragraph 1 of Article 264, Article 266, Sub-paragraph a of Paragraph 1 of Article 267 of the *Penal Code* for the signs of danger. In short, it is related to behaviour of danger.

The criminal sanctions against dangerous crimes are subject to the control of a set of strict legal principles.

Under normal circumstances, only when the signs of criminal crimes are shown and the case for investigation has been commenced could the judge of the Criminal Court execute his/her power. As the stipulation of Article 23 is too simple, how could the judge of the Criminal Court deal with it? It seems that there is a lack of thorough thinking.

* * *

Part III: Conclusion

Upon analysing the bill, the CCAC believes that:

1. **The purpose of legislation should be re-clarified. Does it merely aim at strengthening the supervision over a condominium or does it involve the technical criteria needed to be followed during construction in a condominium?** Consider formulating two sets of law for regulation.
2. If the purpose of legislation is to strengthen the supervision of the Land, Public Works and Transport Bureau over urban construction, **the name, objective and the content of relevant measures as well as the powers of the Bureau as stated in the bill should be amended** (Please refer to Part II for some of the contents).

3. If the government **could not immediately put forward a new draft of the bill regarding the current *General Regulations on Urban Construction*** (mainly concerning the part of technical criteria), **the CCAC believes that it is deemed unnecessary to repeal it, otherwise chaotic situation will occur and criticism will be faced.**
4. In the bill, **numerous technical amendments have to be made and some fundamental concepts have to be clarified.** In addition, the concepts and systems of administrative law and penal litigation law should not be mixed, otherwise execution could hardly be carried out.
5. **Numerous articles in the bill should also be perfected from the perspective of legislation** (Due to time constraint and limited information on hand, we just render the above opinions).

* * *

The above opinions only serve as reference for the Chief Executive.

* * *

Commission Against Corruption, 2nd February 2012.

The Commissioner Against Corruption
Fong Man Chong

APPENDIX II

SOME OF THE RECOMMENDATIONS AND INVESTIGATION REPORTS BY CCAC

Under Paragraphs 4, 9 and 12 of Article 4 of Law no. 10/2000 of 14th August (Organic Law of the Commission Against Corruption of Macao SAR) amended by Law no. 1/2012 of 26th March, the CCAC is entitled to investigate the legality of administrative activities and proceedings with regard to relations between public entities and individuals and notify the Chief Executive of the results or address recommendations directly to the concerned authorities.

In 2012, the CCAC rendered a number of recommendations to government departments and submitted the investigation reports to the Chief Executive based on the significance of the matters involved in the complaints, including:

- 1) - Investigation report on a complaint related to a claim against the Macao Customs Service;
- 2) - Report on several legal issues regarding the Monetary Authority of Macao approving the Bank of China Macau Branch to issue 100th anniversary uncut commemorative notes;
- 3) - Investigation report on the light rail passing Rua de Londres and Rua de Cidade do Porto in Macao;
- 4) - Analysis report on a complaint related to an administrative omission;
- 5) - About the investigation report on the basis for termination of fixed-term appointment of Deputy Director of Fire Services Bureau and relevant complaints;
- 6) - Investigation and analysis report on complaints regarding the information requested when handling birth registration by Civil Affairs Registry;
- 7) - A report (excerpt) on handling of complaint that local mobile phone users can only use 3G service from 9th July 2012 and suggested measures.

* * *

The reports that are more influential are published here for the public's reference.

Case I

Investigation report on a complaint related to a claim against the Macao Customs Service⁸

Key points:

- If the testing equipment of the department is not suitable for the detection of certain types of vehicles, the staff of the department, especially the front-line staff, should be well aware and use the device accurately when performing the duty. Otherwise in case of improper use of the device resulting in the infringement of the rights and interests of the third party, the department should bear the due responsibility.
- In handling complaints from the citizens, the front-line staff should report fully to their superiors as soon as possible so that the latter can seek appropriate solutions timely.

* * *

Part I: Introduction

1. The complainant XXX lodged a complaint to the Commission Against Corruption (hereafter the CCAC) on 11th July 2011 with contents as belows:
 - (1) The COTAI Checkpoint did not follow the normal procedures for the processing of the complainant's application for claims. It failed to submit the related documents (including the complainant's declaration for claims) to the Headquarters of the Macao Customs Service timely;

⁸ The complainant expressed to the CCAC that he had given up the right to seek compensation upon completion of the case and the Macao Customs Service has taken immediate follow-up measures after receiving the report. However, the case itself still has its alerting effect, the CCAC published it in the annual report.

- (2) The complainant phoned the COTAI Checkpoint on 15th April 2011 to inquire about the incident but the male duty officer dealt with the inquiry negligently and irresponsibly;
 - (3) The Director-General of the Macao Customs Service did not give the complainant any written reply with regard to his request for claim in accordance with the law;
 - (4) The Macao Customs Service took several months to deal with the incident, causing the complainant to go here and there without getting the intended result.
2. The CCAC has written to the Macao Customs Service to obtain information and requested the complainant to provide further information in order to have a better understanding of the matter.
 3. The Macao Customs Service stated in the official letter no. 2300/SA/2011.DG⁹ dated 25th July that:
 - “ – *With regard to the alleged damage of the sound insulation cotton at the bottom of the vehicle of Mr. XXX (the complainant) due to customs control when he drove the vehicle through the COTAI Checkpoint departing Macao on 25th December last year (2010), the duty officer of the COTAI Checkpoint had already submitted a report and informed Mr. XXX that he could file a claim for compensation directly to the Headquarters of the Macao Customs Service (Annex 1).*
 - *Upon receipt of the claim/complaint letter from Mr. XXX for the first time on 20/04/2011, the Macao Customs Service immediately initiated the relevant procedures. The Deputy Director-General made an order on 16/05/2011 to begin the administrative procedures for compensation (Annex 2).*
 - *Superintendent A of the Material Resources Division of the Macao Customs Service started to contact Mr. XXX on 07/06/2011, requesting the latter to submit the invoice for repairing the vehicle so that the Macao Customs*

⁹ See page 11 of the case.

Service could proceed with the claim for compensation (Annex 3).

- *In the morning of 07/07/2011, Mr. XXX went to the guardhouse at the entrance of the Headquarters of the Macao Customs Service to look for superintendent A but the latter was on annual leave (Annex 4). Then, Mr. XXX telephoned senior officer B of the Internal Affairs Office of the Macao Customs Service, whom invited him to go inside the headquarters to assist him in submitting the invoice for repairing the vehicle. However, Mr. XXX refused, hanged up and left (Annex 5).*

Please inform Mr. XXX to contact superintendent A (contact number: xxxxxxxx) or senior officer B (contact number: xxxxxxxx) in order for him to submit the relevant documents to the Macao Customs Service so that the necessary administrative procedures regarding the compensation could be completed as soon as possible.” (Bold and underlined texts are inserted by the CCAC)

4. Moreover, the duty officer of the COTAI Checkpoint, principal customs officer C, who handled the case regarding the sound insulation cotton at the bottom of the complainant’s vehicle had been damaged during customs control, has made the report no. 348/PACT/2010¹⁰ on 25th December 2010 with the below contents:

“Today at around 15:00, a lightweight vehicle, plate number MX-xx-xx, Mainland plate number (Guangdong) xxxxx (Macao), name of driver XXX, male, xx years old, Macao permanent identity card holder with number: xxxxxxx(x), number of Macao driving license: xxxxx, valid until xx/xx/20xx, currently residing in xxxxxxxxxxxxxxxx, contact number: xxxxxxxx. The driver drove a lightweight vehicle, MERCEDES BENZ model E300A/T, to cross the border via the COTAI Checkpoint. However, when entering Lane 1, the vehicle was randomly selected by the Automated Vehicle Clearance System for inspection. The customs officer at the lane instructed the driver XXX to drive the vehicle to the operation area of the X-ray car for scanning. Under the instruction of the X-ray car operator, customs officer D, number xxxxx, the driver drove the vehicle onto the ramp. When the vehicle was going up the ramp, it was suspected that the sound insulation cotton at the bottom of the vehicle rubbed against the edge of the

¹⁰ See page 12-13 of the case.

ramp and as a result, part of the sound insulation cotton fell off (indicated by an arrow in the picture). The customs officer D immediately instructed the driver XXX to stop and drive away from the ramp.

With regard to the falling of the sound insulation cotton at the bottom of the vehicle, customs officer D restored the cotton at once to its original position. However, customs officer D found that other than the scratches at the part where the sound insulation cotton fell off, there were also scuff marks at the bottom of the vehicle. Mr. XXX explained that he had previously scratched the bottom of his car in another car park, but he was not sure whether this was the cause of the falling of the cotton in this occasion.

Customs officer D then conducted a manual inspection of the vehicle and no irregular situation was found. The customs officer explained to the driver the content of the inspection record. The latter declared that he understood it and signed for confirmation. Afterwards, he drove away.

Soon after the driver XXX had left, he returned and claimed that the sound insulation cotton at the bottom of the vehicle fell off again. After a careful inspection of customs officer D and another customs officer E, number: xxxxx, it was found that the screws at the bottom of the vehicle for holding the sound insulation cotton were also loosened.

Being notified about the situation, I went to the site immediately for more information. The driver XXX told me that he believed the falling of the sound insulation cotton at the bottom of the vehicle was caused by the ramp of the X-ray car during inspection and thus **handed me a handwritten declaration**, hoping that he could be compensated for the repairing expenses. Given the situation, I told the driver XXX verbally that **the claim for compensation could be made to the Macao Customs Service in accordance with the normal procedures**. The driver XXX left after acknowledged the relevant circumstance.

Attached to this report are the relevant information, the vehicle inspection record, photographs as well as **the declaration made by the owner of the vehicle**.

The superior was informed of this issue.” (Bold and the dotted-lined texts are inserted by the CCAC)

5. The complainant submitted a handwritten declaration to the customs officer on 25th December 2010¹¹ :

“Declaration

*I, XXX, hereby declare that I drove my vehicle with plate number MX-xx-xx to cross the COTAI Checkpoint on 25th December 2010 at around 3:00 pm. When I drove up the ramp of the X-ray car for vehicle inspection, the sound insulation cotton at the bottom of my car was damaged. Therefore **I request for the compensation of the repairing cost.***

Address: Unit xx, Floor xxxxx, Block xxxxxx, xxxxxx Street, Macao

Tel: xxxxxxxx

ID card: xxxxxx(x)

(XXX Signature)

25.12.2010”

(Bold and underlined texts are inserted by the CCAC)

6. On 27th December 2010, the Head of the Island Enforcement Division (and concurrently the commander of the COTAI Checkpoint), who was a Senior Superintendent, made an order on the above-mentioned report with the following content¹² :

“1. The operator of the X-ray car has already handled the problem of the complainant’s vehicle with appropriate measures;

2. The duty officer has already informed the complainant the relevant way for settlement:

*3. The case is provisionally **put on record** for follow-up.” (Bold and underlined texts are inserted by the CCAC)*

¹¹ See the back of page 13 of the case.

¹² See page 12 of the case.

7. On 18th April 2011, the complainant sent a letter¹³ to the Director-General of the Macao Customs Service (the date of entry in the Macao Customs Service was 20th April 2011), below is the content of the letter:

“To: Macao Customs Service of MSAR

Attn: The Director-General, Choi Lai Hang

On 25th December 2010, I was driving a lightweight vehicle with plate no. MX-xx-xx to cross the Lotus border to Hengqin. I was requested by a customs officer to take an X-ray inspection of my vehicle. When I drove up the ramp to the X-ray inspection platform, the sound insulation cotton at the bottom of the vehicle was damaged by the sharp edge of the ramp and the staff of Macao Customs Service immediately carried out an emergency repair of the vehicle. Although the sound insulation cotton was restored to its original position, it was already damaged and thus lost its function of sound insulation. Afterwards, a customs officer let me write a declaration on a sheet of paper. I clearly declared in the declaration the request of being compensated for the repair costs of my vehicle. However, when I submitted the invoice of the repair costs to the COTAI Checkpoint after my vehicle was repaired, the customs officer there told me that they did not handle matters of compensation and asked me to submit it to the Headquarters of the Macao Customs Service. Therefore, I submitted the invoice of the repair costs to the Headquarters of the Macao Customs Service. After waiting for one month, I called xxxxxxxx for inquiry. Miss F, the one who answered the phone, told me that the COTAI Checkpoint had never submitted any document about the case, and hence the Headquarters of the Macao Customs Service could not make any compensation. Thus, on 15th April 2011 at 15:33, I phoned xxxxxxxx for inquiry, but the answer given was I need to appoint a lawyer to sue the Macao Customs Service of the Government for civil claims. I think the reply is unacceptable. How is it possible for me, as an ordinary citizen, to take legal action against the Macao Customs Service for the repair costs of MOP2,490.10? The staff, who answered the call on that day, used a threatening tone and told me to better have a clear understanding of my position. I was not sure whether he/she was trying to tell me that the Macao Customs Service was a government department while I was just an ordinary citizen and it could

¹³ See page 20 of the case

always find a way to get revenge on me. I think the customs officer was very irresponsible in giving me this reply and what he/she said had greatly damaged the image of the public servants of the Macao SAR. Given the above, I made another phone call to the Public Information Centre at 88668866 for inquiry. I was requested by the personnel of the Public Information Centre that I needed to obtain the official reply document from the Macao Customs Service first. Otherwise, they could not handle the case. I hereby request the Macao Customs Service to give me an official reply document, informing me whether I could be compensated for the damage in this incident or not.

Complainant: XXX

Address: Unit xx, Floor xxxxx, Block xxxxxx, xxxxxx Street, Macao

Contact number: xxxxxxxx

Complainant: (Signature)

18th April 2011.”

(Bold and dotted-lined texts are inserted by the CCAC)

8. On 20th April 2011, the Deputy Director-General made an order¹⁴ in the letter of the complainant:

“Refer to DFAPF¹⁵ first p/inform. (asap)”

9. On the next day, the Director-General made the following order¹⁶ :

“Copy to GAI¹⁷ for record.”

* * *

¹⁴ See page 20 of the case.

¹⁵ Checkpoint Enforcement Department.

¹⁶ See page 20 of the case.

¹⁷ Internal Affairs Office.

10. After a comprehensive analysis of all the information, we were able to master what actually happened with regard to the incident:

- (1) On 25th December 2010 at around 15:00, the complainant drove a vehicle with plate number MX-xx-xx to cross the border at the Lotus Port. The vehicle was randomly selected by the Automated Vehicle Clearance System for inspection, thus the customs officer made arrangements for the vehicle to be scanned and inspected according to the established procedures. When the vehicle was going up the ramp for lightweight vehicle inspection, the bottom of the vehicle came into contact with the junction between the ramp and the left side of the platform for the inspection of lightweight vehicles;
- (2) According to the digital photos taken at the Checkpoint, there were damages on the sound insulation cotton at the bottom of the vehicle;
- (3) When the two X-ray car operators tried to restore the sound insulation cotton to its original position of the above mentioned vehicle, they found other scuff marks at the bottom of the vehicle. The position of those marks was not at the part of the vehicle that rubbed against the platform for the inspection of vehicles, thus the marks were not related to the alleged damages in this incident. At that time, Mr. XXX stated that he had previously scratched the bottom of his car in another car park, but he was not sure whether this was the cause of the falling of the cotton in this occasion. Therefore, it could not prove whether the damage of the sound insulation cotton at the bottom of the above mentioned vehicle was due to the rubbing against the inspection platform;
- (4) Since it was not possible to use the X-ray scanning device to conduct inspection on the vehicle, the two operation staff performed a manual inspection of the vehicle. Afterwards, they explained to the driver XXX the content of the inspection record. The latter declared that he understood it and signed for confirmation;
- (5) **Afterwards, the driver XXX drove away and when he reached a place not far away from the entrance of the Lotus Bridge, at a distance of about 400 metres from where the X-ray car was parked, he took a turn and came back. He told the two above mentioned X-ray car operators that the sound insulation cotton at the bottom of the vehicle**

fell off again. After an inspection, it was found that the screws at the bottom of the vehicle for holding the sound insulation cotton were also loosened. At that time, the driver XXX wrote a declaration at the site, expressing his intention to seek compensation from the Macao Customs Service for the damage while D, the person-in-charge that day, informed him clearly at once that claims for compensation should be made in accordance with the normal procedures. When the driver XXX acknowledged the relevant circumstances, he did not insist on pursuing the claim for compensation and left;

- (6) The above mentioned declaration was included in report no. 348/PACT/2010 and the commander of the COTAI Checkpoint had made an order to put the case on record;
- (7) **Test results showed that vehicles of the same model as the complainant's did not have the conditions to be driven up the ramp of X-ray car for lightweight vehicle inspection;**
- (8) The driver XXX had phoned the number xxxxxxxx to inquire about the incident of compensation and the phone call was answered by superintendent A. According to the document of the Macao Customs Service, it was recorded, *"Since superintendent A works in the Material Resources Division, the content of conversation between superintendent A and the complainant is not known in details at this stage"*;
- (9) The driver XXX expressed in his letter that he phoned the Macao Customs Service on 15th April 2011 at 15:30 and he was not satisfied with the unfriendly and threatening manner of the customs officer who answered the phone call;
- (10) Subsequently, the COTAI Checkpoint submitted a report to the Headquarters, attached with a CD-ROM (CAM-S206) containing the video-recording of the whole process of inspection of the vehicle MX-xx-xx taken by the customs officer on 24th April 2011. Other information included the vehicle inspection record of MX-xx-xx on that day, number: 56/PACT/2010, the registration information of the vehicle MX-xx-xx, the travel records (entry and exit) of vehicle MX-xx-xx on 25th December 2010, digital photographs, copies of the report no. 348/PACT/2010 and the letter of complaint dated 18th April 2011;

- (11) On 9th May 2011, the Head of the Island Enforcement Division, who was a senior superintendent and concurrently the commander of the COTAI Checkpoint, gave the below opinion concerning the report made by the operation supervisor of the COTAI Checkpoint dated 6th May 2011:

“Submit to the Head of Checkpoint Enforcement Department for review.”

- (12) On 11th May 2011, the Head of the Checkpoint Enforcement Department issued the following opinion and instruction with regard to the report dated 6th May 2011:

“Based on the content of the report, the following opinions are made:

1. *The results of investigation showed that the bottom of the vehicle driven by the complainant did rub against the ramp for the inspection of lightweight vehicles, thus the part to hold the sound insulation cotton was loosened. It is proposed to DAF¹⁸ to follow up the issue of reparation.*
2. *According to the results of investigation, there was no indication that the staff of PACT¹⁹ had showed any act of disrespect or threat to the complainant.*
3. *If necessary, it is proposed that the conversation between the complainant and the superintendent A to be followed up by DAF or other departments assigned by the superior.*
4. *Instructions were given to PACT that before the implementation of improvement measures, vehicles of the same model as described in the report are prohibited to be driven up the ramp for lightweight vehicle X-ray inspection.”* (The underline is inserted by the CCAC)

- (13) On 12th May 2011, the Assistant Director-General issued the following order on the report dated 6th May 2011:

¹⁸ It refers to the Finance and Administration Department.

¹⁹ It refers to the COTAI Checkpoint.

- “1. Agree with point 1 of the proposal raised by the Head of DFAPF;*
 - 2. Immediately execute the content mentioned in point 4;*
 - 3. Submit to the Deputy Director-General for review.”*
- (14) On 16th May 2011, the Deputy Director-General made the following order:
“I acknowledge. Agree.”
- (15) On the same day, the Head of Operation Management Department gave the following instructions²⁰ :
- “1. Send copy of the report to DAF²¹ for follow up;*
 - 2. Archive the original”*
- (16) On 3rd June 2011, the Head of Finance and Administration Department gave the following instructions:
- “Send to chiefs of DAF*
- 1. Send a photocopy to the Head of DRM²² for the convenience of contacting the person involved and requesting him to provide invoice for the expenses of repairing the vehicle so as to commence the procedures for compensation.*
 - 2. Send the original to the head of DF.²³”*
- (17) On 7th July 2011, senior officer B, who answered the phone call from the complainant, made a “record of incoming call through the hotline”, the respective content and status of following up are as below:
- “----- An enquirer called and said that he was at the guardhouse which was at the entrance of the Macao Customs Service. He expressed that someone*

²⁰ See page 14 of the case.

²¹ Finance and Administration Department.

²² Material Resources Division.

²³ Finance Division.

from the Macao Customs Service phoned and asked him to submit the invoice for compensation. The staff who answered the call asked him about the name of the subunit or that of the staff who gave such notice. However, the enquirer failed to provide more specific information. All he could recall was that a staff from the Macao Customs Service called and informed him to submit the invoice to the Headquarters of the Macao Customs Service for compensation around one to two months ago. Therefore, the officer asked the enquirer to do the registration for entering the Headquarters and waited inside while he/she tried to find out where the invoice should be submitted to so that his case could be referred to the person-in-charge of the respective unit for follow up. However, the enquirer refused to go in, saying that it was too troublesome. Then he hung up and went away.

-----The senior officer who answered the phone call asked the customs officer who was on duty at the guardhouse about the situation. He/She was told that the enquirer was holding a piece of paper containing the hotline number for inquiry and the phone no. of Ms. F: xxxxxxxx (should be under the Material Resources Division). The customs officer asked the enquirer which subunit he wanted to contact, but the enquirer could not give specific answer.

----- Upon receiving the case of objection from the complainant in April, the staff of the Macao Customs Service called the complainant and informed him that the authority was following up the case and gave him the hotline number for inquiry. As the case was still processing and conclusion had not been made, the officer who answered the call reported the case again to the Director-General. Instructions were given to notify the Material Resources Division to contact the complainant and follow up the issue.”;

“ Status of follow up

Based on the order of the Director-General, the Internal Affairs Office (GAI) informed the Material Resources Division to contact the enquirer and immediately replied him that the invoice could be directly submitted to the relevant unit for processing. However, the enquirer expressed that he would not visit the Macao Customs Service again and he would reflect the relevant issues to the Director-General of the Macao Customs Service

directly. Then he hung up.” (The underline is inserted by the CCAC)

(18) On 11th July 2011, the Director-General issued the following order²⁴:

“ - Seen.

- Send to GAI for record.”

(19) On 22th July 2011, the Head of the Material Resources Division who was a senior superintendent, prepared a report no. 48/DRM/2011 with the below content:

“(1) According to the contents described in reference document b), on 25th December 2010, the driver of vehicle no. MX-xx-xx, was randomly selected by the AVC (Automated Vehicle Clearance System) for inspection at the COTAI Checkpoint. During the process of inspection, it was suspected that the sound insulation cotton at the bottom of the vehicle rubbed against the ramp, resulting in the damage of the sound insulation cotton. The driver XXX thought that it was the ramp of the X-ray car for lightweight vehicle inspection that caused the damage of his vehicle, so he requested the Macao Customs Service for compensation and the approval of the related claim was approved by the superior.

(2) Given the relevant administrative procedure, since we lack the original or certified copy of the invoice regarding the vehicle’s repair cost for proceeding with the compensation, superintendent A of our division called the phone number xxxxxxxx provided by the complainant on 7th June. A lady answered the phone, stating that XXX was not in Macao at that moment and would return to Macao on 10th June. Superintendent A tried to call again on 10th June through phone no. xxxxxxxx and got into contact with Mr. XXX. The complainant was notified that his request for compensation was approved by the Deputy Director-General of the Macao Customs Service. However, given the relevant administrative procedure, the complainant was requested to submit the original or certified copy of the invoice for the vehicle’s repair cost in order to proceed with the compensation. The complainant indicated that he would submit the relevant document when he was free.

²⁴ See page 14 of the case.

- (3) *In the morning of 7th July, the complainant arrived at the Headquarters of the Macao Customs Service and asked to see superintendent A to submit the relevant documents but the said staff was on annual leave (see the annual leave application form for reference). Therefore, Mr. XXX called the extension no. xxx (the hotline of Macao Customs Service) in the guardhouse at the entrance of the Headquarters, requesting his case of claims for his vehicle to be handled. Senior officer B was in contact with him and inquired about his situation. The complainant told him/her that he was notified by personnel of the Macao Customs Service about one to two months ago that he could submit the invoice for repairing his vehicle to the Headquarters, but he did not know which subunit. On the phone, senior officer B asked Mr. XXX to go into his/her office to better ascertain the situation and provide the necessary assistance. However, the complainant refused and said, "It's too troublesome! I will write a letter to the Director-General." After saying that, he hung up and left the Headquarters. According to the staff who was on duty at the gate of the Macao Customs Service at that time, the complainant stayed for 5 to 10 minutes there. Thereafter, the staff of our division called the person concerned twice to find out about the situation and informed him to submit the relevant documents so that the procedures of compensation would not be hindered. However, the complainant stated that he was not going to submit the documents to the Macao Customs Service and he would not pursue the claim for compensation at this stage. He also expressed his dissatisfaction towards the attitude of certain staff of the Macao Customs Service (but our division did not know who he was referring to) and he would lodge a complaint to the CCAC to confirm whether there was any administrative malpractice involved in the case.*
- (4) *Given the above, upon receipt of the related documents, the staff of our division had already **phoned** Mr. XXX **as rapidly as he/she could** and informed him that his request for compensation was approved. He/She asked him to submit the original or certified copy of the invoices at his earliest convenience so that the procedures of compensation could be continued. However, the complainant always said that the case was not urgent and he would come and submit the relevant documents when he had time. Considering that the complainant was probably very busy with his work, the staff of this division tried not to bother him with frequent phone calls, which was the reason why the follow-up work was only resumed after waited for a certain period of time in order for the relevant unit of this division to start the rest of the procedures. During the above-mentioned period, it was not found that the staff of*

this division had violated the administrative procedures in any form in the process of handling this case. However, the person concerned was uncooperative and expressed his dissatisfaction during the conversation which caused unnecessary pressure and burden on the work of the staff of this division.” (The underline is inserted by the CCAC)

(20) On 25th July 2011, the Head of Finance and Administration Department gave the following order on the report date 22nd July 2011:

“To Head of DAF:

1. *Seen.*
2. *Based on the contents described in this report, no circumstance of administrative irregularity was found in the preparatory work of the respective compensation carried out by the Material Resources Division.*
3. *Submit to the superior for review and consideration.”*

(21) On 25th July 2011, the Director-General of the Macao Customs Service issued the following order:

“T.C.²⁵” (Acknowledged).

* * *

²⁵ Should be the abbreviation of “Tenho Conhecimento”.

Part II: Analysis – Irregularities committed by the Macao Customs Service in this case

It is stipulated in Paragraphs 4 and 12 of Article 4 of Law no. 10/2000 of 14th August (*Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*):

“Article 4 Powers

The Commission Against Corruption is entitled to:

(...);

4) Conduct or request to conduct inquiries, comprehensive investigations, investigation measures or any other measures aimed at examining the legality of administrative acts and proceedings with regard to relations between public entities and individuals;

(...);

12) Address recommendations directly to the concerned authorities for the purpose of rectifying illegal or unfair administrative acts or procedures or of performing due acts;

(...).”

Thus, we conduct a detailed analysis in relation to this complainant.

I. Vehicles of the same model do not have the conditions to be driven up the ramp for inspection safely

1. According to the information provided by the Macao Customs Service to the CCAC, the operational head of the COTAI Checkpoint came to the following conclusion after the investigation instructed by the Deputy Director-General: “Test results showed that vehicles of the same model as the complainant’s did not have the conditions to be driven up the ramp of X-ray for lightweight vehicle

inspection.” (The underline is inserted by the CCAC). Thus, the Head of the Checkpoint Enforcement Department pointed out in the opinion issued on 11th May 2011: *“Instructions were given to PACT that before the implementation of improvement measures, vehicles of the same model as described in the report are prohibited to be driven up the ramp of X-ray car for lightweight vehicle inspection.”*²⁶ .

2. It is worth noting that: starting from the day the complainant’s vehicle was damaged and the written declaration was submitted (25th December 2010), till the day (20th April 2011) when the Deputy Director-General of the Macao Customs Service gave an order to carry out an investigation as soon as possible (not counting the duration of time when the Head of the Checkpoint Enforcement Department gave an instruction that vehicles of the same model could not be driven up the ramp for lightweight vehicle X-ray inspection on 11th May 2011, upon receiving the investigation report from the operational head of the COTAI Checkpoint), **there was a four-month period of time that the Macao Customs Service was not aware that vehicles of the same model as the complainant’s could not be driven up the ramp for X-ray inspection. If it happened that vehicles of the same model were requested to undergo X-ray inspection, it was likely that damages similar to the complainant’s vehicle may occur. Thus, the Macao Customs Service would be subject to the risk of claims for compensation.**
3. Throughout this period, the following deficiencies were identified in the administrative procedures:
 - (1) The front-line staff failed to timely report the situation to the leadership, causing the latter not able to grasp the information in this area for a period of time;
 - (2) The front-line staff lacked the vision and sensitivity in overseeing the overall situation and failed to propose to the superior to adopt any provisional preventive measures in a timely manner (regardless of the outcome of the specific case of complaint);
 - (3) If there was a good flow of information and the incident was timely reported to the superior, the Director-General of the Macao Customs Service could

²⁶ See paragraph 10 of part II of the report of the Macao Customs Service.

have adopted certain provisional measures in accordance with Article 83 of the *Code of Administrative Procedure*, so as to enhance administrative efficiency and improve the workflow of the department itself. However, the front-line staff failed to do so.

* * *

II. The handwritten declaration submitted by the complainant to the COTAI Checkpoint on the day of incident was not handled in accordance with the law

1. The complainant claimed that he had submitted the declaration for compensation to the COTAI Checkpoint on the day of the incident (25th December 2010).
2. However, the Macao Customs Service pointed out in its reply letter to the CCAC dated 25th July 2011 that: “Regarding the incident of the sound insulation cotton at the bottom of Mr. XXX’s vehicle being damaged due to customs control during the time he drove his vehicle to cross the border via the Lotus Port on 25th December last year, the duty officer of that Checkpoint has already submitted a report on the case and informed Mr. XXX that he could file his claim for compensation directly to the headquarters of the Macao Customs Service (...). The Macao Customs Service received the letter of claim/complaint from Mr. XXX for the first time on 20th April 2011 (...)” (Bold and underlined texts are inserted by the CCAC).
3. According to the report no. 348/PACT/2010 prepared by the duty officer of the COTAI Checkpoint who handled the incident of the complainant’s vehicle being damaged during inspection on that day (25th December 2010): “The driver XXX told me that he believed that the falling of the sound insulation cotton at the bottom of the vehicle was caused by the ramp of the X-ray car, therefore, he handed me a handwritten declaration and hoped that he could be compensated for the repairing expenses as a result of that. Given the situation, I told the driver XXX verbally that the claim for compensation could be made to the Macao Customs Service in accordance with the normal procedures. The driver XXX left after acknowledged the relevant circumstances”. “Attached to this report are the relevant information, the vehicle inspection record, photographs as well as the declaration made by the owner of the vehicle.” (Bold and underlined

texts are inserted by the CCAC)

4. **In the handwritten declaration that was attached to the report, the complainant has expressed explicitly “the will of receiving the compensation for the expenses of repairing the vehicle”. The complainant’s address and phone number were also contained in the declaration.**

5. It was contained in the data that: the duty officer who prepared the above mentioned report pointed out that when accepting the handwritten declaration of the complainant, he/she had also “*told the driver XXX verbally that the claim for compensation could be made to the Macao Customs Service in accordance with the normal procedures*”. In this regard, a question could be raised: What is the actual meaning of “the claim for compensation could be made to the Macao Customs Service in accordance with the normal procedures” (The underline is inserted by the CCAC)?

6. The understanding of the Head of the Island Enforcement Division seems to be – according to the normal procedure, claims should be presented to the headquarters of the Macao Customs Service. For this reason, even though the handwritten declaration of the complainant was received by the COTAI Checkpoint, it would not process the request. The complainant should make another request for compensation to the headquarters of the Macao Customs Service in order to start the process of compensation. Thus, the Head of the Island Enforcement Division considered that besides “putting the case on record”, no other arrangements should be made by the COTAI Checkpoint with regard to the claim for compensation of the complainant’s vehicle being damaged because of taking the inspection.

7. However, from the fact that the complainant submitted the invoice for the repair cost to the COTAI Checkpoint subsequently (a fact that was confirmed by the Macao Customs Service afterwards) and reiterated to the Director-General of the Macao Customs Service and the CCAC that he had already submitted the declaration for claims to the Macao Customs Service on that day, it is obvious that there is a divergent understanding between the complainant and the Macao Customs Service on the expression “claims of compensation should be raised to the Macao Customs Service in accordance with the normal procedures”. Since the complainant’s vehicle was damaged during the X-ray inspection at the customs, and he has already made his request for compensation “at the scene” in written form [the provisions of Paragraph 1 of Article 76 of the

Code of Administrative Procedure approved by Decree Law no. 57/99/M of 11th October], therefore, the normal procedures for his claim of compensation has already begun.

8. In fact, afterwards the Macao Customs Service merely expressed its understanding of the relevant expression in this way, “*The duty officer of the checkpoint has already (...) informed Mr. XXX that he could raise the request of compensation to the headquarters of the Macao Customs Service directly*” (The underline is inserted by the CCAC).
9. Furthermore, if the duty officer has clearly expressed on that day verbally that: the complainant must request the claim for compensation to the headquarters of the Macao Customs Service by himself, then why did the duty officer accept the written declaration of the complainant?
10. It is worth noting that: with regard to the actual content of the verbal explanations of the duty officer when accepting the written declaration for claims of compensation by the complainant on the day of the incident, since there were discrepancies between the circumstances claimed by the Macao Customs Service and the complainant, it is difficult to determine it now. However, **objectively speaking, it is certain that on the day of the incident, the duty officer has indeed received the declaration of claims written by the complainant, and the declaration was further served as an attachment in the report of the duty officer on the day of the incident for the consideration of the superior.**
11. In accordance with Articles 57 and 60 of the *Code of Administrative Procedure*, the document of the complainant is sufficient to start the corresponding administrative procedure, but the competent decision-making officials had never made any explicit decision (approval or disapproval and lack of subsequent follow-up procedures).
12. **In fact, the duty officer does not have the competence to make such decision. Therefore, the document should have to be submitted to the Director-General of the Macao Customs Service for decision in accordance with Article 36 of the *Code of Administrative Procedure*.** However, it was not the case!

* * *

III. Irregularities of the procedures adopted in handling request by individuals

1. Non-contractual civil liability refers to the civil liability that the administration authority should bear towards the victims injured due to the unlawful acts committed by its organs or its personnel during the exercise of their functions or the wrongdoing because of the exercise of their duties [Articles 2 and 8 of Decree Law no. 28/91/M of 22nd April, as amended by Decree Law no. 110/99/M of 13th December].
2. The Macao Customs Service is led by the Director-General who is assisted by one Deputy Director-General and two Assistant Director-Generals. The Director-General is responsible for carrying out the duties of the Macao Customs Service, his powers mainly includes leading, co-ordinating and supervising the activities of the Macao Customs Service, as well as representing the Macao Customs Service externally. The Management Committee, chaired by the Director-General, makes resolution in matters of financial management of the Macao Customs Service, and absolutely has the power to resolve fiscal expenditures [Articles 6 and 7 of Law no. 11/2001 of 8th of June *Macao Customs Service of the Macao Special Administrative Region*; Article 1, Paragraph 1 of Article 2, Paragraph 1 and Clauses 1) and 2) of Paragraph 2 of Article 3 and Article 6 of Administrative Regulation no. 21/2001, amended and republished by Administrative Regulation no. 25/2008 of 1st of December *Organisation and Operation of the Macao Customs Service*].
3. Thus, the Management Committee of the Macao Customs Service, the Director-General or the substitute has the competence to deal with the case for compensation in accordance with the legal procedures.
4. Besides, Article 36 of the *Code of Administrative Procedure* stipulates:

“Article 36

(Submission of application to incompetent entity)

1. When a private individual, for excusable error and within the set period of time, submits an application, petition, declaration of objection or appeal to the incompetent entity, the entity shall forward the relevant document to the competent entity in accordance with its jurisdiction, and notify the private individual.

2. *In case of inexcusable error, relevant application, petition, declaration of objection or appeal shall not be handled, and the private individual shall be notified within 48 hours.*
3. *For the definitions of error, declaration of objection and appeals may be made in accordance with the general provisions.” (The underline is inserted by the CCAC)*
5. In this case, the vehicle of the complainant has been damaged by the ramp when going through the X-ray inspection at the COTAI Checkpoint. The complainant has written a declaration immediately at the scene to the relevant department (i.e., the Macao Customs Service) asking for compensation for the damage. **Objectively speaking, the complainant did not address the request to the wrong entity or committed any inexcusable error, just because the recipient was not the subunit or personnel with the competence/power to handle the respective affairs inside the entity.** Nevertheless, as a law enforcement officer, the staff should have sufficient knowledge to decide and give proper instructions on the procedures to follow.
6. Since it is stipulated in Article 36 of the *Code of Administrative Procedure* that when a private individual, for excusable error, makes his/her request to incompetent entity, the entity shall forward the relevant document to the competent entity in accordance with its jurisdiction; when the receiving entity is correct but only the recipient is not the subunit/personnel with the power/function to handle the related affairs within the entity, according to the principle of good faith, principle of non-bureaucracy and principle of efficiency, as well as the fundamental principle of interpretation of law, the recipient should forward the relevant document to the subunit/personnel with the power/function to handle the related affairs in accordance with the law. (Articles 8 and 12 of the *Code of Administrative Procedure* and Article 8 of the *Civil Code*). The simplest and the most direct way is – to submit the document to the superior – so that the said incident/request could be delivered to the subunit/personnel with the power/function to handle the related matters.
7. In fact, the duty officer who received the handwritten declaration of the complainant has already attached it in the report of the case prepared on that day to be submitted to the superior.

8. However, with regard to the report of the duty officer that was submitted to the superior on the day of the incident (attached with the handwritten declaration of the complainant), the Head of the Island Enforcement Division (concurrently the commander of the COTAI Checkpoint) gave the following instructions on 27th December 2010: “1. *The operator of the X-ray car has already handled the problem of the complainant’s vehicle with appropriate measures*; 2. *The duty officer has already informed the complainant the relevant way for settlement*; 3. **The case is provisionally put on record for follow-up.**” (Bold and underlined texts are inserted by the CCAC).
9. **Later on until 20th April 2011, the day that the Macao Customs Service received the letter sent by the complainant to the Director-General of the Macao Customs Service, it did not appear that the case/the handwritten declaration had been forwarded to the superior or being handled by any other measures.**
10. In other words, **the “path” for the handwritten declaration of the complainant to get to the subunit/personnel with the competence/power to handle the relevant affairs “ceased” when it reached the Head of the Island Enforcement Division.**
11. This clearly proves that the administrative procedures taken by the law enforcement personnel was improper, thus prolonging the time in solving the matter.

* * *

IV. The rights and duties of the Macao Customs Service in this case

1. At present, the disciplinary regime under the *Statute of Militarised Personnel of the Security Forces of Macao* (EMFSM), approved by Decree Law no. 66/94/M of 30th December, as amended by Administrative Regulation no. 9/2004 of 29th March, is still applicable to customs officers, particularly with regard to the stipulations of duties and grading of performance.
2. Under Article 3, Clause c) of Paragraph 4 of Article 5 and Paragraph 1 and Clause a)-b) of Paragraph 2 of Article 8 of the EMFSM, militarised personnel are under

the principle of command and shall fulfil the obligation of zeal, especially, “to handle any facts occurred within their competence; if necessary, report the facts in an objective manner”; “provide correct information immediately to the superior with regard to matters concerning the duty, justice and discipline” (The underline is inserted by the CCAC).

3. **As the commander of the COTAI Checkpoint**, his/her “function of command is manifest in the exercise of authority that is conferred upon a militarized personnel for directing, coordinating and controlling forces or subunits with assignments of an operational nature”; “the exercise of the authority conferred by laws and regulations, shall be accompanied by the corresponding responsibility that is not delegated, the captain or the department head shall be solely responsible for the missions assigned to the team or the subordinate subunits in all circumstances.” (See Article 45 of the EMFSM) (The underline is inserted by the CCAC).

4. **As the Head of the Island Enforcement Division**, his/her “management or leadership functions are reflected in the exercise of the authorities conferred upon militarized personnel to direct, supervise and monitor bodies or subunits with administrative, logistic, technical nature or with the duty of training”; “the exercise of authority conferred by the laws and regulations, is accompanied by the corresponding responsibility that is not delegated, and the Director or leadership shall be solely responsible in all circumstances for the fulfilment of tasks assigned to the subordinate organs or subunits.” (The underline is inserted by the CCAC) [Article 46 of the EMFSM].

5. The duties of the Island Enforcement Division includes: “To monitor the observance of the legislation on the import, export and transit of goods, means of transport, passengers and their luggage at the check-points of the Macao SAR to other places”; “To notify the Operation Management Department with all important intelligence within the scope of the customs and police force” (Paragraphs 1 and 6 of Article 16 of Administrative Regulation no. 21/2001 of 22nd October Organisation and Operation of the Macao Customs Service, amended and republished by Administrative Regulation no. 25/2008 of 1st December).

6. On the other hand, the Macao Customs Service is also a direct public administration department; hence, the Head of the Island Enforcement Division is also subject to the *General Regulations Governing Directors and Chiefs* (Paragraph 1 of Article 1 of Law no. 15/2009 of 3rd August *Fundamental Provisions of the General Regulations Governing Directors and Chiefs*).
7. Other than the general obligations of staff of public administration, the leadership and chiefs are also subject to specific duties, including “exercise their respective powers to ensure the conformity of their own acts and press on with the compliance of the acts committed by their subordinates with the conditions laid by applicable legislation, as well as to respect the legally protected rights and interests of individuals”; “Report to the government on all important issues pertaining to the department loyally and in appropriate way” (The underline is inserted by the CCAC) . [Clauses 2) and 3) of Article 16 of Administrative Regulation no. 26/2009 of 10th August, *Supplementary Provisions of the General Regulations Governing Directors and Chiefs*].
8. “When in compliance with the applicable laws, the chiefs, who are responsible for the management of subunits of the competent organisation, have the following powers in general, but do not affect the other powers vested”, including “formulating or proposing measures for the coordination of activities carried out by the subunits of the respective organisation and ensuring the technical quality of the service provided by their subunits”; “formulating or proposing measures aimed at ensuring the technical quality of the work carried out by the subunits of the organisation and the compliance with an appropriate period of time to provide services more efficiently”; (The underline is inserted by the CCAC) [Clauses 3) and 4) of Paragraph 1 of Article 21 of Administrative Regulation no. 26/2009 of 10th August *Supplementary Provisions of the General Regulations Governing Directors and Chiefs*].
9. Base on the above provisions, **the law has emphasised several times that leadership and chiefs shall exercise the powers legally attributed to the pursuit of public interest. Thus, when the vehicle of the complainant was damaged during the process of customs control of X-ray inspection at a location that is under the management and execution of power of the Head of the Island Enforcement Division, coupled with the complainant’s clear indication of his attempt to seek compensation in written form, as the Head of this Division and commander of the COTAI Checkpoint, he/she should**

investigate the cause of the case and adopt necessary protective and follow-up measures in accordance with the powers vested.

10. Or in other words, even if the underlying condition is beyond the scope of what he/she could foresee, the Head of the Island Enforcement Division should report to the superior the important information obtained in the exercise of his/her powers (i.e. a vehicle of a private individual has been damaged by the ramp of the X-ray car when undergoing customs inspection and the party concerned wrote at the spot a declaration for compensation), so that the superior could fully grasp the work situations of the front-line staff and adopt or order to take necessary measures. However, it is disclosed in this case that the front-line staff failed to do so.

* * *

V. Failure in adopting appropriate preservative measures

1. Although the duty officer concerned has already submitted to the superior the photos showing the damages at the bottom of the complainant's vehicle, objectively speaking, since the Macao Customs Service has always had video recordings of the inspection process of vehicles, and the damages of the said vehicle was related to the process of inspection, in order to clarify the attribution of liability for the damage, it is necessary to acquire the relevant video recordings.
2. **It is indeed due to the fact that the Head of Island Enforcement Division has not referred the case of damage alleged resulted from the X-ray inspection and the request of compensation to the superior,** when the Deputy Director-General of the Macao Customs Service issued the instruction to investigate the case, the operational head of the COTAI Checkpoint, who was responsible for the investigation, made the following report: *"In order to obtain more information for investigation purpose, I would like to acquire the video recordings (CAM-S206)(...). However, after enquiring Mr. G of the Information and Communication Technology Department about the retention period of the data taken by the recording equipment of the CCTV system at the customs checkpoints, I was answered by Mr. G that the data retention period of the recording equipment was about 60 to 70 days. Whereas the video recordings*

of the day 25/12/2010 were already out of the retention period, therefore, the relevant data was not stored anymore (...)”.

3. The above point proves again the repeated errors in the process, thus leading to the loss of evidence and the hindrance of the investigation. The law enforcement agency has committed an inexcusable error.

* * *

VI. Stance of the Macao Customs Service with regard to the handling method of “putting on record” by the Head of the Island Enforcement Division

1. The fact that the Head of the Island Enforcement Division only treated the report prepared by the duty officer who was on duty that day with the decision to “put on record” (no investigation, no preservation and no submission to the superior), has resulted in the leadership of the Macao Customs Service only became aware of the case about the damage of a vehicle during customs inspection and the claim for compensation after nearly four months later. It seems that the Macao Customs Service thought that there was nothing wrong.
2. The CCAC does not agree with the aforementioned stance of the Macao Customs Service. In fact, a number of errors were already pointed out in the above contents and we do not want to repeat them again here. However, it is worth noting that, as the law enforcement agency responsible for the monitoring of the border, its staff must know clearly and master the operating scheme and the principles of administrative procedure, especially when involving the rights and interests of a third party. If this basic knowledge is not properly mastered, it will certainly bring a great impact to the operation and efficiency of the department.

* * *

VII. The Macao Customs Service did not respond to the complainant in written form

1. The complainant stated in his letter sent to the Director-General of the Macao Customs Service dated 18th April 2011 (date of issue): *“I hereby request the Macao Customs Service to give an official reply about this incident whether it can be compensated or not.”* (The underline is inserted by the CCAC)
2. In accordance with the provisions of Clause a) of Article 68, Article 71, Paragraphs 1 and 3 of Article 72 of the *Code of Administrative Procedure*, approved by Decree Law no. 57/99/M of 11th October, the administrative authority shall inform the interested party within eight days “the administrative acts on the decision with regards to any request asked for by an interested party”. Depending on the possibilities and appropriateness, the notifications should be directed to the interested party, or by letter, telegram, telex, facsimile or telephone. If the notification is made by telephone, it needs to be confirmed by any of the other methods mentioned above (they all belong to methods with carrier) in the following working day.
3. Concerning the request for claims by the complainant, according to the results of investigation, it was verified that the bottom of the vehicle did rub against the ramp for lightweight vehicle inspection, which caused the loosening of the parts for fixing the sound insulation cotton. Thus, the Deputy Director-General of the Macao Customs Service made a dispatch on 16th May 2011, agreeing to designate the Finance and Administration Department to follow up the issue of repairing the vehicle of the complainant.
4. In fact, with regard to the dispatch of the Deputy Director-General, the staff of the Macao Customs Service successfully got in contact with the complainant on 10th June. *“The complainant was notified that his request for compensation was approved by the Deputy Director-General and in accordance with the relevant administrative procedures, he was requested to submit the original or certified copy of the invoice regarding the cost of repairing the vehicle, so that the issue of compensation could be settled (...).”*
5. It is shown from the above that it was indicated in the dispatch issued by the Deputy Director-General of the Macao Customs Service her consent to repair/compensate the damage of the complainant’s vehicle, and the designation of a

subunit for the implementation of the relevant repair/compensation. Therefore, according to the provisions of Clause a) of Article 68, Article 71, Paragraphs 1 and 3 of Article 72 of the *Code of Administrative Procedure*, the relevant dispatch of the Deputy Director-General of the Macao Customs Service is classified as an administrative act with notifications to be made.

6. The complainant admitted that the Macao Customs Service had contacted him a number of times by telephone with regard to the issue of compensation, but he also pointed out that the Macao Customs Service had never responded in writing.
7. Besides, according to the information provided by the Macao Customs Service, it did not appear that after making the notification by telephone, the Macao Customs Service had tried to have it confirmed by any of the statutory methods with a carrier. This may also be suspected of violating the methods of notification as stipulated in Clause a) of Article 68, Article 71, Paragraphs 1 and 3 of Article 72 of the *Code of Administrative Procedure*.

* * *

VIII. Attitude of the customs officer who answered the phone call of the complainant on 15th April 2011

1. The complainant stated that he called the telephone number xxxxxxxx of the COTAI Checkpoint at 15:33 on 15th April 2011 to inquire. The male duty officer, who answered the phone call, in the absence of grasping and following-up the case, replied to the complainant hastily that he had to hire a lawyer himself to seek compensation through lawsuits. With this regard, the complainant questioned that the duty officer's way of handling the case was too hasty and irresponsible.
2. Regarding the above situation, it was stated in the report prepared by the chief operation officer of the COTAI Checkpoint dated 6th May 2011, "*the driver XXX claimed in his letter that he had called this checkpoint at 15:30 on 15/04/2011 to pursue the compensation for his vehicle. With regard to this incident, after being informed, I spoke to the driver on the phone on that day. At that time, I felt the driver XXX was impolite and he used certain foul words in the conversation.*"

I told him immediately to calm himself down, and keep his emotion under control and respect his attitude, which was different from the expression that the driver XXX stated in his letter ‘the staff of the Macao Customs Service who answered the phone used a threatening tone and asked the complainant to have a clear understanding of his position’. It is likely that the driver XXX was filled with vexation to complain and was under the condition of emotionally instability, as well as wrongly understood my attitude and the dialogue between us, thus causing this misunderstanding.”²⁷ (The underline is inserted by the CCAC).

3. With regard to the report made by the chief operation officer of the COTAI Checkpoint, the Head of Checkpoint Enforcement Department believed that: *“According to the results of investigation, there was no clear indication of any act of disrespect or threat committed by the staff of PACT towards the complainant.”*; the Deputy Director-General of the Macao Customs Service agreed with such conclusion and issued an order accordingly.
4. Given the fact that the Macao Customs Service and the complainant gave different accounts of the situation, the CCAC has resorted to every means available to the investigation and collection of evidence. In the end, since we could not confirm that the allegation of the complainant is actually the fact; the CCAC could only make the decision of archiving.
5. It is note worthy that the complaine of ill telephone manner was actually the chief operation officer of the COTAI Checkpoint, the same person who drew up the report of investigation on the incident and the claim for compensation of the complainant (report no. 022/PACT/2011 of 6th May 2011), and also the customs officer of the COTAI Checkpoint who refused to accept the invoice for the cost of repairing handed in by the complainant²⁸.
6. According to the provisions of Paragraphs 1 and 2 of Article 50, Paragraph 2 of Article 51 and Paragraph 1 of Article 53 of the *Code of Administrative Procedure*, *“in circumstances which give rise to reasonable doubt about the impartiality and the integrity of holders of public office or staff of the public administration, (...) the relevant holder of public position or the staff should*

²⁷ See point 12 of (3) Investigation results of report no. 022/PACT/2011 of the Macao Customs Services dated 6th May 2011.

²⁸ See point 10 of (2) Information obtained in investigation of report no. 022/PACT/2011 of the Macao Customs Services dated 6th May 2011.

ask for recusal from participating the relevant procedure”, “the request of the holder of public position or staff of public administration will only be made in writing when it is determined by the entity to whom the request is directed”; “with similar foundation and before the making of final decision, any interested party may raise a requested recusal against the holder of public position or the staff who participates in such procedure, act or contract”; “the act or contract that the holder of public position or the staff of public administration who is subject to recusal has participated, can be cancelled in accordance with general terms, unless another penalty is specifically provided”.

7. Regarding the handling of the incident of claim/complaint, the chief operation officer of the COTAI Checkpoint was in circumstances of self recusal. Hence, upon receiving the instruction to conduct investigation of the complainant and the relevant circumstances came to his/her knowledge, he/she had the obligation to take the initiative to ask for self recusal. Besides, the Head of the Checkpoint Enforcement Department should bring the relevant circumstances into consideration when making such instruction.
8. However, no record was found to indicate that the chief operation officer of the COTAI Checkpoint had raised the request of self recusal, or the relevant circumstances were brought into the consideration of the Head of Department for decision making. Given the above, the Macao Customs Service should make improvement on its ways of handling matters.
9. In addition, if the complainant’s case was being followed-up by another subunit in April 2011, and the Director-General had also given instructions for follow up, why did the front-line staff tell the complainant on the phone to claim for compensation by legal means? This proves once again that there are problems in the operating procedures of the Macao Customs Service, causing confusion among citizens!

* * *

IX. The complainant was dissatisfied with the Macao Customs Service that he had to go here and there without getting any desired response

1. The information showed that the complainant made the following “attempts” concerning the claim of compensation for the damage at the bottom of his vehicle, including:
 - 1) The “submission” of the handwritten declaration for claims on the day of the incident (25th December 2010);
 - 2) With specific date unknown, the complainant had gone in person to the COTAI Checkpoint to submit the invoices for the repair cost of the vehicle. However, the chief operation officer expressed to him that *“this Checkpoint will not accept the invoices for the cost of repairing the vehicle since it does not comply with the relevant procedures of claim for compensation”*. Therefore, the complainant was not able to submit the invoices²⁹;
 - 3) Between March and April 2011, the complainant phoned the Macao Customs Service at no. xxxxxxxx (later on it was verified that it was the phone number of superintendent A of the Material Resources Division) for inquiry. He was told that the COTAI Checkpoint had never submitted any document about the case; hence, the Headquarters of the Macao Customs Service could not make any compensation. Concerning this fact, the Macao Customs Service did not make any response;
 - 4) On 15th April 2011, the complainant phoned the no. xxxxxxxx and the chief operation officer of the COTAI Checkpoint, who answered the phone, told the complainant that he should resolve the case through civil proceedings. The complainant was dissatisfied with the answer and claimed that he was threatened;
 - 5) On 18th April 2011, the complainant sent a letter to the Director-General of the Macao Customs Service to seek compensation and make a complaint against the improper handling of the case by the customs personnel. Superintendent A of the Material Resources Division tried to contact the

²⁹ See point 10 of (2) Information obtained in investigation of report no. 022/PACT/2011 of the Macao Customs Services dated 6th May 2011.

complainant on 7th June but did not succeed. Subsequently, the complainant was successfully contacted on 10th June. The complainant was notified that *“his request for compensation was approved by the Deputy Director-General of the Macao Customs Service. However, given the relevant administrative procedure, the complainant was requested to submit the original or certified copy of the invoice for the vehicle’s repair cost in order to proceed with the compensation. The complainant indicated that he would submit the relevant document when he was free.”*³⁰ ”;

- 6) On 7th July 2011, the complainant went in person to the Macao Customs Service to try to settle the issue of claims. However, the person who was responsible for the handling of the relevant case of claims for compensation was on annual leave and the complainant was not willing to accept the suggestion (invited the complainant to go to the office to better ascertain the situation and assist with follow up) proposed by the staff of the inquiry hotline of the customs, therefore, the case had not been solved. Later on, the staff of the Material Resources Division had phoned the complainant twice to inquire about the situation and informed him to submit the documents. However, the complainant stated both times that he would no longer seek any compensation.
2. Given the above, it could be seen that the complainant indeed had made several attempts to seek compensation from the Macao Customs Service, but the recipient of such request was not correct. The Head of the Island Enforcement Division did not further submit to the superior the handwritten declaration (25th December 2010) of the complainant. And then the customs personnel, who had contacted the complainant, had never tried to find out the reason for the complainant to raise such request. Before 20th April 2011 (the date entered and signed by the complainant was 18th April 2011), the date that the Macao Customs Service received the letter sent by the complainant to the Director-General, the Macao Customs Service was never aware of the incident happened on 25th December 2010, when the vehicle of the complainant was suspected being damaged in the process of X-ray inspection at the COTAI Checkpoint. By the time the complainant wrote a letter to the Director-General of the Macao Customs Service on 18th April 2011, he was filled with dissatisfaction against the Macao Customs Service, coupled with the misunderstanding between the

³⁰ See page 2 of report no. 48/DRM/2011 of the Macao Customs Services dated 22nd July 2011, which is contained in page 21 of the case.

complainant and the customs personnel during their communication, caused the relevant case of claims could not be resolved in a timely manner.

3. Let us take another part of this case as example to examine the handling methods of the case:

On 7th July 2011, the complainant arrived at the Headquarters of the Macao Customs Service to submit the invoices for the cost of repairing his vehicle. However, the report prepared by the Head of the Material Resources Division recorded the following:

“(3) In the morning of 7th July, the complainant arrived at the Headquarters of the Macao Customs Service and asked to see superintendent A to submit the relevant documents but the said staff was on annual leave (see the annual leave application form for reference). Therefore, Mr. XXX called the extension no. xxx (the hotline of Macao Customs Service) in the guardhouse at the entrance of the Headquarters, requesting his case of claims for his vehicle to be handled. Senior officer B was in contact with him and inquired about his situation. The complainant told him/her that he was notified by personnel of the Macao Customs Service about one to two months ago that he could submit the invoice for repairing his vehicle to the Headquarters, but he did not know which subunit. On the phone, senior officer B asked Mr. XXX to go to his/her office to better ascertain the situation and provide the necessary assistance. However, the complainant refused and said: “It’s too troublesome! I will write a letter to the Director-General.” After saying that, he hung up and left the Headquarters. According to the staff who was on duty at the gate of the Macao Customs Service at that time, the complainant stayed for five to ten minutes there. Thereafter, the staff of this division called the person concerned twice to find out about the situation and inform him to submit the relevant documents so that the normal process of the procedures of compensation would not be hindered. However, the complainant stated that he was not going to submit the documents to the Macao Customs Service and he was not pursuing the claim for compensation of the relevant amount at this stage. He also expressed his dissatisfaction towards the attitude of certain staff of the Macao Customs Service (but our division did not know who he was referring to) and he would lodge a complaint to the CCAC to confirm whether there was any administrative malpractices

involved in the case.

- (4) *Given the above, upon receipt of the related documents, the staff of this division had already phoned Mr. XXX as soon as he/she could and informed him the approval of the relevant request for compensation and asked him to submit the original or certified copy of the invoices at his earliest convenience so that the procedures of compensation could be continued. However, the complainant always said that the case was not urgent and he would come and submit the relevant documents when he had time. Considering that the complainant was probably very busy with his work, therefore, the staff of this division tried not to bother him with frequent phone calls, which was the reason why the follow-up work was only resumed after waiting for a certain period of time, in order for the relevant subunit of this division to start the rest of the procedures. During the above-mentioned period, it was not found that the staff of this division had violated the administrative procedures in any form in the process of handling this case. However, the person concerned was uncooperative and expressed his dissatisfaction during the conversation which caused unnecessary pressure and burden on the work of the staff of this division." (The underline is inserted by the CCAC).*

The staff who answered the phone call at that time had also submitted a handwritten report with the following contents:

"----- An enquirer called and said that he was at the guardhouse which was at the entrance of the Macao Customs Service. He expressed that someone from the Macao Customs Service phoned and asked him to submit the invoice for compensation. The staff who answered the call asked him about the name of the subunit or that of the staff who gave such notice. However, the enquirer failed to provide more specific information. All he could recall was that a staff from the Macao Customs Service called and informed him to submit the invoice to the Headquarters of the Macao Customs Service for compensation around one to two months ago. Therefore, the officer asked the enquirer to do the registration for entering the Headquarters and waited inside while he/she tried to find out where the invoice should be submitted to so that his case could be referred to the person-in-charge of the respective unit for follow up. However, the enquirer refused to go in, saying that it was too troublesome. Then he hung up and went away.

-----The senior officer who answered the phone call asked the customs officer who was on duty at the guardhouse about the situation. He/She was told that the enquirer

was holding a piece of paper containing the hotline number for inquiry and the phone no. of Ms. F: xxxxxxxx (should be under the Material Resources Division). The customs officer asked the enquirer which subunit he wanted to contact, but the enquirer could not give specific answer.

----- Upon receiving the case of objection from the complainant in April, the staff of the Macao Customs Service called the complainant and informed him that the authority was following up the case and gave him the hotline number for inquiry. As the case was still processing and conclusion had not been made, the officer who answered the call reported the case again to the Director-General. Instructions were given to notify the Material Resources Division to contact the complainant and follow up the issue.

(...).”

A number of doubts and loopholes were shown in this part:

- (1) Why the contact person of the Macao Customs Service was not clearly indicated when they contacted the complainant for the first time?
- (2) Why was the case unattended during the annual leave of the customs officer who was in charge of the case? However, the case was being followed up again after grasping the whole matter?
- (3) Why didn't the staff accept the relevant invoice and issued the proof confirming the receipt of such document at that time so that the complainant could leave first, then the Macao Customs Service could handle the invoice properly through their internal procedure afterwards? But why did he/she insist on knowing the event, finding out the subunit responsible for handling the case before accepting the relevant invoice?
- (4) As mentioned before, the method of submitting this kind of document could be done in a simple way. In fact, it is not necessary for the person involved to delivery it in person. For example, the Macao Customs Service could inform the complainant to send the invoice to the Macao Customs Service in form of correspondence (including postal) with sufficient information to identify the case. Upon receipt of the invoice, if there is any question, the Macao Customs Service could contact and explain to the complainant (e.g., the amount claimed is too high, etc.). It is indeed unnecessary to make such simple procedure so complicated, causing the complainant failed to solve the problem in a direct

way even after contacted the Macao Customs Service several times. For these reasons, we consider that the key issue lies in the malfunction of the department and the weak awareness to abide by law, which eventually influenced the work efficiency and undermined the legitimate rights and interests of citizens.

4. Although the complainant told the CCAC that he would not insist on pursuing the compensation since the procedure was too complicated and time wasting, as a supervisory body, the CCAC has the obligation to point out the many faults committed in various stages to prevent the same mistakes from happening again. It is proved in this case that: the authority has missed the opportunity to resolve the problem in time, which infringes upon the complainant's tangible and procedural rights and interests. It has also exposed the issue of the law enforcement level of the front-line personnel of the Macao Customs Service, resulting in the "restart" of the handling of the case in a passive condition, which means more human and material resources to be spent on the case. Thus, it is necessary for the relevant department to review and improve its work procedures.

* * *

Part III: Conclusion

Given the above, the CCAC considers that:

1. The complainant's vehicle was damaged at the site (the COTAI Checkpoint) of the Island Enforcement Division under the Macao Customs Service, allegedly being damaged by the facility (the ramp of the X-ray car for lightweight vehicle inspection) of the Macao Customs Service due to cooperation with the Macao Customs Service which carried out its duty of checking the passengers and goods in transit.
2. Objectively speaking, the staff of the Macao Customs Service had indeed accepted the handwritten declaration of the complainant on the day of incident (25th December 2010) which in fact contained the complainant's will of requesting a compensation from the Macao Customs Service. Based on the principle of good faith, the principle of non-bureaucracy and the principle of efficiency, **when the object entity that a private individual asks for the claim against is correct, but the recipient is not the subunit/personnel that**

has the function/power to deal with the matter, the recipient should follow the same rule of claims raised by the individual to incompetent body and refer the case to the unit or personnel with the function/power for follow up. In this circumstance, the simplest way is to submit the document to the superior.

3. In fact, the duty officer, who had accepted the handwritten declaration of the complainant, made a report and submitted it to the superior, together with the handwritten declaration of the complainant on the day of the incident. **However, when the report reached the Head of the Island Enforcement Division (also the commander of the COTAI Checkpoint), a decision was made to “put the case on record”. That was why the Director-General of the Macao Customs Service only came to the knowledge of the case when he received a letter from the complainant on 20th April 2011.**
4. With regard to the incident of the complainant’s vehicle allegedly damaged due to undertaking the X-ray inspection and that he had shown his willingness to seek compensation in writing, as the Head of the Island Enforcement Division and the commander of the COTAI Checkpoint, **he/she had the power and the obligations by law to investigate the cause of the incident and take the necessary protective and response measures, or submit the case to the superior, so that the competent body could be able to adopt timely and appropriate measures to settle the case.**
5. Due to the “omission of act” of the Head of the Island Enforcement Division, the complainant was dissatisfied with the Macao Customs Service for not properly handling his claim for compensation which was “already submitted” for a long time. Besides, it was only discovered that the video recording of the day of incident had been erased when the Deputy Director-General made the order to investigate into the case (nearly four months from the day on which the complainant handed in the written declaration); while vehicles of the same model as the complainant’s did not have the essential conditions to be driven up the ramp intact for inspection, thus the public administration authority was exposed to the risk of claims of compensation for any damage caused to vehicles during that period.
6. However, the decision of “put on record” made by the Head of the Island Enforcement Division was in fact inappropriate and improvement should be made.

7. On the other hand, since the Deputy Director-General of the Macao Customs Service had already made the decision to compensate the complainant on 16th May 2011, after notifying the complainant by phone, the Macao Customs Service should make confirmation through official letter, telegram, telex or facsimile. However, it was not seen that the Macao Customs Service has ever made the confirmation/notification in the form of carrier, which was suspected of violating the stipulation of format of notification in the *Code of Administrative Procedure*.
8. Concerning the problem with the attitude of the staff of the Macao Customs Service who answered the phone call of the complainant on 15th April 2011, since both sides clung to their own version, it was impossible to determine who was right, even after investigation, it was decided to archive this part of the case.
9. However, since the complaine of alleged ill telephone manner was exactly the same operational head of the COTAI Checkpoint who drew up the report on the claim of the complainant and the investigation of the incident, by law he should be under the condition of self-recusal, but there was not any record to indicate that the relevant operational head had raised the request of self-recusal, or the Head of the Checkpoint Enforcement Department had taken into account the circumstances in the assignments.
10. The case itself is not complicated and it is considered quite easy to solve. However, the reality is the improper handling method at the beginning causes the case to become complicated which is contrary to the principle of eliminating bureaucracy and affects work performance. With regard to the measures taken in relation to the requested compensation amount of the complainant, obviously it does not comply with the principles of economy and efficiency. It is indeed unnecessary to require the complainant to ask for compensation through litigation.

* * *

Part IV: Recommendations

According to paragraph 12 of Article 4 of Law no. 10/2000 of 14th August (*Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*), the CCAC issues the following recommendations to the Macao Customs Service:

1. To supervise and urge the front-line staff to strictly comply with the provisions of the *Code of Administrative Procedure* when handling complaints, appeals or any application, especially the principle of economy and the principle of decision regarding procedures.
2. To improve the internal and external work flow of the department, particularly areas involving the rights and interests of a third party, so that staff at all levels are well aware of their rights and obligations and in strict compliance with the work rules, as well as timely and accurately report to their superiors the progress of their work and incidents happened.
3. To intensify monitoring on the front-line staff and adopt effective and timely measures designed to enhance work performance (including temporary measures), so as to increase the efficiency of the department and protect the legitimate rights and interests of administrative counterpart.
4. With regard to external relations, the department shall establish work rules that conform to economic efficiency, facilitate the lives of citizens, eliminate bureaucracy, act in good faith and safeguard the legitimate rights and interests of the residents so that front-line staff shall have rules and guidelines to follow and the leadership shall be accountable.
5. In procedures involving a third person, as a law enforcement department, the Macao Customs Service should take preserving the evidence as the first priority. In the absence of final decision, the consequences of the loss of evidence due to negligence should be avoided from happening, which is very unfavourable to the administrative entity.

* * *

Finally, I hereby make the following orders:

1. **Notify the Macao Customs Service and the complainant of the content of this report and recommendation.**
2. **Archive this case after execution.**

* * *

The Commission Against Corruption, 28th February 2012.

The Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of the case:

- (1) If the front-line staff fail to report the cases in a timely manner after receiving complaints from the citizens, it will greatly delay the progress of solving the problems of the department;
- (2) In handling civil compensation cases raised by citizens, departments should seriously consider their responsibilities and the required amount of compensation. If it is identified that the department has the responsibility and the amount claimed is not a large amount, the department should handle the case in a way that is efficient and convenient for the citizens as soon as possible to avoid unfairness to the claimant;
- (3) In the administrative procedure, with the prerequisite of not deviating from the statutory framework, the principle of efficiency and convenience should be applied and unnecessary procedures should be eliminated.

Case II

Report on several legal issues regarding the Monetary Authority of Macao approving the Bank of China Macau Branch to issue 100th anniversary uncut commemorative notes (excerpt)

Key points:

- Being an authority supervising financial institutions, the Monetary Authority of Macao should be clear of its scope of competence when performing its duties;
- Regarding the issuance of banknotes, the supervisory authority should clearly distinguish among coins in circulation, commemorative coins and uncut notes, as well as follow the approval and assessment procedures in compliance with the law.
- Concerning the issue of the supervisory authority exceeding its competence, it should seek approval from the competent body timely.

[Note: This report merely covers the scope of assessment procedures and competence of approval the Monetary Authority of Macao has on the note-issuing bank concerning its application of issuance of banknotes in circulation whilst the operation of the bank is not involved. Following investigation and issue of relevant report, the Macao SAR government has completely solved the concerning legal issues regarding the issuance of banknotes and rectified relevant defects through Administrative Regulation no. 20/2012 of 8th August.]

* * *

Part I – Introduction

- I) Since the Bank of China Macau Branch (hereafter “BOC”) has gained the approval for issuing banknotes for the year of dragon and 100th anniversary commemorative banknotes, the Commission Against Corruption (hereafter “CCAC”) has received quite a number of complaints, pointing at insufficient supervision (administrative illegality) of the Monetary Authority of Macao (hereafter “AMCM”) and malpractices of the BOC, thus requesting the CCAC for intervention and investigation.
- II) This report (excerpt) merely regards the 100th anniversary commemorative banknotes as the targets of analysis; other issues will be handled in a separate case.

* * *

- III) Following comprehensive analysis of the notice “Sales update and further sales arrangement of BOC 100th anniversary commemorative notes” published by the BOC on 5th April 2012 and the AMCM’s official letter no. 2525/12-AMCM-DFR(STE) dated 2nd May 2012 submitted to the CCAC concerning the information of the authority approving the BOC to issue uncut notes, the CCAC found that:

1. The authority did not state which law or regulation it had followed to assess and approve both the proposal and resolution of “The sales of new notes and issuance of uncut notes with sizes different from those approved by the Administrative Regulation”;
2. The procedure adopted by the authority to approve the selling price of “single note” was different from that of “uncut notes”. For the selling price of the former note, the resolution was agreed by the Board of Directors and then sent to the Secretary for Economy and Finance for approval whilst that of the latter note was just approved by the member of the Board of Directors surnamed Poon.

Thus, the CCAC sent a letter to the authority requesting for detailed information regarding the issue on 29th May 2012.

IV) The details of the reply from the AMCM on 4th June 2012 are as follows (Bold and underlined texts are inserted by the CCAC):

- “1. “According to Administrative Regulation no. 31/2011 of 8th August, the Bank of China Limited is authorised to issue its 100th anniversary commemorative notes in the denomination of MOP100. The uncut notes referred in the official letter sent by your office include 10,000 sets of 3-in-1 uncut notes and 2,800 sets of 30-in-1 uncut notes. **The specification of the notes is in compliance with the stipulation in Paragraph 2 of Article 2 of the regulation (general feature). Thus, enclosed with the letter is a sample of the aforementioned notes for your office for verification.....** could be returned as soon as possible.
2. As mentioned above, the feature of the aforementioned uncut notes conforms to the stipulation of the regulation approving the issuance of the notes while in particular circumstances in the past (such as the BOC issuing the face value of MOP20 to commemorate the 2008 Beijing Olympic Games in accordance with Administrative Regulation no. 5/2008 of 22nd February), we also allowed the bank to sell similar kinds of notes without setting any special regulation. However, considering that the two note-issuing banks may have a request to sell uncut notes combination in the future, it is necessary for us to formulate relevant guidelines and we are re-studying relevant issues.
3. We should also point out that many regions such as the People’s Republic of China, Singapore and the Hong Kong SAR have long been selling uncut notes.
4. The member of Board of Directors of our authority executes his power according to Paragraph 5 of Article 17 of Statute of the Monetary Authority of Macao approved by Decree Law no. 7/95/M of 30th January (amended by Decree Law no. 14/96/M of 11th March). **However, we admit that we should ratify the decision (a brief order) stated on the Report no. 06/D/DFR of 29th March 2012 within the statutory period, but we have not completed it on time.** Even so, we have provided the Bank of China Limited with an extra authorisation according to the Resolution no. 356/CA dated 30th of last month which is now waiting for the decision of the superior. We will send the CCAC with the relevant photocopy of the resolution afterwards.”

* * *

Part II: Analysis

I - In relation to “Issuance of uncut notes”

1. The currency system of Macao is regulated by Decree Law no. 7/95/M of 30th January. Its Article 2 stipulates:

“1. The legal tender currency in circulation of Macao comprises notes and coins.

2. *Coins include coins frequently in use, commemorative coins and coins specially used in Numismatics.*

3. *Coins which are sufficient for circulation and for change conveniently are regarded as coins frequently in use.*

4. *Commemorative coins are stamped with images of figures, facts, themes or designs related to memorial days.*

5. *Coins specially used in Numismatics have significant features and thus possess the value of specimen coins.”*

2. In view of the currency system regulated by Article 2 of the above Decree Law, the currency of Macao is divided into two categories – notes and coins while coins are further divided into three types, including:

“3.1 Coins frequently in use – coins which are sufficient for circulation and for change conveniently;

- 3.2 ***Commemorative money (coins)** – stamped with images of figures, facts, themes or designs related to memorial days;*

- 3.3 *Coins specially used in Numismatics – the features possessed can become the value of specimen coins.”*

3. In the definitive regulation of “commemorative money” in the Chinese version

of Paragraph 4 of Article 2 of the above Decree Law, the term “coins” are not adopted as in Article 3 and Article 5. Based on the legislative techniques and the overall analysis of the legal regime, the legislature has stated in Paragraph 2 that coins are divided into three categories and definitive regulations are given to each category in the following Paragraph 3 to Paragraph 5.

4. Therefore, it could be understood that the “commemorative money” as stipulated in Paragraph 4 is restricted only to one of the coins’ categories mentioned in Paragraph 2 – commemorative money (coins), and is impossible to or should not include “commemorative notes”.
5. In addition, **commemorative coin possesses the characteristics of “merchandising with a price higher than its face value” and “always bearing the legal tender power according to its face value” (see Paragraph 4 of Article 3 and Paragraph 4 of Article 11 of the same Decree Law.) Banknotes and coins frequently in use could be withdrawn from circulation through Decree Law/ Administrative Regulation (Article 9, Article 10 and Paragraph 1-3 of Article 11).**
6. With regard to the power to issue **currency**, Article 5 of the same Decree Law stipulates:
 - “1. *The local region enjoys the right to issue currency of Macao.*
 2. *The local region enjoys the exclusive right of issuing legal tender notes and coins in circulation while the stipulation in the following Paragraph is still applicable.*
 3. *Banks which are authorised to undertake business in Macao could be vested with the right to issue notes by the local region on its behalf.*
 4. **Commemorative money and coins specially used in Numismatics are issued by the Monetary and Foreign Exchange Authority of Macao**³¹,

³¹ Article 1 of Administrative Regulation no. 18/2000 stipulates, “The Monetary and Foreign Exchange Authority of Macao was renamed ‘The Monetary Authority of Macao’, with its Portuguese name as ‘Autoridade Monetária de Macau’ and its acronym in Portuguese remained as ‘AMCM’. The term The Monetary and Foreign Exchange Authority of Macao as appeared in its Statute approved by Decree Law no. 14/96/M of 11th March shall all be regarded as the Monetary Authority of Macao.”

(acronym in Portuguese as AMCM) according to the stipulation of its Statute.”

7. The legislature seems to vest the AMCM with the right to issue “commemorative coins and coins specially used in Numismatics” in accordance with Paragraph 4 of Article 5 and the *Statute of the Monetary Authority of Macao*.
8. Although the legislature approved the new *Statute of the Monetary Authority of Macao* by Decree Law no. 14/96/M of 31st March in 1996 after the Decree Law no. 7/95/M of 30th January came into force, the *Statute* has not made any corresponding regulations regarding the issuance of “commemorative money (coins) and coins specially used in Numismatics” as well as “commemorative notes”.
9. Afterwards, both Ordinance no. 106/99/M of 12th April which amends the logo of the Authority and Administrative Regulation no. 18/2000 which amends the authority’s name to the Monetary Authority of Macao (the current name) have not vested the Authority with the right to issue commemorative coins and commemorative notes.
10. Paragraph 1 and Paragraph 2 of Article 6 of Decree Law no. 7/95/M stipulates:
 - “1. *The legal tender currency in circulation shall be enacted by Decree Law.*
 2. *The Decree Law as specified in the above Paragraph shall include the denominations, features and quantity of the banknotes and coins.”*

Thus, the issuance of banknotes and coins in the local region is still enacted by Decree Laws/Administrative Regulations (including the coins frequently in use, commemorative coins and coins specially used in Numismatics). Feature and quantity of currency in different denominations shall also be stipulated.

11. In other words, under the current legislative system, although the legislature has not categorised banknotes into “banknotes in circulation” and “commemorative banknotes”, the stipulation that “the issuance of currency system shall be enacted by Decree Laws/Administrative Regulations” has not regulated the issuance of commemorative

banknotes and the local region can issue new types of currency, such as “commemorative banknotes” and “uncut notes” through Administrative Regulations, instead of by other legal means (such as Administrative Order, Order of the Secretary or Resolution of Board of Directors of the “AMCM”).

12. Under the abovementioned legal system, the issuance of commemorative coins in the local region from Macao’s handover to China to the year of 2012 is as follows.

Regulation no.	Purpose of issuing commemorative coins	Determination of selling price
Administrative Regulation no. 25/2003	50 th Macau Grand Prix	Article 4 stipulates: <i>“The commemorative coins referred in this Administrative Regulation are for public subscription and their prices are determined by the Monetary Authority of Macao.”</i>
Administrative Regulation no. 19/2004	5 th Anniversary of the Return of Sovereignty of Macao to the Motherland	
Administrative Regulation no. 34/2004	Lunar Year of the Rooster	
Administrative Regulation no. 37/2004	The 4 th East Asian Games	
Administrative Regulation no. 18/2005	Lunar Year of the Dog	
Administrative Regulation no. 18/2006	Lunar Year of the Pig	
Administrative Regulation no. 21/2007	2008 (Lunar Year of the Rat) to 2019 (Lunar Year of the Pig)	
Administrative Regulation no. 21/2009	10 th Anniversary of the Return of Sovereignty of Macao to the Motherland	

13. The above stipulation of issuing commemorative coins shows that even though Paragraph 2 of Article 8 of Decree Law no. 7/95/M has appointed the “AMCM” to be responsible for the circulation of “commemorative coins” and “coins specially used in Numismatics”, the power to determine the selling price of the “commemorative coins” is usually vested with through Administrative Regulation.
14. New banknotes were issued over ten times from Macao’s handover to China to the year 2012. The following records the issuance of new banknotes for special occasions:

Regulation no.	Purpose of issuance and face value	Issuing uncut notes concurrently
Administrative Regulation no. 33/2000	It is believed that the purpose of issuance is related to the Millennium (Banknotes of MOP10)	Issuance of 1.5 million sets of 4-in-1 uncut notes and 30-in-1 uncut notes in the denominations of MOP10 for commercial use, pursuant to Administrative Regulation no. 33/2000 of 8 th September, authorised by Order no. 240/2000 of the Chief Executive
Administrative Regulation no. 5/2008	Beijing Olympic Games (Banknotes of MOP20)	No relevant stipulation, the AMCM stated that uncut banknotes were issued.
Administrative Regulation no. 30/2011	Lunar Year of 2012-2023 (Banknotes of MOP10)	No relevant stipulation
Administrative Regulation no. 31/2011	100 th Anniversary of Bank of China (Banknotes of MOP100)	No relevant stipulation (These are the new banknotes involved in this case)

15. The above information reflects that issuing uncut notes concurrently with new notes for every special occasion is not customary.

16. In fact, the issuance of “uncut notes” involved in this case is enacted by Administrative Regulation no. 31/2011 of 5th September. **According to Article 1** (authorising the Bank of China Limited to issue 3 million pieces of **new notes** in the denomination of MOP100 to commemorate its 100th anniversary), **and Article 3 regarding the design of the notes**, such as at the front side of the MOP100 note, at the right from the top to the bottom the following characters are printed: (1) “to commemorate the 100th anniversary of Bank of China” both in Chinese and Portuguese; (2) report concerning the establishment of the Bank of China in 1912 in Chinese; at the right of the back side of the MOP100 note, Chinese characters of “to commemorate the 100th anniversary of Bank of China” are printed vertically, **the new notes of MOP100 fall into the category of “commemorative notes”**.
17. However, according to Article 2 of Administrative Regulation no. 31/2011, the above “**commemorative notes**” also have the following features:
- “The abovementioned banknotes incorporate the following apparent features:*
- 1) *Key tone: the front side is tinted in gold and the back side tinted in green;*
 - 2) ***Size: 153mm x 76.5mm;***
 - 3) *Specification: the front side has a horizontal pattern and the back side has a vertical pattern.”*



3-in-1 uncut notes and 30-in-1 uncut notes

18. Upon reviewing the sample of two sets of “uncut notes”, there is neither significant cut in between every new note of MOP100 nor feature incorporating easily detached marks such as cutting lines or pinholes. Therefore, it can be confirmed that the size of the “uncut notes” does not conform to the legally stipulated one. In other words, the “uncut notes” issued by the BOC shall not be considered for sale just in different packaging.
19. Under these circumstances, the BOC has issued “commemorative notes” with three different apparent features (sizes), including single note with a size of

153mm x 76.5mm, 3-in-1 uncut notes with a size of 153mm x (76.5mm x 3) and 30-in-1 uncut notes with a size of (153mm x 5) x (76.5mm x 6).

20. **The latter two “uncut notes” have sizes significantly different from the size of a single note as stipulated in Administrative Regulation no. 31/2011. Thus, it implies that the “uncut notes” are not categorised in the type of currency stated in the abovementioned Administrative Regulation.**

[Note: two types of currencies can be categorised in Numismatics:

- (1) Commemorative money (*espécie comemorativa*) – incorporating two main features:

- a) - serving as means of payment (i.e. circulating currency);
- b) - its value can be higher than its face value.

- (2) Money for collection (*espécie notafílica*) – also incorporating two main features:

- a) - not serving as means of payment;
- b) - for collection only, the 3-in-1 uncut notes belong to this category because these notes cannot be used for settlement (requesting the bank to collect the notes or the notes can serve as means of payment).]

21. **Therefore, under the system that “the issuance of currency shall be enacted by Administrative Regulation”, the issuance of “uncut notes” by the local region shall only be enacted by Administrative Regulation, rather than just approved by the Order of the Chief Executive or authorised by the AMCM.**
22. In other words, **when the AMCM received the BOC’s application of “issuing uncut notes”, the authority should have sent the proposal to the Chief Executive for approval and then published the relevant Administrative Regulation in the *Official Gazette of the Macao SAR*.**
23. However, it is surprising that the above application was approved by the member of the Board of Directors of the AMCM surnamed Poon in Report no. 22/D/DFR of 30th August 2011 (**Sale of new banknotes as merchandises and**

issuance of uncut notes) (see P. 42-P.44). This is “an act absolutely against legal procedure” that leads to invalid legal consequences in accordance with Sub-paragraph f of Paragraph 2 of Article 122 of the *Code of Administrative Procedure*.

24. Thus, it is necessary to report the above analysis to the Chief Executive in order to take remedial measures, (the BOC stated previously that citizens could subscribe the notes through online registration from 11th to 30th June and a draw would be conducted on 11th July.) particularly on the approval of the issuance of the uncut notes by publishing relevant Administrative Regulation in the *Official Gazette of the Macao SAR* in order to carry out its legal effects. Meanwhile, ratification should also be made.

* * *

II – Determination of selling price

25. The Report no. 06/D/DFR (see P. 14-16) of 29th March 2012 which was not ratified in time (a simple order) as referred to in the reply letter of the AMCM mainly covers the determination of selling price, which is MOP600 and MOP6,000 respectively, of the two categories of “uncut notes”.
26. The authority stated that Resolution no. 356/CA of 30th May 2012 was made for ratification and was submitted to the supervisory body for approval. Considering that the AMCM drafted Resolution No. 067/CA of 30th January 2012 concerning the approval of the selling price of the single note and had it submitted to the Secretary for Economy and Finance for approval (see P.24-26), it is believed that the abovementioned Resolution No. 356/CA was similarly submitted to the Secretary for approval.
27. It is noteworthy that if the AMCM immediately took the above remedial measures – the issuance of uncut notes enacted by Administrative Regulation, it can serve as a means to point out that the determination of selling price is either approved by the authority or the Secretary of Economy and Finance and the issues concerning the selling price of the “single note” and “uncut notes” can be solved at the same time.



III – With regards to publishing Order of delegation of authority in accordance with the law

28. On the other hand, with regards to the price of uncut notes agreed by the member of Board of Directors, the authority replied that “the member of Board of Directors executed his power in accordance with Paragraph 5 of Article 17 of the *Statute of the Monetary Authority of Macao* approved by Decree Law no. 7/95/M of 30th January (amended by Decree Law no. 14/96/M of 11th March)”.
29. Paragraph 4 and Paragraph 5 of Article 17 of the *Statute of the Monetary Authority of Macao*, which states that: “4. *The Board of Directors shall, based upon the Chairman’s recommendation, assign its board member to be responsible for the specialised affairs with one or numerous corresponding departments of the Monetary and Foreign Exchange Authority of Macao.* 5. *The assignment of the specialised affairs shall include the delegation of corresponding powers concerning the relevant affairs.*”, shall belong to the stipulation regarding the Board of Directors delegating its authority.
30. In fact, upon checking the *Official Gazette of the Macao SAR*, the AMCM just published the Order of delegation of authority concerning “Delegating certain functions to the Deputy Director of Finance and Human Resources Department, Chief of Human Resources Section and Chief of Finance Section” in the Series II, No. 21 of 22nd May 2002, and the Resolution or Order concerning the Board of Directors assigning its member to be responsible for corresponding duties, including Resolution no. 275/CA as mentioned in the above Order of delegation of authority made by the member surnamed Lou, had not been published in the Official Gazette.
31. Thus, it is doubtful whether the member of the Board of Directors was delegated the authority by the Board to be responsible for relevant affairs because Paragraph 2 of Article 39 of *Code of Administrative Procedure* states: “*The act of delegating authority shall be published in the Official Gazette of Macao (the current Official Gazette of the Macao SAR)*”.

32. In addition, the act of failing to publish the resolution about delegation in the *Official Gazette* is also allegedly violating the stipulation of the *Code of Administrative Procedure*. With regards to the affairs concerning in this case, the authority already made the relevant authorisation in Resolution no. 356/CA on 30th May 2012 and was waiting the supervisory body for approval and promised to the CCAC to provide the copy of relevant resolution in order to solve the problems raised in this case.
33. However, it is necessary for the CCAC to remind the authority to pay attention to the issue of publishing Order of delegation of authority in accordance with the law.

* * *

IV – Regarding the lack of transparency in sales information and supervision on selling procedure

34. It is mentioned in the notice of “Sales update and further sales arrangement of BOC 100th anniversary commemorative notes” from the BOC dated 5th April that “In addition to the public sale of 1 million pieces of single notes in Macao, all holders of a Macao permanent/non-permanent identity card will be eligible to register online for a chance to buy one of the 10,000 sets of the 3-in-1 uncut notes or one of the 2,800 sets of 30-in-1 uncut notes.” (Bold and underlined texts are inserted by the CCAC) This arouses the doubt of the public – where are the rest of the 2 million pieces of single notes and how will they be sold?
35. According to the document provided by the authority, the sales information of single notes, 3-in-1 uncut notes and 30-in-1 uncut notes furnished by the BOC to the AMCM was the same as it publicly announced (see P.7, 17-24):

Types	No. of sets authorised to issue	Equivalent to the quantity of single notes	No. of sets sold	Equivalent to the quantity of single notes
30-in-1 uncut notes	25,000	750,000	2,800	84,000
3-in-1 uncut notes	120,000	360,000	10,000	30,000
Single notes	1,890,000	1,890,000	As at 30 th May, 704,960 were sold	704,960
Total	-----	3,000,000	-----	818,960

36. The AMCM bears the responsibility to oversee the monetary, financial, foreign exchange and insurance markets. If the BOC has not declared or disclosed the sale of the remaining 22,200 sets of “30-in-1 uncut notes” 110,000 sets of “3-in-1 uncut notes” and 1 million pieces of single notes as well as the procedure of the notes entering the market, the AMCM **is obliged to execute its powers to follow up the above issues and makes timely announcement to enhance the transparency.**
37. Considering that the authority will formulate relevant guidelines as the two note-issuing banks may request to sell “uncut notes” combination in the future, **it seems more appropriate for the CCAC, at this stage, to point out to the Chief Executive, the Secretary for Economy and Finance and the AMCM on the BOC’s inadequacies in the selling procedure of the “commemorative notes” in order to solve relevant problems as soon as possible.**

* * *

Part III – Conclusion and recommendations

According to the aforementioned facts, the CCAC believes that:

1. As the AMCM's decision to approve "issuing two types of uncut notes" is invalid, immediate remedial measures have to be taken.
2. The authority has to immediately deal with the issue of failing to publish the Order of delegation of authority in the *Official Gazette* according to Article 39 of the *Code of Administrative Procedure*, as well as follow up and pay attention to how the BOC handles the remaining some 2 million pieces of commemorative notes.
3. Considering that the authority will formulate relevant guidelines as the two note-issuing banks may request to sell "uncut notes" combination in the future, the AMCM has to adopt appropriate measures concerning the BOC's inadequacies in dealing with the selling procedure of the "commemorative notes".
4. The AMCM should draft the Administrative Regulation regarding the BOC's 100th anniversary uncut notes and send to the Chief Executive as soon as possible in order to solve the problem of lack of legal rationale.

* * *

I hereby make the following orders:

- 1) As the content of this report involves the Chief Executive's power in formulating regulation and the execution problems of the AMCM, we send this report to the Chief Executive for deliberation and making decision.
- 2) Notifying the AMCM of the content of the report.

* * *

Commission Against Corruption, 11th July 2012.

The Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of this case:

- (1) The AMCM, which is the target of supervision of the CCAC, is suggested to make a complementary step according to law upon finding out defects;
- (2) It is the decision right of the note-issuing bank and the government to determine whether to issue “uncut notes” or not, the CCAC does not and should not hold any stance;
- (3) If the AMCM immediately takes remedial measures to rectify the defects in legal procedure, it will be one of the most effective means to solve the problem;
- (4) To oversee whether the concrete measures taken to exchange lunar year banknotes are effective or not and whether they conform to the regulations of public affairs administration belongs to the issue of another scope. It will be more appropriate to handle it through other procedures.

Case III

Investigation report on the light rail passing Rua de Londres and Rua de Cidade do Porto in Macao

Key points:

- Technical standards necessarily adopted for the construction of the LRT system in Macao;
- In administrative procedures, competent departments must provide the public with clear justifications for the technical standards adopted;
- In administrative procedures, public consultation should be carried out according to the public administration principles and the principle of “good father of a family”.

* * *

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Investigation report on the light rail passing Rua de Londres and Rua de Cidade do Porto in Macao

Part I: Background

1. Some representatives of the Macao Community Development Association went to the CCAC on 29th May 2011 and filed complaints over various issues related to the construction of the Light Rapid Transit (LRT) system on the Macao Peninsula and Taipa. They voiced their suspicion over the existence of illegalities in relevant procedures and required CCAC's investigation.
2. The complaint covers a wide range of issues and has allegations of both criminal offences and administrative impropriety, among which the route selection of the LRT system is particularly called into question. It points out that the Transportation Infrastructure Office (hereinafter referred to as GIT) altered the previous plan by deciding to run the railway through Rua de Londres and Rua Cidade do Porto, however with no sufficient scientific grounds for acting so. The complaint goes further to criticise GIT for incorporating the said area into the project, believing it would cause a failure to meet relevant fire safety requirements. It therefore puts forward a request that the government reconsider the route.
3. On the issue that the railway will be designed to run through the interior of NAPE, the Macao Community Development Association expressed their concerns in the complaint letter, as follows:

“(…)

Running the light rail through Rua de Londres and Rua Cidade do Porto instead of the coastal area according to the original plan may involve the following illicit interests:

- (1) *The two plots of land behind Zhu Kuan Building and Edifício Wan Yu Vilas, together with the area covering the road space to be freed up resulted from the use of a proposed underground tunnel at Avenida Dr. Sun Yat-Sen and Zone B of the proposed reclamation project (designed to*

fill the coastal area between the Macao Science Center and the Kun Iam Statue), will be earmarked for the development of a couple of commercial and residential buildings. For already many years the government has only levied a nominal fee of 60,000-80,000 patacas on those developers. However, over the last few years, the transactions related to the said plots carried out by the developers already reached tens of billions. If the profits to be yielded from the concession for development on these plots in the future are also taken into account, the illicit interests might reach at least hundreds of billions. Therefore, it is not surprising that some associations would collude with the unscrupulous developers and officials and have the light rail run through the interior of NAPE at any costs;

- (2) *According to the press release issued by the Deputy Director of GIT on local newspapers last week, the LRT project has to commence shortly and therefore it will be impossible to take into account the future development of the five reclaimed zones, Shizimen and the Hengqin Island. If the railway is to run along the originally proposed coastal area in lieu of the interior of Rua de Londres and Rua Cidade do Porto, then the project will have to be postponed for two to three more years. That will mean kicking off the project at the current stage is solely for illicit profits, yet the practical needs of Macao in the following three years have been completely ignored. Suppose Phase I of the construction will span four years. Chances are it will have to be demolished before going into operation, due to the fact that re-planning has to be carried out as a result of rapid social development. It means yet another project generating greater illicit profits will be carried out. How could the official give such a ridiculous reason on a press release? They are just way out of line?*

(...).”

4. Since relevant preparation work is set to commence shortly, the most pressing issue now is to examine the legality and rationality of running the railway through Rua de Londres and Rua Cidade do Porto, especially from the prospective of technical feasibility. Therefore, the said issues are the foci of our investigation and analysis, while the related side issues may also be discussed.
5. In view of the special nature, wide coverage and complexity of this case, the CCAC has marshalled a great deal of human resources to cope with it.

* * *

Part II: Investigative measures

The CCAC took a couple of measures in the course of investigation, as follows:

1. On 17th June 2011, the CCAC staff met the Director of GIT at a meeting to understand the conception, preliminary plan and progress of the LRT project. It also requested GIT to provide necessary information and documents.
2. On 1st July 2011, the CCAC staff had a meeting with the representatives of the Macao Community Development Association to hear their opinions and requests.
3. On 20th July 2011, the CCAC staff met with the Secretary for Transport and Public Works and the Director of GIT at a meeting, where the latter two parties were requested to present necessary information and explain some core issues (with special regard to whether it was a “policy decision” or a “technical requirement” to have the railway run through Rua de Londres).
4. In August 2011 the CCAC sent letters to GIT requesting the provision of other information relevant to the LRT project.
5. The CCAC received official letters and information from GIT on the following occasions:
 - (1) On 24th June 2011, the CCAC received an official letter no.1048/ET/2011 and relevant information from GIT.
 - (2) On 30th June 2011, the CCAC received an official letter no.1077/ET/2011 and relevant information from GIT.
 - (3) On 2nd September 2011, the CCAC received an official letter no. GIT-O-11-1552 and relevant information from GIT.
 - (4) On 6th September 2011, the CCAC received an official letter no. GIT-O-11-1555 and relevant information from GIT.

The CCAC received the following supplementary information from the complainant: 809/C/2011, 817/C/2011, 926/C/2011, 1158/C/2011, 332/I/2011,

371/I/2011, 380/I/2011, 389/I/2011, 390/I/2011, 403/I/2011, 433/I/2011, 434/I/2011, 461/I/2011, 462/I/2011, 470/I/2011, 471/I/2011, 473/I/2011, 474/I/2011, 669/I/2011.

6. The CCAC obtained documents consisting of nearly 10,000 pages, many of which being architectural drawings and consultancy reports.
7. The CCAC designated professional engineers to take measurements and collect necessary information at Rua de Londres. These data were organised and analysed subsequently.

* * *

Part III: Introduction to the construction of the LRT system

The GIT published the progress of the LRT system*:

- *In 2002, the first Chief Executive of Macao SAR, Edmond Ho, mentioned the following in his policy address: “In order to solve the urban transport problems, the Government will introduce a brand new mass transit system into the territory”. It was also the same year that he entrusted Mass Transit Railway Corporation Limited of Hong Kong (now known as MTR Corporation Limited) to conduct a preliminary study on the development of an urban railway transport system in Macao.*
- *In February 2003, the Macao SAR Government officially began a research on the construction of the LRT System. The objective and necessity of building a railway transport system in Macao, preferably a light rail system, were recognised in the first feasibility study report. Concept corridors serving residential, commercial and tourist areas were also analysed in the report. Following the feasibility study report was a public consultation, where many residents voiced their opinions to the Government.*

* The original translation provided by GIT is available at: <http://www.git.gov.mo/en/history.aspx>.

- *Based on the railway technology derived from the first phase of research and public opinions and advices collected during the consultation, the Government conducted a more in-depth feasibility study on the LRT System in 2005. The report in this stage set out the target groups of the light rail service and analysed some possible routes covering Macao Peninsula, Taipa and Cotai. In the end, it was proposed in the report that three lines covering about 27 kilometres and 29 stations in total should be considered.*
- *In 2006, Macao Government conducted an in-depth research on the LRT System, aiming to further study the features of the line routes and service scope concluded from the previous reports. The “In-Depth Research on the Macao LRT System”, announced in the same year by the Government, considers an elevated railway system the best option for the city. It recommends the construction of a double-track railway for trains running on rubber-tyred wheels, which should have a total length of about 22 kilometres, 26 stations and allow trains to arrive every 3-6 minutes. It also highlights the importance of installing platform screen doors, escalators and elevators and utilising natural light, ventilation and barrier-free access. During the four-month public consultation, the government collected and analysed various opinions from the public, communities and business owners. Some organisations and residents believed that the proposed train stations were too close to each other while the service might fail to cover the high-density residential areas.*
- *After conducting an exhaustive technology assessment and reviewing the opinions from the public consultation, the Government announced the “Optimisation Program for the Macao LRT System” in July 2007. This optimisation program proposed that Phase I of LRT System should total 20 kilometres in length and cover all the borders, high-density residential areas and some tourist attractions. There should be 12 stations to the east of the Macao peninsula connecting Border Gate and Barra. Also, 11 stations were suggested to be built on Taipa and Cotai to connect Sai Van Bridge and Pac On Ferry Terminal. Therefore, a total of 23 stations were proposed in Phase I of the LRT.*

In addition, the LRT system was suggested to bear a design for fully-automated rubber-tyred trains that run every 3 to 6 minutes on elevated railways. It would also feature energy saving, environmental friendly

facilities and barrier-free access. In order to enhance the capacity of the current public transport service and the integration of different transport services, public transport interchange (PTI) facilities will be built at important locations where some of the stations are situated. Public car parks (there will be 11 in total, with 6 on the Macao peninsula and 5 on Taipa) will be built in the vicinity of the stations.

After the 45-day public consultation period, in October 2007, the Government announced that Phase I of LRT System will be under construction. The “Transportation Infrastructure Office (GIT)” was then established in November of the same year to undertake the design and construction of the project and its future operational arrangements.

- In October 2009, GIT announced the “Construction Plan of Phase I of the Macao LRT System 2009”. The total number of stations to be built was adjusted to 21. In order to preserve the view of the Macao World Heritages sites and reserve space for the connection with the underground railways of Phase II in the future, **the Barra station would be built underground on a larger scale** so that its function as a local and regional integrated transport hub can be consolidated. In addition, the rails at Nam Van Lake and Sai Van Lake sections which connect Barra and Nam Van would be built in the tunnel, **while the Sai Van Lake station would be underground and the Nam Van Lake station on the ground.** Taking into account the city positioning and the need for transport services integration in Macao, the construction plan estimated that there would be a gradual increase in the maximum passenger load per hour per direction during rush hour, from 8,000 at the early stage of operation to 14,200 in 2020.
- International calls for tenders for the supply of “Rolling Stock and Systems of Macao LRT Phase I” commenced in December 2009. With the confirmation of the types of rolling stock and system to be used, the major construction works will take place subsequently in the second half of 2010 or later.”

* * *

Part IV: Introduction to the preliminary issues

Before proceeding with analysis, some issues necessitate clarification, the most important two being the following:

First, the legal basis of CCAC's intervention in the case and measures that may be proposed.

Second, since this is a highly technical project, did the responsible department make sure that all the steps, namely preparation, planning, implementation and launching calls for tenders, were taken in strict compliance with applicable legal provisions and technical requirements?

* * *

1. The legal basis of CCAC's intervention in the case and measures that may be proposed:

According to Subparagraphs 4), 5), 11), 12) and 14) of Article 4 of Law no. 10/2000 of 14th August (*Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*), the CCAC is vested with the following powers:

"The Corruption Against Corruption is entitled to:

(...);

4) Conduct or request to conduct inquiries, comprehensive investigations, investigation measures or any other measures aimed at examining the legality of administrative acts and proceedings with regard to relations between public entities and individuals;

5) Examine the legality and administrative correctness of acts which involve property entitlements;

(...);

11) Propose to the Chief Executive the adoption of administrative measures for

the purpose of improvement of the services provided by the public administration;

12) Address recommendations directly to the concerned authorities for the purpose of rectifying illegal or unfair administrative acts or procedures, or of performing due acts;

(...);

14) Seek, in cooperation with the concerned bodies and departments, the most adequate solutions to protect the legitimate interests of the individuals and to improve administrative activity;

(...).”

In addition, Article 2 of the *Code of Administrative Procedure* provides that:

**“Article 2
(Scope of Application)**

- 1. The provisions of this Code apply to all bodies of the government that, in the performance of administrative activity of public management, establish relations with individuals as well as to acts performed by administrative bodies of the Territory that do not belong to the Public Administration while carrying out materialised administrative functions.*
- 2. The provisions of this Code shall also apply to acts performed by concessionaires in exercising the powers of authority.*
- 3. It may be mandated by law that provisions of this Code apply to activities of organs of private institutions in pursuit of public interest.*
- 4. The general principles of administrative activities as defined in this Code apply to all the activities of the Administration, even if such activities are only conducted for the purpose of technical or private management.*
- 5. The provisions of this Code relating to the organisation and administrative activities are applicable to all activities of the Administration in the field of public management.*

6. *The provisions of this Code are also complementarily applicable to special procedures, provided that they do not cause the reduction of guarantees of individuals.”*

It should be noted that according to Paragraph 4, activities only conducted for the purpose of technical management shall also abide by the provisions of the *Code of Administrative Procedure*.

Therefore, administrative bodies should indicate the parametres and criteria upon which decisions regarding technical matters are based and make clear to the public, particularly the interested parties, the rationales and grounds for making such decisions. Administrative bodies are also to bear any civil compensation liabilities even if they have to resort to initial solutions due to the unavailability of better ones.

In addition, when making decisions administrative bodies must strictly comply with the two major principles laid down in Article 5 and Article 8 of the *Code of Administrative Procedure*, namely “principle of proportionality” and “principle of good faith”.

With regard to the “principle of proportionality”, Article 5 of the *Code of Administrative Procedure* provides that:

**“Article 5
(Principle of equality and proportionality)**

1. *In their relations with individuals, Public Administration must be governed by the principle of equality and must not favour, benefit and harm any persons, deprive them of any right or exempt them from any duty on the basis of their ancestry, sex, race, language, original place of residence, religion, political or ideological convictions, education, economic situation or social status.*
2. *The management decisions which conflict with rights or legally protected interests of individuals can only affect such rights and interests when the objectives to be obtained are appropriate and proportionate.”*

With regard to the “principle of good faith”, Article 8 of the *Code of Administrative Procedure* provides that:

**“Article 8
(Principle of good faith)”**

1. *In the exercise of administrative activities of any forms in any phases, Public Administration and individuals should act and establish relations according to the rules of good faith.*
2. *When the provisions of the preceding paragraph are observed, the fundamental values of law significant in certain situations shall be considered, in particular:*
 - a) *Trust of the counterpart raised by relevant activities;*
 - b) *The objective to be achieved from the undertaken activity.”*

Therefore, a proposal that is reasonable, the most cost efficient and with the least adverse impact should be chosen without prejudice to the objectives to be achieved and the approach to be adopted. Any irregularity or deviation will be deemed as a violation of the principles of public administration. In severe situations relevant administrator shall even be subject to legal liabilities.

Judging by the above considerations, the CCAC has the power to intervene in any administrative procedure, regardless of whether there has been a final decision or public money is involved or not.

However, there are quite some special factors that are worth our attention in this case, as follows:

Usually speaking, the intervention of the CCAC is requested upon the receipt of complaint against a decision made by the Public Administration on an issue or the execution of relevant acts that may be detrimental to the interest of the complainant.

In this case, however, there is no decision made by the Public Administration on the issues raised in the complaint yet. The issues are largely related to the period between planning and execution, which leaves the CCAC in a somewhat passive position in the intervention. This is an issue that inevitably comes along with “prior supervision”. However, if the matter of such far-reaching significance were only subject to “subsequent supervision” (which occurs only when the construction has been completed), irreversible consequences would probably be seen. An enormous

damage may be done if an erroneous decision has been made.

In fact, this is probably one of the most technical, complex, far-reaching and sensitive issue that the CCAC has dealt with in recent years. Nevertheless, the CCAC will fulfil its duty independently according to law as it always does.

* * *

2. Relevant technical issues

The construction of the light rail system in Macao is undoubtedly an enormous initiative. From carrying out preparatory work to deciding the construction of light rail, a multitude of statistics and information need to be collected and analysed. In addition, it is indispensable to carry out site surveys and make necessary adjustments according to various actual factors, including the form and structure of streets, geologic characteristics, city planning, traffic requirements and demographics. Such factors should by no means be ignored.

In such context, a few important technical elements must be determined, including:

- road space to be occupied by the railway tracks;
- materials to be used;
- design of mechanical parts and railway tracks;
- standards and factors of fire safety, etc.

When it comes to fire safety, undoubtedly, the set of standards currently adopted in Macao were not intended for the construction of mass transit systems, like the light rail project. Therefore, introducing standards that are internationally recognised or adopted by advanced countries is a must.

We believe these technical standards should be determined at the design stage, and that the applicability of usual standards adopted by foreign countries should not be decided only when the construction plan and routes of the light rail are already confirmed. This clearly shows that the competent department has failed to carry

out strict technical inspection and conduct relevant activities in proper ways. These issues will be analysed in detail later.

* * *

Part V: Introduction to the light rail system

First, let us look at some basic information about light rapid transit.

According to the data available, light rail was the earliest means of rail transport adopted in metropolises in the world. Over a span of more than ten years, due to the disadvantages of road transport, such as pollution, traffic congestion and inefficient utilisation of energy resources, many cities that once relied on road transport started to adopt rail transport systems. Nevertheless, before deciding which type of rail transport to be adopted, it is necessary to take several factors into account, including passenger load forecast, geographical characteristics, environmental impact and economic effectiveness.

The advantages of light rapid transit can be summarised as follows:

- (1) Great capacity to accommodate different passenger loads;
- (2) High productivity service;
- (3) Lower level of noise and air pollution;
- (4) High degree of comfort.

Light rapid transit also has some drawbacks, including:

- (1) High construction and maintenance costs;
- (2) Negative visual impact of overhead cables.

* * *

Classification of the systems:

The rail transport systems can be classified according to the “track gauge³²”, the “right of way” and the “length of route”. Details are as follows:

1. Classification by track gauge:

- (1) **Standard gauge:** The gauge of 1,435mm (4 ft 8½ in), started to be adopted by the International Union of Railways as an international standard in 1937, is used by about 60% of the world’s railways at present, including Taipei (Taipei Metro), Japan (SKS), France (TGV) and Germany (ICE). The standard gauge, also known as international gauge, originated in the UK.
- (2) **Broad gauge:** This is wider than the standard gauge. Among the three existing gauges, broad gauge is the least adopted and is mostly adopted to meet national needs. Broad gauge tracks are used in Russia (1,524mm) and Spain (1,674mm).
- (3) **Narrow gauge:** This is more narrow than the standard gauge. It varies in width due to the need to adapt to various landforms, including the most common types of 1,067mm and 762mm. Narrow gauge railways can be seen in places such as Taiwan (1,067mm) and forests (762mm).

Since railways started to emerge in the 19th century, debates regarding which type of gauges is the best have come along. As viewed from the modern standpoint, neither narrow gauge nor broad gauge has noticeable advantages. Reasons are as follows:

- The heaviest freight trains in the world can run on standard gauges in the United States and Australia. This means that broad gauge railways do not necessarily have a higher freight capacity.
- The standard gauge is also used in high-speed railways. This means that broad gauge railways do not necessarily support high speed trains better than the others.

³² Gauge is the distance between the two rails on a railway track (the measurement between the inner faces of the two rails).

- There are also very heavy trains running on narrow gauge railways (1,067mm) in Queensland of Australia and South Africa. This means narrow gauge railways do not necessarily have a lower carrying capacity.
- The difference between the construction cost of a standard gauge railway and that of a narrow gauge railway is not significant.
- It is possible to build narrow gauge railways with a carrying capacity identical to that of standard gauge railways.

Judging from the above facts, it can be believed that laying broad or narrow gauge tracks are not necessarily more cost saving than laying standard gauge tracks, and that the former are not as compatible as the latter.

* * *

2. Classification by right of way

Rights-of-way can be divided into three types, as follows:

- (1) Type A: With this right of way, vehicles travel on reserved routes, lanes, or tracks that are separate from ordinary roads, and therefore no level crossings can be seen. Such tracks can be elevated off the ground, go underground or be at ground level. High-speed rail transport and rapid transit have such right of way.
- (2) Type B: With this right of way, vehicles travel on both reserved tracks and tracks intersected with roads intended for other means of transport. The light rapid systems of many foreign countries have such right of way.
- (3) Type C: With this right of way, vehicles travel on the tracks built along ordinary roads for other means of transport. Trams or trolleybuses have such right of way.

* * *

3. Classification by length of route

A Rail Rapid Transit (RRT) system must meet the following five conditions:

- Being a mass transit system;
- Circulating within the city;
- Being driven by electricity;
- With majority of the routes running on tracks separated from other roads and railroad tracks;
- Providing frequent service.

In most cities, sections of a rail rapid transit system that circulate around the city centre are laid in underground tunnels, and therefore they are also called “underground railroad” or “metro”³³.

* * *

³³ In Taiwan this is called Mass Rapid Transit system (MRT).

Part VI: Technical standards necessary for the construction of the LRT system in Macao

So far, there are no specific rules for railway transport in the legal system of Macao. Therefore, the introduction of rules of foreign countries is inevitable.

According to Article 46.4 of the *Fire Safety Regulation* approved by Decree Law no. 24/95/M of 9th June:

*“46.4 Fire safety systems, facilities and equipment shall be planned, designed, executed and assembled in accordance with the technical standards and rules contained in the legislation and regulations currently in force in Macao; **when such standards and rules are absent, specific technical standards and rules contained in legislation and regulations internationally recognised and accepted by DSSOPT shall be observed, particularly those currently in force in Portugal, the neighbouring territory Hong Kong (Codes of Practice), the UK (British Standards) or the United States of America (NFPA Standards).**”*

NFPA stands for National Fire Protection Association³⁴, and has two meanings, as follows:

It is understood as “Fire Protection Association of the U.S.” (National Fire Protection Association). Established in 1896, it aims to promote the development of fire protection science, improve fire protection technologies, organise information exchange and formulate standards for the installation of fire protection systems and thus to minimise the loss of life and property in the event of fires. As an international technical and educational organisation, it has 150 institutional members, 75,000 individual members, and members from more than 80 countries. Its missions include formulating standards and criteria and recommending fire operation rules, manuals, guides and standard provisions.

“NFPA” also means a set of standards for fire protection design of buildings, fire and rescue training, fire equipment (e.g., 1983, 1670) and the like. These standards have gained domestic and international recognition and many of them have been adopted by the American National Standards Institute (ANSI).

³⁴ Information is available on this website: www.nfpa.org and <http://baike.baidu.com/view/2249268.htm>.

In addition, the Association participates in standard drafting in conjunction with the International Organisation for Standardisation (ISO) and the Commission for the Canadian Electrical Code (CECC). It also maintains collaborative relationships with agencies such as the Department of Labour (DL), the Department of Health, Education and Welfare (DHEW), the National Bureau of Standards (NBS), the General Services Administration (GSA) and the Department of Housing and Urban Development (HUD) in the United States. NFPA makes its searchable database of standards, publication information, periodicals and meeting minutes available on its website.

NFPA 130 is known as NFPA 130:2010³⁵ Standard for Fixed Guideway Transit and Passenger Rail Systems. NFPA 130 covers fire protection requirements for all metro, rail transit and railroad systems. The purpose of this standard is to establish minimum requirements that will provide a reasonable degree of safety from fire and its related hazards in fixed guideway transit and passenger rail system environments.

NFPA 130 is officially known as:

- NFPA 130:2010 *Standard for Fixed Guideway Transit and Passenger Rail Systems*

³⁵ NFPA130 (*Standard for Fixed Guideway Transit and Passenger Rail Systems*) (According to the information on the internet, the updated version of 2011 is available).

Railway components tested by NFPA 130 are as follows:

Category	Function of Material	Test Item	Test Method
Cushioning	All individual flexible cushioning materials used in seat cushions, mattresses and mattress pads	Surface Flammability	ASTM D 3675
		Smoke Density	ASTM E 662
Fabrics	Seat upholstery, mattress ticking and covers, window shades, etc	Burning behaviour	14 CFR 25
		Smoke Density	ASTM E 662
Interior vehicle components	Seat and mattress frames, wall and ceiling lining and panels, partitions, wind-screens, component boxes and covers.	Surface Flammability	ASTM E 162
		Smoke Density	ASTM E 662
	Flexible cellular foams used in armrest and seat and mattress padding	Surface Flammability	ASTM D 3675
		Smoke Density	ASTM E 662
	Thermal and acoustical insulation	Surface Flammability	ASTM E 162
		Smoke Density	ASTM E 662
	HVAC ducting	Surface Flammability	ASTM E162
		Smoke Density	ASTM E 662
	Floor covering	Critical Radiant Flux of Floor-Covering System	ASTM E 648
		Smoke Density	ASTM E 662
	Light diffusers, transparent plastic windscreens, etc.	Surface Flammability	ASTM E 162
		Smoke Density	ASTM E 662
Elastomers	Window gaskets, door nosings, etc.	Flame propagation	ASTM C 1166
		Smoke Density	ASTM E 662

Exterior vehicle components	Roof housings, exterior covering of vehicles	Surface Flammability	ASTM E 162
		Smoke Density	ASTM E 662
Wire and cable	All	Cable Flammability	UL 1581
		Smoke Density	ASTM E 662
Structural component	Flooring, other	Fire Resistance	ASTM E 119

Adopted by most countries and regions of the world, the NFPA130 has a very complete set of standards relating to rail transit systems, structure and design. The index is provided in the following to show the fundamental standards for different categories.

Chapter 1 Administration.....	130– 7	5.4 Wiring Requirements.....	130–12
1.1 Scope.....	130– 7	5.5 Means of Egress.....	130–13
1.2 Purpose.....	130– 7	5.6 Emergency Lighting.....	130–16
1.3 Application.....	130– 7	5.7 Fire Protection.....	130–16
1.4 Equivalency.....	130– 7	5.8 Storage Tanks and Service Stations.....	130–17
1.5 Units and Formulas.....	130– 7	5.9 Interior Finish.....	130–17
Chapter 2 Referenced Publications.....	130– 8	5.10 Rubbish Containers.....	130–17
2.1 General.....	130– 8	5.11 Combustible Furnishings and Contents.....	130–17
2.2 NFPA Publications.....	130– 8	Chapter 6 Trainways	130–17
2.3 Other Publications.....	130– 8	6.1 Applicability.....	130–17
2.4 References for Extracts in Mandatory Sections.....	130– 9	6.2 Egress and Emergency Access.....	130–17
Chapter 3 Definitions.....	130– 9	6.3 Construction Materials.....	130–19
3.1 General.....	130– 9	6.4 Traction Power.....	130–21
3.2 NFPA Official Definitions.....	130– 9	6.5 Protection.....	130–21
3.3 General Definitions.....	130–9	6.6 Flammable and Combustible Liquids Intrusion.....	130–22
Chapter 4 General.....	130–11	Chapter 7 Emergency Ventilation System.....	130–23
4.1 Fire Safety of Systems.....	130–11	7.1 General.....	130–23
4.2 Goal.....	130–11	7.2 Design.....	130–24
4.3 Objectives.....	130–12	7.3 Emergency Ventilation Fans.....	130–24
4.4 Assumption of a Single Fire Event.....	130–12	7.4 Devices.....	130–24
4.5 Shared Use by Freight Systems.....	130–12	7.5 Shafts.....	130–25
4.6 Fire Scenarios.....	130–12	7.6 Emergency Ventilation System Control/Operation.....	130–25
Chapter 5 Stations.....	130–12	7.7 Power and Wiring.....	130–25
5.1 General.....	130–12		
5.2 Construction and Compartmentation.....	130–12		
5.3 Ventilation.....	130–12		

Chapter 8 Vehicles.....	130–26	Chapter 10 Communications.....	130–34
8.1 Applicability.....	130–26	10.1 General.....	130–34
8.2 Compliance Options.....	130–26	10.2 Operations Control Center (OCC) and Command Post Relationship.....	130–34
8.3 Equipment Arrangement.....	130–26	10.3 Radio Communication.....	130–34
8.4 Flammability and Smoke Emission.....	130–26	10.4 Telephone.....	130–35
8.5 Fire Performance.....	130–28	10.5 Portable Telephones and Lines.....	130–35
8.6 Electrical Fire Safety.....	130–28	10.6 Public Address (PA) System.....	130–35
8.7 Ventilation.....	130–31	10.7 Portable Powered Speakers (Audiohailers).....	130–35
8.8 Emergency Egress Facilities.....	130–31	Chapter 11 Control and Communication System Functionality, Reliability, and Availability.....	130–35
8.9 Protective Devices.....	130–31	11.1 General.....	130–35
8.10 Vehicle Support and Guidance System.....	130–32	11.2 Train Control.....	130–35
8.11 Engineering Analysis Option.....	130–32	11.3 Functionality, Reliability, and Availability of Control Systems	130–35
Chapter 9 Emergency Procedures.....	130–32	Annex A-Explanatory Material.....	130–35
9.1 General.....	130–32	Annex B-Ventilation.....	130–43
9.2 Emergency Management.....	130–32	Annex C-Means of Egress Calculations for Stations.....	130–46
9.3 Emergencies.....	130–33	Annex D-Rail Vehicle Fires.....	130–51
9.4 Emergency Procedures.....	130–33	Annex E-Fire Hazard Analysis Process.....	130–53
9.5 Participating Agencies.....	130–33	Annex F-Creepage Distance.....	130–56
9.6 Operations Control Center (OCC).....	130–33	Annex G-Informational References.....	130–57
9.7 Liaison.....	130–34	Index.....	130–59
9.8 Command Post.....	130–34		
9.9 Auxiliary Command Post.....	130–34		
9.10 Training, Exercises, Drills, and Critiques.....	130–34		
9.11 Records.....	130–34		
9.12 Removing and Restoring Traction Power.....	130–34		

In addition, two of the chapters are cited here for better illustration:

Chapter 6 covers standards for railways, as follows:

Chapter 6 Trainways

6.1* ***Applicability.** This chapter applies to all portions of the trainway, including pocket storage and tail tracks not intended for occupancy by passengers.*

6.2 ***Egress and Emergency Access.***

6.2.1 ***General.***

6.2.1.1* *The system shall incorporate a walk surface or other approved means for passengers to evacuate a train at any point along the trainway so that they can proceed to the nearest station or other point of safety.*

6.2.1.2 *System egress points shall be illuminated.*

6.2.1.3 *Where the trainway track bed serves as the emergency egress pathway, it shall be nominally level and free of obstructions.*

6.2.1.4 *Walking surfaces shall have a uniform, slip-resistant design.*

6.2.1.5 *In areas where cross-passageways are provided, walkways shall be provided on the cross-passageway side of the trainway for unobstructed access to the cross-passageway.*

6.2.1.6 *Crosswalks shall be provided at track level to ensure walkway continuity.*

6.2.1.7 *Crosswalks shall have uniform walking surface at the top of the rail.*

6.2.1.8 *Walkway continuity shall be maintained at special track sections (e.g., crossovers, pocket tracks).*

6.2.1.9* *The means of egress within the trainway shall be provided with an unobstructed clear width graduating from the following:*

(1) 610 mm (24 in.) at the walking surface to

(2) 760 mm (30 in.) at 1420 mm (56 in.) above the walking surface and to

(3) 610 mm (24 in.) at 2025 mm (80 in.) above the walking surface

6.2.1.10* Guards.

6.2.1.10.1 *Raised walkways that are more than 760 mm (30 in.) above the floor or grade below shall be provided with a continuous guard to prevent falls over the open side.*

6.2.1.10.2 *Guards shall not be required along the trainway side of raised walkways where the bottom of the trainway is closed by a deck or grating.*

6.2.1.10.3 *Guards shall not be required on raised walkways that are located between two trainways.*

6.2.1.11* Handrails.

6.2.1.11.1 *Raised walkways shall be provided with a continuous handrail along the side opposite the trainway.*

6.2.1.11.2 *Raised walkways that are greater than 1120 mm (44 in.) wide and located between two trainways shall not be required to have a handrail.*

6.2.1.12 *Passengers shall enter the trainways only in the event that it becomes necessary to evacuate a train.*

6.2.1.13 *Evacuation shall take place only under the guidance and control of authorized, trained system employees or other authorized personnel as warranted under an emergency situation.*

6.2.2 Means of Egress Underground.

6.2.2.1 General. *Exit stairs and doors shall comply with Chapter 7 of NFPA 101, except as herein modified.*

6.2.2.2* Number and Location of Means of Egress Routes.

6.2.2.2.1 *Within underground or enclosed trainways, the maximum distance between exits shall not exceed 762 m (2500 ft).*

6.2.2.2.2 *For exit stairs serving underground or enclosed trainways, the width of exit stairs shall not be required to exceed 1120 mm (44 in.).*

6.2.2.3 ***Cross-Passageways.***

6.2.2.3.1 *Cross-passageways shall be permitted to be used in lieu of emergency exit stairways to the surface where trainways in tunnels are divided by a minimum of 2 hour-rated fire walls or where trainways are in twin bores.*

6.2.2.3.2 *Where cross-passageways are utilized in lieu of emergency exit stairways, the following shall apply:*

- (1) Cross-passageways shall not be farther than 244m (800 ft) apart.*
- (2)* Cross-passageways shall not be farther than 244m (800 ft) from the station or tunnel portal.*
- (3) Cross-passageways shall be a minimum of 1120 mm (44 in.) in clear width and 2100 mm (7 ft) in height.*
- (4) Openings in open passageways shall be protected with fire door assemblies having a fire protection rating of 1 1/2 hours with a self-closing fire door.*
- (5) A tenable environment shall be maintained in that portion of the trainway that is not involved in an emergency and that is being used for evacuation.*
- (6) A ventilation system for the contaminated tunnel shall be designed to control smoke in the vicinity of the passengers.*
- (7) Provisions shall be made for evacuating passengers via the non-incident trainway to a nearby station or other emergency exit.*
- (8)* The provisions shall include measures to protect passengers from oncoming traffic and from other hazards.*

* * *

7.1, 7.2, 7.3 of the Chapter 7 cover the design of railways, as follows,

Chapter 7 Emergency Ventilation System

7.1 General.

7.1.1* *This chapter defines the requirements for the environmental conditions and the mechanical and nonmechanical ventilation systems used to meet those requirements for a fire emergency in a system station or trainway as required by Section 5.3 and 6.3.2.*

7.1.2 *The requirement for a mechanical or nonmechanical system intended for the purpose of emergency ventilation shall be determined in accordance with 7.1.2.1 through 7.1.2.4.*

7.1.2.1 *For length determination, all contiguous enclosed trainway and underground system station segments between portals shall be included.*

7.1.2.2 *A mechanical emergency ventilation system shall be provided in the following locations:*

- (1) *In an enclosed system station*
- (2) *In a system underground or enclosed trainway that is greater in length than 305 m (1000 ft)*

7.1.2.3 *A mechanical emergency ventilation system shall not be required in the following locations:*

- (1) *In an open system station*
- (2) *Where the length of an underground trainway is less than or equal to 61 m (200 ft)*

7.1.2.4 *Where supported by engineering analysis, a nonmechanical emergency ventilation system shall be permitted to be provided in lieu of a mechanical emergency ventilation system in the following locations:*

- (1) *Where the length of the underground or enclosed trainway is less than or equal to 305m(1000 ft) and greater than 61m (200 ft)*

- (2) *In an enclosed station where engineering analysis indicates that a nonmechanical emergency ventilation system supports the tenability criteria of the project.*

7.1.2.5 *In the event that an engineering analysis is not conducted, or does not support the use of a nonmechanical emergency ventilation system for the configurations described in 7.1.2.4, a mechanical emergency ventilation system shall be provided.*

7.1.3 *The engineering analysis of the ventilation system shall include a validated subway analytical simulation program augmented as appropriate by a quantitative analysis of airflow dynamics produced in the fire scenario, such as would result from the application of validated computational fluid dynamics (CFD) techniques. The results of the analysis shall include the no-fire (or cold) air velocities that can be measured during commissioning to confirm that a mechanical ventilation system as built meets the requirements determined by the analysis.*

7.1.4 *Where required by 7.1.2, the mechanical emergency ventilation system shall make provisions for the protection of passengers, employees, and emergency personnel from fire and smoke during a fire emergency.*

7.2 ***Design.***

7.2.1 *The emergency ventilation system shall be designed to do the following:*

- (1) *Provide a tenable environment along the path of egress from a fire incident in enclosed stations and enclosed Trainways*
- (2) *Produce sufficient airflow rates within enclosed trainways to meet critical velocity*
- (3) *Be capable of reaching full operational mode within 180 seconds*
- (4) *Accommodate the maximum number of trains that could be between ventilation shafts during an emergency*
- (5) *Maintain the required airflow rates for a minimum of 1 hour but not less than the required time of tenability*

7.2.1.1 *Where the airflow rates required to accomplish 7.2.1(1), 7.2.1(2), or*

approved alternative performance criteria are dependent upon the unimpaired function of the air distribution system, that system shall be designed to continue operation when exposed to the conditions generated during the design incident for the duration determined as per 7.2.1(5). Although rating is not required, materials or systems that are fire rated for the required duration shall be permitted to be used.

7.2.2 *Point-extract ventilation systems shall be permitted subject to an engineering analysis that demonstrates the system will confine the spread of smoke in the tunnel to a length of 150 m (500 ft) or less.*

7.2.3 *The design shall encompass the following:*

- (1) The fire heat release rate and fire smoke release rate produced by the combustible load of a vehicle and any combustible materials that could contribute to the fire load at the incident site*
- (2) The fire growth rate*
- (3) Station and trainway geometries*
- (4) The effects of elevation, elevation differences, ambient temperature differences, and ambient wind*
- (5) A system of fans, shafts, and devices for directing airflow in stations and trainways*
- (6) A program of predetermined emergency response procedures capable of initiating prompt response from the operations control center in the event of a fire emergency*
- (7) A ventilation system reliability analysis that, as a minimum, considers the following subsystems:*
 - (a) Electrical*
 - (b) Mechanical*
 - (c) Supervisory control*

7.2.4 *Criteria for the system reliability analysis in 7.2.3(6) shall be established and approved.*

7.2.4.1 *The analysis shall consider as a minimum the following events:*

- (1) Fire in trainway or station*
- (2) Local incident within the electrical utility that interrupts power to the emergency ventilation system*
- (3) Derailment*

7.2.5* *The design and operation of the signaling system, traction power blocks, and ventilation system shall be coordinated to match the total number of trains that could be between ventilation shafts during an emergency.*

7.2.6* *The time-of-tenability criteria for stations and tunnels shall be established and approved. For stations, the time shall be greater than the calculated egress time used to establish egress capacity in 5.5.6.*

7.3 *Emergency Ventilation Fans.*

7.3.1 *The ventilation system fans that are designated for use in fire emergencies shall be capable of satisfying the emergency ventilation requirements to move tunnel air in either direction as required to provide the needed ventilation response.*

7.3.1.1 *Individual emergency ventilation fan motors shall be designed to achieve their full operating speed in no more than 30 seconds from a stopped position when started across the line and in no more than 60 seconds for variable-speed motors.*

7.3.1.2 *The ventilation system designated for use in emergencies shall be capable of operating at full capacity in either the supply mode or exhaust mode to provide the needed ventilation response where dilution of noxious products is to be maximized.*

7.3.1.3 *The ventilation system designated for use in emergencies shall be capable of being turned off and dampers closed to provide the needed ventilation response where dispersion of noxious products is to be minimized.*

7.3.2 *Emergency ventilation fans, their motors, and all related components exposed to the exhaust airflow shall be designed to operate in an ambient*

atmosphere of 250°C (482°F) for a minimum of 1 hour but not less than the required time of tenability.

- 7.3.2.1** *An engineering design analysis shall be permitted to be used to reduce this temperature; however, the temperature shall not be less than 150°C (302°F).*
- 7.3.3** *Fans shall be rated in accordance with the ANSI/AMCA 210, AMCA 300, AMCA 250, ASHRAE Handbook—Fundamentals, and ASHRAE 149.*
- 7.3.4** *Local fan motor starters and related operating control devices shall be located away from the direct airstream of the fans to the greatest extent practical.*
- 7.3.4.1** *Thermal overload protective devices on motor controls of fans used for emergency ventilation shall not be permitted.*
- 7.3.5** *Fans that are associated only with passenger or employee comfort and that are not designed to function as a part of the emergency ventilation system shall shut down automatically on identification and initiation of a fire emergency ventilation program so as not to jeopardize or conflict with emergency airflows.*
- 7.3.5.1** *Nonemergency ventilation airflows that do not impact the emergency ventilation airflows shall be permitted to be left operational where identified in the engineering analysis.*
- 7.3.6** *Critical fans required in battery rooms or similar spaces where hydrogen gases or other hazardous gases might be released shall be designed to meet the ventilation requirements of NFPA 91.*
- 7.3.6.1** *These fans and other critical fans in automatic train control rooms, communications rooms, and so forth, shall be identified in the engineering analysis and shall remain operational as required during the fire emergency.*

* * *

Among all the information presented to the CCAC, there was no document showing that any of these standards were adopted or considered in relevant project

design analysis. It should be noted that scientific data and technical standards must always be presented when it comes to achieving public acceptance of a project. This is what is expected in public administration and how public interest can be protected.

Even though GIT did not compare relevant data or carry out necessary technical analysis, the company awarded the contract of the project has the obligation to provide detailed technical information on such aspects. However, we did not find any such material.

* * *

Part VII: Irregularities found in the process of design and construction of the LRT system

In this part we will look at the problems found in the work performed by GIT and relevant departments in relation to the LRT project.

Analysis will be carried out on the following aspects:

1. Application of technical standards (unclear application);
2. Consultation on the construction of the light rail and route selection (insufficient and incomplete consultation);
3. Design;
4. Technical considerations reflected on the drawings.

* * *

Point 1: Application of technical standards (unclear application)

According to the information collected, in the preparatory stage and the final decision stage of the construction of the LRT system, GIT held various meetings with other public departments. Many of them were held with the Fire Services Bureau (CB). Some of these meetings will be shown here as examples for the purpose of our analysis.

- (1) In the afternoon of 30th July 2009, GIT held a meeting with CB representatives on the subject “presentation and discussion on fire prevention equipment to be installed in the light rail stations”. At the meeting, the CB representatives raised a question:

“Do the fire prevention system and equipment to be installed in the light rail stations conform to the rules provided in the Fire Safety Regulation’?”

- (2) The following is the response of the GIT representatives:

“Since there is no specific provision about the installation of the fire prevention facilities in light rail stations, NFPA 130 standards are adopted for the design of relevant system and equipment.”

- (3) The reply clearly shows that relevant design should have been conducted according to NFPA 130 standards. The reason is simple: **It is impossible to commence design work before the standards are decided.**

- (4) The CB representatives also made the following request at the meeting:

“Certification from NFPA 130 regarding the distance between fire prevention facilities should be presented.”

- (5) CB brings up a similar issue in a document drawn up on **29th September 2009**:

“The basis of design of the entire LRT system and its main stations must be explained in detail, especially when it comes to the design of fire prevention facilities; if relevant design is not to be done according to the Fire Safety Regulation, prior approval and authorisation must be obtained from the competent authorities.”

- (6) CB also points out the following issues in a document drawn up on **23rd June 2010**:

“1. Since CB has not yet received formal design drawings of the LRT system, no opinion regarding its fire safety can be given so far. As soon as final drawings are received, CB will give necessary advice according to relevant legislation and actual circumstances.

2. Tracks and train platforms to be built along the light rail must be designed to present no obstruction to fire-fighting and rescue operations. The design should conform to the provisions of Article 8³⁶ of the Fire

³⁶ The content of the article is as follows:

“Article 8°

(Conditions of accessibility and intervention)

- 8.1. *The location and urban integration of the buildings shall be subject to conditions that allow access of firefighters and fire service.*
- 8.2. *Buildings shall be served by roads that allow approach, parking, maneuver and operation of fire engines and aerial ladder trucks, in order to facilitate access from the outside to the various units of the floors, either directly or through public horizontal ingresses from the front of the buildings; Such roads, even when established in the private property, shall be permanently connected to public roads.*
- 8.3. *The roads for access shall have the following characteristics:*
 - a) *A minimum of 3.5 m in clear width;*
 - b) *A minimum of 5.0 m in clear height;*
 - c) *A minimum of 13.0 m as the bending radius.*
- 8.4. *In the zones where buildings have adjoining walls referred to in Paragraph 12, the roads must have areas for parking, maneuver and operation of fire engines and aerial ladder trucks. The areas shall also meet the following conditions:*
 - a) *The distance from the edge of the area to the walls of the building shall be big enough to allow the operation of aerial ladder trucks;*
 - b) *A minimum of 16.0 m in length;*
 - c) *A minimum of 6.0 m in clear width, which should be expanded to 8.0 m for roads without a way out;*
 - d) *Being situated at a plane distance not less than 8.0 m from the access points of the building to allow the parking of fire engines and aerial ladder trucks 3.0-10.0 m away from the outer walls of the building;*
 - e) *Allowing access to the front of the building without obstacles;*
 - f) *A maximum inclination of 10%;*
 - g) *Being able to support a vehicle with a weight of 230 KN (i.e., 155 KN of the rear axle load and 75 KN of the front axle load). The distance between the two axles shall be able to reach 4.5 m;*
 - h) *Being able to resist a puncture force of 150 KN over an area of 20 mm in diameter;*
 - i) *Being absolutely free of benches, trees, flower troughs, lamps, kerbs or other obstacles that impede access of the vehicles mentioned earlier.*
- 8.5. *The buildings of Class P and Class M, except those of Group VII, Class A and Subclass A1, except those of Groups VI, VII and VIII, and Class A and Subclass A2 of Group I must be served by accessible roads and areas for parking, maneuver and operation of fire engines along at least one side of the building.*
- 8.6. *The buildings of Class A and Subclass A1 of Group VII, Class A of Groups VI, VII and VIII, Class P and Class M of Subclass A2, except those of Group I and Class MA must be served by accessible roads and areas for parking and maneuver of fire engines and aerial ladder trucks along at least two sides of the building.*
- 8.7. *For buildings of Class P of Group I, the areas for parking and maneuver of fire engines and aerial ladder trucks can be located at a distance not exceeding 30.0 m from any egress of the escape routes of the building.*
- 8.8. *When it is not possible to observe the provisions of Paragraphs 5 and 6 due to the shape of the lot, the buildings of Class A and Subclass A2, except those of Groups I, VI, VII and VIII and Class MA, except those of Groups VII and VIII shall be served by accessible roads and areas with a minimum span of 12.0m*

Safety Regulation’.

- (7) **In a letter written on 15th July 2011 (as a reply to the letter from GIT dated 8th July, 2011), DSSOPT writes the following:**

*“Regarding the subject of your letter, according to the order of the Director of DSSOPT of 12th July 2011, we hereby inform your office that, when there is no relevant standard or rule in the current Fire Safety Regulation, **DSSOPT has no objection** to the application of NFPA as the fire safety standards for rail transit.”*

So, here are parts of our conclusion:

- a) **Why did GIT not ask for DSSOPT’s opinion on the possibility of adopting NFPA 130 standards until as late as July 2011?**

for parking, maneuver and operation of fire engines and aerial ladder trucks along at least one side of the building. These buildings shall also meet one of the following conditions:

- a) Providing a refuge floor. For buildings of Class A and Subclass A2, the refuge floor shall not be located lower than half the height of the building or higher than 31.5 m; for buildings of Class MA, the refuge floor shall not be located lower than half the height of the building or higher than 47.0 m from the ground surface. In the latter case, the refuge floor shall not be higher than 47.0 m from the ground surface regardless of the height of the building;
- b) Providing vertical and horizontal external passages that directly serve the front of the building.

Note: At least 33.4% of the accessible walls mentioned in this paragraph shall provide access points to the building.

- 8.9. The buildings of Group VI shall not be higher than those of Class A. Also, buildings of Subclass A2 shall provide a refuge floor which shall not be located lower than half the height of the building or higher than 31.5 m from the ground surface.
- 8.10. All buildings with more than 30 floors or with a height greater than 90.0 m, except those of Group I, shall provide refuge floors, which shall not be more than 15 floors apart.
- 8.11. Buildings of Class A and Subclass A2 of Group IV with individual flats facing public roads that provide access, parking, maneuver and operation of fire engines and aerial ladder trucks, and those of Class MA of Groups I and IV, are exempt from compliance with the provisions of Paragraph 6.
- 8.12. The exterior walls (accessible walls) of buildings through which are expected to be possible for rescue operations and fire fighting shall not contain protruding objects that hinder the access points of the buildings (windows, balconies, verandas, etc.) and fixed structures (bars, gratings, fencing, etc.) that hinder the entry; in addition, when the access points are window openings, a minimum of 0.50 m of the window sills shall not have a thickness greater than 0.30 m to allow the attachment of hook ladders.
- 8.13. According to the provisions in Tables III and IV, buildings shall be, depending on their height, served by areas of certain ‘number’ and certain ‘outer perimeter’ that have access to the fronts and allow entry, parking, maneuver and operation of fire engines and aerial ladder trucks.”

- b) It also means that, up to then, GIT did not communicate with the competent department or present any documents regarding the technical issues to it.
- c) Also, in the reply letter of DSSOPT, we do not see any technical analysis or detailed reasoning. While it “had no objection” to application of NFPA 130, it did not give a clear assent to it either. What was the ground for this?

Judging from the above facts, the methods and data used by the competent department during the whole design process are far from convincing and illuminating. It is noteworthy that all of these are technical standards rather than dispensable reference information. According to information released by GIT on the internet, the design of the light rail system was already “finalised” in October 2010, so why was GIT still, in the year of 2011, raising the question of whether the NFPA 130 standards could be adopted? What was the reason of still seeking advice of other departments on such issues?

* * *

Point 2: Consultation on the construction of the light rail and route selection (insufficient and incomplete consultation)

Prior to making the decision to carry out consultation, a competent department should consider what should be covered in the consultation, including the following:

- (1) What the subject matter is (the content of consultation should be specific);
- (2) Whether consultation can be made on the relevant content or not;
- (3) What is the consultation for;
- (4) Who should be consulted with;
- (5) How the consultation should be carried out (methods);
- (6) How consultation results should be dealt with.

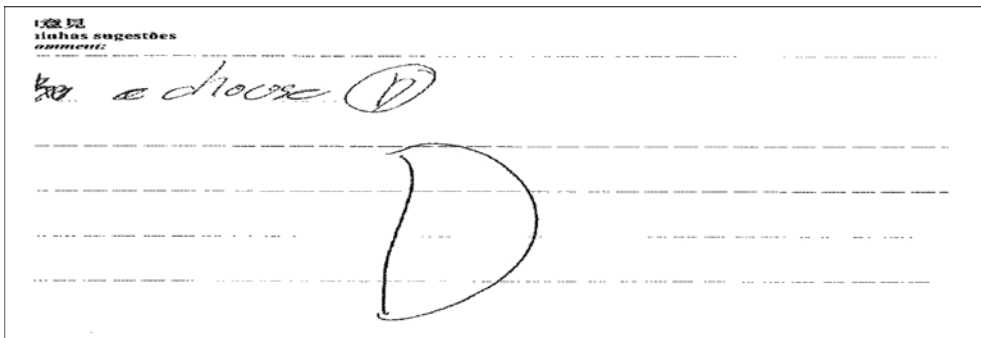
One should be clear that it is not possible to carry out consultation on some subjects or issues, such as technical standards. Therefore the competent

department should disclose the scientific data and technical standards to the general public faithfully and comprehensively. It should also point out the reason for using these data, as well as their advantages and disadvantages.

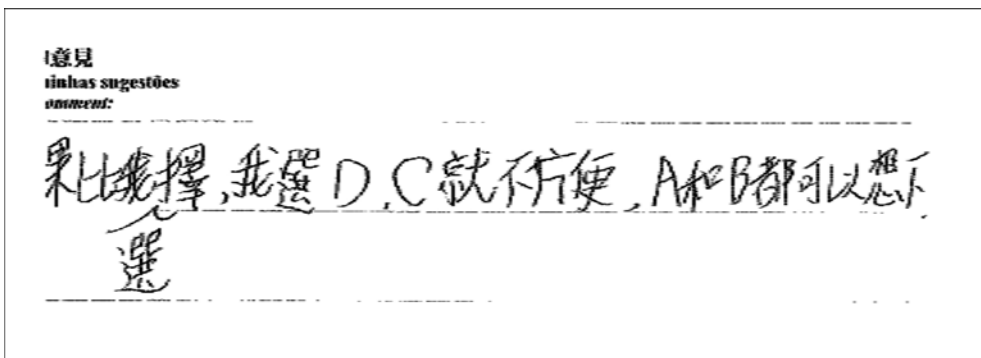
In addition, a detailed analysis report should be written after relevant consultation is completed, indicating how the data deriving from the consultation can be used.

During the construction of the light rail, the competent department did conduct several consultations to get public opinions. However, we have yet to see any elaborate report or convincing information indicating the reasons and grounds for changing the decisions made before and after the consultations, or any illuminating scientific data that the public can refer to.

Among the documents presented to the CCAC, we have found the following opinions from the consultations:



Suggested meaning: Choose D.



Suggested meaning: For me, I would choose D. C is inconvenient. A and B can also be considered.

意見
sugestões
comment:

得見
我 ~~想~~ 得有了
這些輕鐵，很方便。

Suggested meaning: I think LRT will provide lots of convenience for us.

意見
sugestões
comment:

A, B, C, D

Suggested meaning: A-B-C-D

意見
sugestões
comment:

非常好

Suggested meaning: Very Good.

意見

nhas sugestões
moment:

如欲興建軌道捷運,請盡快,
要阻礙:澳、氹、環~~乘~~乘公共交通
具的學生盡快興可令全澳大眾得
;以及希望票價能~~能~~保持4.5-7.5
-較好,以及多推優惠價。多謝。

Suggested meaning: If the construction of the light rail has been decided, please start the works as soon as possible, or it will cause trouble to students who need to travel between Macao, Taipa and Coloane by public transport. The general public in Macao will also benefit from it. Hopefully, the ticket prices will be set between MOP4.5-7.5 and there will be discounts. Thank you.

意見

nhas sugestões
moment:

好,這個好,希望政府早日建成這個捷

Suggested meaning: Good. This is good. I hope that the government will complete the construction of the light rail as soon as possible.

意見
inhas sugestões
nument:

這個捷運又方便、快捷、環保，具成本效益
交通工具，我個人最希望早日有輕鐵
個車線。

Suggested meaning: The LRT is convenient, comfortable and eco-friendly. It is a means of transportation that can maximise the benefit. Hopefully the light rail service will be provided in the near future.

意見
inhas sugestões
nument:

我要用D方案由馬場
東馬路至路水新外
不用探首、很快、安全。

Suggested meaning: I will go for Plan D - from Avenida Este do Hipódromo to Cotai. It is not necessary to (...)[illegible words]. It's fast and safe.

We remain rather sceptical about the objectivity of these responses and consultation results, and we doubt if these opinions are worth being used as reference.

The consultation methods and targets are also worth mentioning. If the light rail service is meant for those who live within 300 metres from the station³⁷, then the consultation should be conducted with a clear target group (i.e., it does not make

³⁷ This does not mean that the CCAC thinks “300 metres” is a suitable distance. We also have no idea why it has to be 300 metres but not 500 metres or others. In addition, if the LRT system meets the technical requirements, the proposed routes are in the public interest and the competent departments can present scientific data, we believe the targets of consultation should not be limited to merely residents living in the areas adjacent to the stations. All the Macao residents should be able to involve in the consultation.

sense to consult residents who live in Coloane about their opinions on operating the light rail service at Rua de Londres in Macao). The most effective way is to send the consultation documents to residents who live in the concerned areas and collect their opinions. In the consultation, the respective residents may be requested to provide residence information without having to reveal their personal data. In addition, with the data from the Cartography and Cadastre Bureau and the Statistics and Census Services, consultation can be carried out among residents who live in the possibly benefited or affected areas. This is the type of consultation that should be done to collect useful opinions. Those deemed too general and arbitrary should not be considered at all. One should bear in mind that the light rail system is a significant infrastructure project that will tremendously influence Macao for a few decades or even a century. It is far too important to be dealt with like a short-term issue.

Obviously, the competent department failed to recognise these facts. Revising the route of a segment and building rail tracks are two different subjects. They necessitate different types of consultation. Ordinary consultation cannot and should not be applied.

For instance, when consultation on elderly policies is to be made, secondary school students or tourists should not be a target (or the only target) to consult with; similarly, it does not make much sense to ask non-local workers about their opinions regarding Macao's education policies.

For such small cities like Macao, conducting a rigorous public consultation is not something extremely difficult. The key issue is whether appropriate methods and procedures are adopted or not.

In view of the far-reaching influence of the light rapid transit system on the city, safety and public interest must be regarded as two fundamental elements that must not be compromised. Since the project is deemed as "public property", it must be managed according to the rules of public administration. Despite that decision-making bodies have relatively greater discretion, it does not mean that they can act arbitrarily or make decisions on a coin flip. Each step and each decision must not only meet technical and safety standards, but must also be backed up and justified by clear rationale. They must be able to stand up to the voices of criticism and opposition from the society. Take, for example, the work of a doctor. It is unreasonable that a doctor gives no explanation to a patient about the diagnosis, remedy and prescription on the grounds that the patient has no medical knowledge. Therefore, as administrative bodies and staff, they must provide information everybody has the right to know.

This concept may also apply to the construction of light rail and route selection.

We came to know that at the preparatory stage the GIT had produced many publications and promotion materials in order to familiarise citizens with issues pertaining to the LRT system, including the following:

- *Research Report on Social and Economic Effectiveness of Phases I & II of Macao LRT System* (October 2010)
- A quarterly magazine - *LRT Zone*
- A brochure - *Introduction to LRT Route and Station Design of NAPE Zone*
- Construction Plan of Phase I of the Macao LRT System 2009
- Optimisation Program for the Macao LRT System 2007
- In-Depth Research on the Macao LRT System 2006
- Feasibility Study on the Macao LRT System 2005

We believe that the information about social and economic effectiveness of LRT is sufficient. However, the information about the most critical issues, i.e., technical standards and respective expositions, is still inadequate – this is also our main concern.

* * *

Point 3: Design

(I) – About the failure to comply with fire prevention provisions in Phase I of the LRT system (the segment of Rua de Londres and Rua Cidade do Porto)

According to the information from GIT, through Letter no. 736/ET/280/2009 dated 11th August 2009 and Letter no. 892/ET/337/2009 dated 24th September 2009,

GIT requested CB to give opinions on fire safety techniques and plan drawings for the routes and stations of Phase I of LRT. CB replied GIT in two letters, namely official letter no. 5129/DT/2009 and official letter no. 5656/DT/2009. (See Annex I)

The two reply letters are as follows:

“Subject: Request for opinions on fire safety techniques

Reference document: no. 736/ET/280/2009, 11/08/2009

On 11th August 2009, CB received the official letter no. 736/ET/280/2009 from GIT with plan drawings and documents enclosed. CB hereby gives its opinions, as follows:

Ø1. According to the preliminary designs of stations no. 1-5, 7 and 8, the locations of platforms and access staircases of station no. 3 (Estrada Marginal do Hipódromo) and station no. 7 (Dr. Carlos D’Assumpção Park) will affect the fire service intervention for the surrounding buildings .

Ø2. For the conditions of assess and intervention and the requirements on space for fire engines, please refer to the provisions of Article 8 of the Fire Safety Regulation.

*Plan Drawing Analysis Unit of Technical Support Department,
4th September 2009.”*

(Official letter no. 5129/DT/2009 of CB, 8th September 2009)

*** * ***

“Subject: Plan drawings for routes and stations of Phase I of LRT System

Reference document: no. 892/ET/337/2009, 24/09/2009

On 24th September 2009, CB received the official letter no. 892/ET/337/2009 from GIT with plan drawings/documents enclosed. CB hereby gives its opinions, as follows:

Ø1. The basis of design of the entire LRT system and its main stations must be explained in detail, particularly the design of fire prevention facilities; if relevant design is not to be done according to Fire Safety Regulation, prior approval and authorisation must be obtained from the competent authorities.

*Ø2. As for station no. 11, which is adjacent to the fire station at Sai Van Lake, CB considers that the infrastructure of the station **must bear a design that do not affect the maneuver of the fire engines of CB and its water rescue operations.***

Ø3. Measures to be taken to ensure the normal operation of the fire station at Sai Van Lake during the construction of station no. 11 should also be specified.

Ø4. CB believes it will better facilitate their fire fighting and rescue operations if the LRT has the capacity to transfer fire fighters and necessary equipment efficiently from the fire station to places where fire may break out at the light rail zones or surrounding areas (e.g., by providing exits leading to the fire station).

Ø5. The new projects submitted by GIT have shown the improvements made on the designs of stations no. 3 and 7 according to the opinion of CB mentioned in Ø1 of no. 1502/DT/UAP/2009, 07/09/2009.

*Plan Drawings Analysis Unit of Technical Support Department,
29th September 2009.”*

(Official letter no. 5656/DT/2009 of CB, 29th September 2009)

In addition, GIT disclosed the following information on its website:

*“The distance between the buildings on two sides of London Street [Rua de Londres] is 24 meters, and the width of the elevated rail is 9 meters. Consequently, if an elevated railway is built at the road centreline, **it will be 7.5-meter apart from the buildings on both sides of the road. The noise barrier wall will not be higher than 15 meters, which is equivalent to the height of the 4th floor; therefore, the views of the apartment above the 4th floor will not be affected.** On the other hand, the light rail project should comply with the Fire Safety Regulation and **the current ZAPE line can meet its requirement of a minimum 6-meter width.** It also has to pass the safety assessment processed by the international independent safety assessment consultants and meet the safety and other related standards given by the train supplier. Since the*

*residents' safety is always a high priority for the Government, the emergency response measures are set up to raise the safety standards, for example, to **buy targeted fire equipment and to exercise regular fire drills**. GIT, together with a few government departments, arranged a meeting with the representatives of the Macao Community Development Association (on 29th July 2011) and exchanged opinions on the issues residents were most concerned about. According to the government, the route at NAPE has eventually been decided after long-term study and extensive consultation. It would continue to ensure that the LRT system is safe and meets the requirements of environmental impact assessments and fire safety. GIT emphasised that the government would always give top priority to the lives and property of residents during the construction of the LRT system. It will strive to ensure that the LRT is safe, efficient and convenient when carrying out route planning and station design. When the construction of the LRT system is under process in the future, GIT will also join hands with public works, environmental protection and fire services departments to strictly supervise if relevant safety and environmental requirements are met. When it comes to fire safety, GIT has been in close communication with CB on related issues all along. In the planning and design stage of the LRT system, GIT carried out the design work in strict compliance with the safety standards on various aspects and presented them to responsible departments for review and evaluation. After detail design is completed, relevant plan drawings will be presented to CB for in-depth analysis and advice, so that relevant designs meets the fire safety requirements."*

We can draw the following conclusion from the above clarification:

1. GIT was trying to "varnish" the facts with nice words and vacuous remarks, instead of presenting technical data to convince the public.

" (...) the government would always give top priority to the lives and property of residents during the construction of the LRT system. It will strive to ensure that the LRT is safe, efficient and convenient when carrying out route planning and station design. When the construction of the LRT system is under process in the future, GIT will also join hands with public works, environmental protection and fire services departments to strictly supervise if relevant safety and environmental requirements are met. When it comes to fire safety, GIT has been in close communication with CB on related issues all along."

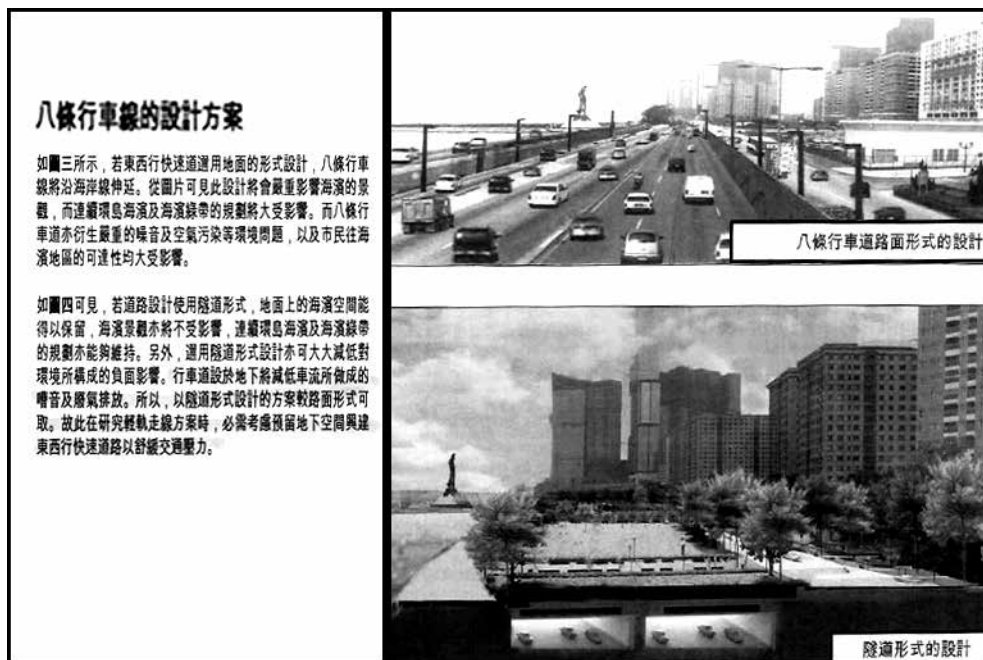
Such remark is not convincing at all. **The consideration for safety in the design procedure and route selection should not be confused with that in the light rail operation. In most situations, an error in the design procedure**

may lead to an irreversible consequence.

2. **Before making the decision to carry out the construction, GIT should have announced to the public the scientific data and standards it has decided to adopt.** It should have compared them with the existing data and standards, **and should have explained why their decision was correct and how it would meet the technical requirements.** This is how people should be convinced with justifiable grounds. For example, Chapter VI of NFPA130 sets the widths of the railways. Therefore, if the width of the street is X metres that does not meet the standard, the proposal should not be adopted. This is what a report or a technical explanation should be like.
3. It is far from being convincing if, even in the conception and design stage, only empty remarks, instead of technical standards or facts, are presented to the public. As mentioned above, one should not confuse the qualified data (including data for deciding the routes) at the design stage with the fire safety data to be based on when the LRT system is operated. Significant amendments or revision can still be made at the design stage. However, it will be too late and too difficult to make any changes or adjustments after the light rail goes into operation. The competent department should therefore be aware of this fact. After all, building a large infrastructure is not as simple as buying vegetables in the market. If you do not like the vegetables you have bought, you just throw them away - it only costs you a penny.
4. **In 2011, GIT were still consulting CB in a few official letters if the design can be based on NFPA 130 standards. This demonstrates that GIT was not clear about the matter from the very beginning.** Strictly speaking, before any design work should take place, GIT should have a document detailing which NFPA 130 standards are applicable to the light rail project and make it open to the public. However, GIT has never done this. If GIT itself is not sure which NFPA standards are applicable and which are not, we doubt if any of its technical decisions is convincing at all. Even if GIT defends that the contractors should be responsible for making relevant decisions because the major parts of the project (including design work) have been outsourced to them, it is logically wrong: if a department with decision-making power has no idea what to base on when making a decision, how can it decide if a proposal complies with relevant technical requirements and safety standards or not?

5. What is also worth our attention is that according to GIT, “The distance between the buildings on two sides of London Street is 24 meters, and the width of the elevated rail is 9 meters. Consequently, if an elevated railway is built at the road centreline, it will be 7.5-meter apart from the buildings on both sides of the road. The noise barrier wall will not be higher than 15 meters, which is equivalent to the height of the 4th floor; therefore, the views of the apartment above the 4th floor will not be affected. On the other hand, the light rail project should comply with the Fire Safety Regulation and **the current ZAPE line can meet its requirement of a minimum 6-meter width.** It also has to pass the safety assessment processed by the international independent safety assessment consultants and meet the safety and other related standards given by the train supplier. (...)” If we compare this with another document, we will find something strange and dubious.

We find the following illustrations in the “Final Report - Preliminary study on the integration of the light rail system into Zone B” of GIT:



The eight-lane motorway designs

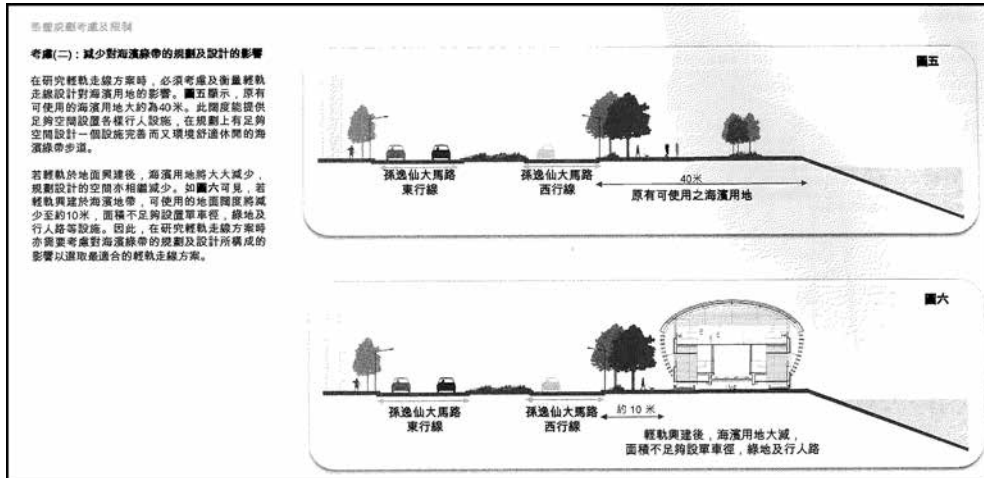
Illustration no. 3 shows that the east-west motorway is built above ground, which means the eight-lane motorway will occupy the waterfront. This will seriously affect the landscape of the coastal area. The planning of a coastal green corridor will also be affected. Furthermore, the eight-lane motorway will cause serious environmental problems, such as noise pollution and air pollution. It will also be difficult for citizens to reach the waterfront area.

In illustration no. 4, the eight-lane motorway is built inside an underground tunnel, so the waterfront will be reserved and its landscape will be left unaffected. The planning of the coastal green corridor can also be maintained. In addition, the negative environmental impacts will be greatly reduced as the underground design will help reduce the emission of noise and waste air of vehicles. Therefore, building an underground motorway would be more beneficial. When the route planning of the LRT system is carried out, consideration should be given to the reservation of a space for the construction of an east-west underground motorway that will help ease traffic movements.

Captions:

Illustration no. 3 – The above-ground design of the eight-lane motorway

Illustration no. 4 – The underground design of the motorway



Considerations and limitations on the overall planning

Consideration (2): Reducing the impact on the planning and design of the coastal green corridor

When route planning of the LRT system is carried out, the influence of the routes on the coastal green corridor should be evaluated. According to **illustration no. 5**, the width of the original area available for coastal planning is 40 metres, which may provide sufficient space for the construction of pedestrian facilities. Therefore, adequate space should be reserved for the development of a well-equipped and comfortable coastal green corridor.

If the light rail system is to be built above ground, the space for building a green corridor at the coastal area will be greatly reduced. According to **illustration no. 6**, if the light rail is to run along the coastal area, the width of the original area available for coastal planning will be reduced to about 10 metres, which is insufficient for building any bike lane, green space or footpath. Therefore, when the route planning of the LRT system is carried out, consideration should be given to its influence on the planning of the coastal green corridor so that the best route can be decided.

Captions:

Illustration no. 5 –

Eastbound motorway at Avenida Dr. Sun Yat-Sen

Westbound motorway at Avenida Dr. Sun Yat-Sen

Space available for coastal planning (40 m)

Illustration no. 6 –

Eastbound motorway at Avenida Dr. Sun Yat-Sen

Westbound motorway at Avenida Dr. Sun Yat-Sen

After the light rail is constructed, the space available for coastal planning will be greatly reduced, which is insufficient for building any bike lane, green space or foot-path (10 m)

- (1) Why is the light rail decided to run along a street with a width of only 24 metres instead of a space with a width of 40 metres? We have not seen any scientific justification for such decision. Moreover, at that time, there was actually suggestion that the light rail should be built in an underground tunnel.
- (2) The last illustration above, where the light rail is suggested to be built in an underground tunnel, was prepared when several proposals were made at that time. **Since this solution was not adopted in the end, why was not there a set of scientific data explaining the infeasibility of it?** Anyhow, it was not Rua de Londres but the coastal area of Avenida Dr. Sun Yat-Sen being considered to have an underground tunnel built for the light rail.
- (3) Furthermore, according to the conception at that time, an eight-lane east-west motorway will be developed along the coastal area.

We have doubts about the following issues:

- a) - Where is the proposal for the eight-lane east-west motorway? Who made this decision on the proposal?
- b) - Now that the light rail is to be constructed in the district, why should there be an eight-lane motorway? What was the ground for this conception? Does it mean that the reclaimed area in the future aims for the development of the eight-lane motorway? (We are sure the answer will be “no”!)
- c) - How could the competent department decide it is impossible to have the

rail tracks laid underneath Avenida Dr. Sun Yat-Sen simply based on some very initial ideas that have not been proved adoptable yet?

The decision is neither justifiable nor beneficial to public interest.

- d) - Moreover, according to the routes already decided by GIT, elevated rail tracks will be used at the segment between Sai Van Bridge and MGM Grand Macau. If the landscape of the coastal area mentioned above is to be affected, will the landscape of this segment not be affected? This decision does not seem justifiable at all.
- e) - Besides, has GIT ever considered the possible impact of the elevated light rail bridge on the reclaimed area next to the Governor Nobre de Carvalho Bridge if the Government decides to build the buildings for the judicial organs, the Commission Against Corruption and the Commission of Audit there? Apparently, GIT has shown no consideration for the influence of the elevated bridge on the look of the city, landscapes and the significant increase of commuters in the area. This has once again reflected that the failure of relevant department to make comprehensive analysis of situations and its lack of vision when making judgements. The problem is the same: lack of scientific and technical analysis.

* * *

- (4) Recently, relevant public works department released a document for public consultation, titled “Overall Planning of New Urban Areas (for consultation)”, which has the following suggestions on the infrastructure and urban planning of Zone B:



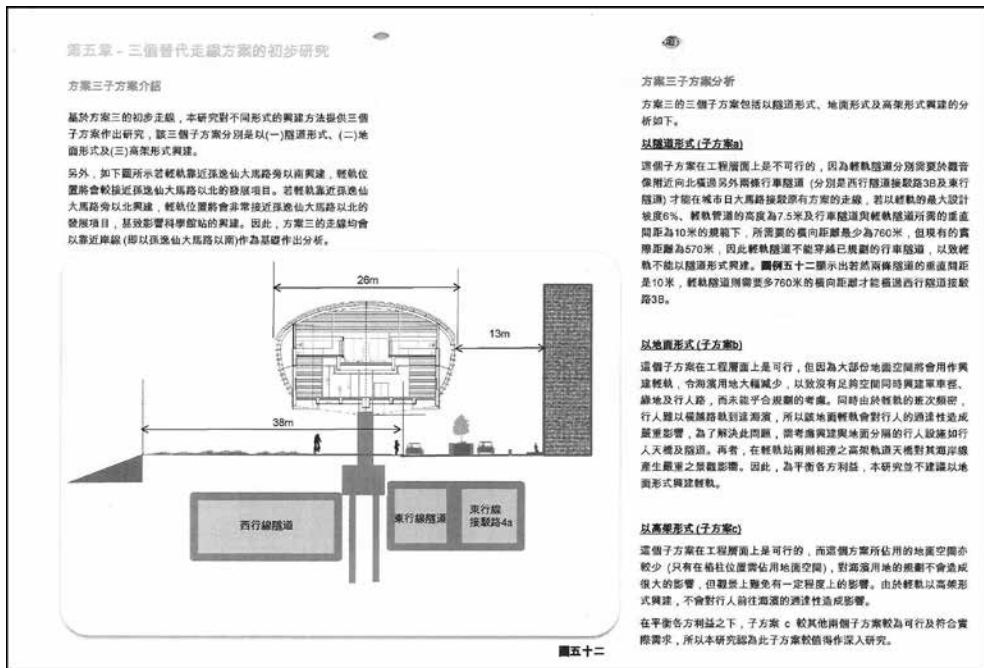
Considerations and limitations on the overall planning

Consideration (5): The necessity to reserve space for the development of Zone B in the new urban areas, thus allowing more flexibility for land exploitation and planning and the design of buildings

When planning the routes of the light rail, it is necessary to reserve space for the development of Zone B in the new urban areas, thus allowing more flexibility for land exploitation and planning and the design of buildings. According to **illustration no. 13**, by virtue of the structural constraints resulting from the positioning of the pillars of the Governor Nobre de Carvalho Bridge, if the light rail is to be built along the coastal area, the utilisable space in Zone B will be reduced, which means that Zone B will have to be moved northwards. Similarly, according to **illustration no. 14**, by virtue of the development of Zones C and D of Nam Van Lake and the structural constraints resulting from the positioning of the pillars of the Governor Nobre de Carvalho Bridge, if the light rail is to be built along the Nam Van Lake, it cannot be laid

parallel to or inside the westbound tunnel. In this case, the utilisable space in Zone B will also be reduced, which means that Zone B will have to be moved southwards.

Judging from the above analysis, no matter whether the light rail is to be built along the coastal area or the Nam Van Lake, the utilisable space in Zone B in the new urban areas will be reduced by about 15%-20%. Therefore, when comparing various proposed LRT routes, it is necessary to consider their impacts on the utilisable space in Zone B, thus allowing more flexibility for land planning and the design of buildings.



Chapter V – Preliminary study on the three proposed LRT routes

Introduction to a sub-proposal of proposal no. 3

According to the preliminary route of proposal no. 3, this study aims to analyse the three sub-proposals regarding the ways of construction of the LRT, namely, (1) underground construction, (2) above-ground construction and (3) elevated railways. Furthermore, according to the illustration below, if the light rail is to be built to the south of Avenida Dr. Sun Yat-Sen, it will be close to the development projects situated in the north of the road. But if the light rail is to be built to the north of the

road, it will be much closer to those development projects and will even affect the construction of the Macao Science Center station. Therefore, this analysis will be based on the route planned along the coastal area (i.e., to the south of Avenida Dr. Sun Yat-Sen).

Analysis of three sub-proposals of proposal no. 3

Underground construction (Sub-proposal A)

*This sub-proposal is technically infeasible as it means that the light rail tunnel will have to cross another two tunnels (the 3B link of the westbound tunnel and the east-bound tunnel) towards the north near the Kum Iam Statue so that it can connect with the route planned in the initial proposal at Avenida 24 de Junho. Considering that the light rail can only have a maximum slope of 6%, the light rail tunnel must have a height of 7.5 m and the vertical distance between the motorway tunnel and the light rail tunnel must be 10 m, the construction of the underground light rail will need a minimum horizontal distance of 760 m. Since the actual horizontal distance is only 570 m, it is impossible to build an underground light rail. According to **illustration no. 52**, if the vertical distance between the two tunnels is 10 m, the light rail tunnel will need a horizontal distance of 760 m to be able to cross the 3B link of the west-bound tunnel.*

Above-ground construction (Sub-proposal B)

This sub-proposal is technically feasible. However, since most of the above-ground space will be reserved for the construction of the LRT, the space available for coastal planning will be greatly reduced, which is insufficient for building any bike lane, green space or footpath. So this sub-proposal is not suitable for relevant planning. In addition, by virtue of the high frequency of the light rail service, it will be very difficult for pedestrians to cross the tracks and get to the coast. To solve this problem, it might be necessary to build footbridges or underpasses. Furthermore, the elevated light rail bridge over the light rail station will seriously affect the coastal landscape. Therefore, with various interests taken into account, this sub-proposal is not recommended in this study.

Elevated railways (Sub-proposal C)

This sub-proposal is technically feasible. Moreover, the light rail will take up less above-ground space (only the pillars of the elevated bridge will do) and it will not

have too much impact on the coastal planning. While the landscape of that area will inevitably be affected to a certain extent, the construction of elevated railways will present no obstacle for citizens to reach the coast.

With various interests taken into account, sub-proposal C is considered to be more feasible and practical as compared with the other two sub-proposals. Therefore, this study concludes that sub-proposal C is worth further consideration.

Illustration no. 52

[The following illustrations are only available in Chinese and Portuguese on the website of the DSSOPT]



Sistema do Trânsito

Pontos comuns:

- A circular externa fica no espaço subterrâneo, reduzindo a influência da circulação do trânsito sobre a zona da frente marítima. Os documentos internos são principalmente destinados à interligação interna da zona.
- Em articulação com o corredor verde que se estende ao longo da costa do vertice (este-oeste), são criadas uma zona pedonal e ciclovia contínuas. Beneficia as instalações para atravessamento de peões da Avenida do Dr. Sun Yat Sen, elevando a acessibilidade pedonal entre a zona e o MAF.



Desenho da frente Marítima da Zona B



Desenho do Sistema Rodoviário da Zona B



Desenho do Sistema de Mobilidade Lenta da Zona B



Espaço Subterrâneo

Anteprojecto I:

- As construções públicas são concebidas de tal maneira que permita a utilização, no máximo, do espaço subterrâneo, enquanto as terrenos são utilizados de forma interna na construção do corredor verde costeiro.



Desenho da Organização do Espaço Subterrâneo da Zona B (Anteprojecto I)



Anteprojecto II:

- Incentivar a utilização no máximo do espaço subterrâneo por construções comerciais e habitacionais, rentabilizando-se a eficácia na utilização dos terrenos.



Desenho da Organização do Espaço Subterrâneo da Zona B (Anteprojecto II)

Pontos comuns:

- Dá ênfase ao desenvolvimento das instalações públicas e instalações do trânsito no espaço subterrâneo.
- A circular externa será construída no espaço subterrâneo, com parques de estacionamento público criados continuamente.
- Planeia a instalação de uma galeria técnica comum e de galeria para a água, gás, fibra ótica e outros serviços.

The Zone B urban planning proposal for public consultation is again different from the original proposal:

- (1) **There is no indication that any underground tunnel for vehicles has been planned in the Eastern and Western districts;**
- (2) **If this is simply an omission, it means the urban planning proposal for public consultation could have been better;**
- (3) Suppose buildings for the judicial organs will be constructed in Zone B and the light rail is to be built on an elevated bridge in this area. Has there been any consideration regarding the impact of the bridge on these buildings, particularly on the traffic and safety problems to be faced by the staff who will have to travel between their homes and the new work places every day? The said urban planning will obviously fail to produce a beneficial effect, not to mention its negative impact on the look of the landscapes.

* * *

(II) - About the government's environmental impact assessment of LRT System Phase I construction (at Rua de Londres and Rua Cidade do Porto)

According to the information provided by GIT, GIT requested the Environment Protection Bureau (DSPA) for opinion on the route and floor plans of stations of the Phase I of LRT system through official letter no. 888/ET/334/2009 on 23rd September 2009, while the latter made a response through official letter no. 498/013/DAMA/DPAA/2009, which indicates that:

“Technical opinion on the route and floor plans of stations of Phase I of LRT system

On the design of Phase I of the LRT system, the former Environmental Committee submitted an environmental impact assessment (EIA) report and opinions to GIT through official letter no. OF.1570/CA/2008 on 4th November 2008. Based on the revised information about the route and floor plans of stations of Phase I of LRT system and the abovementioned official letter, we would like to give the following suggestions:

- 1). *Since the locations of some of the stations have been adjusted, it is necessary to conduct another EIA on the noise and air pollution caused by the construction and operation, especially the dust (total suspended particles) and noise produced by piling and the noise caused by the trains approaching and leaving the stations, the facilities of the stations, the broadcasting and the passengers, and once again calculate the total density of suspended particles and the level of noise at the sensitive receivers. GIT should try to evaluate the effectiveness of the measures in a quantifiable way in order to meet the standard provided by Decree Law no. 54/94M of 14th November about noise and the 'Guidelines on the smoke and noise caused by construction and foundation works' and minimise the impact to the citizens living nearby.*
- 2). *There are many sensitive receivers along the LRT route (e.g. residences, schools) and even some routes or stations are very close to them, such as Border Gate, Estrada Marginal da Areia Preta, Rua de Londres and Rua Cidade do Porto, Nam Van Lake and Estrada Governador Albano de Oliveira in Taipa, etc. Therefore, stricter standard should be adopted to evaluate the affect of noise, such as the level "B" under the noise criterion of Hong Kong, in order to better protect the living quality of the residents along the route. Moreover, GIT should assess the impact on the sensitive receivers, especially the views at the lower-level residences and light pollution, in order to ensure the illumination of the stations will not affect the indoor facilities subject to light pollution, such as residence. At the same time, we suggest that the vertical luminance on the windows of the residences should not be over 41x. If needed, the GIT should take relevant measures and their effectiveness should be evaluated in a quantifiable way.*
- 3). *Since part of the route will run through narrow streets, such as station no. 3 located at Estrada Marginal da Areia Preta, the GIT should evaluate the ventilation and environmental factors, such as sunshine, at those locations. If needed, the GIT should take relevant measures and their effectiveness should be evaluated in a quantifiable way.*
- 4). *In view of serious pollution of the deposits of Sai Van Lake and Nam Van Lake, for the design of the route from station no. 9 to station no. 12, which has been changed to be under the two lakes, GIT should carefully and thoroughly assess the influence of the construction and operation of LRT system on the hydrology,*

quality of water, ecology, landscape of the two lakes and on the residences, and render relevant remedies and try to evaluate the effect in a quantifiable way after the measures are taken, in order to formulate effective pollution prevention measures, decrease the negative impact of the construction and operation on the residents and environment, and avoid damage to the ecology of Sai Van Lake and Nam Van Lake.

- 5). *Since the LRT route will pass the Ecological Zone of Cotai, in order to prevent the birds that rest there, especially the Black-faced Spoonbill, an endangered species, from threats, an EIA should be conducted on the zone as one of the main sensitive receivers. The level “A” under the noise criterion of Hong Kong is recommended to be adopted to reassess the noise. Taking into account the affect of the light at the metro route on the Zone, mitigation measure is suggested and its effectiveness should be evaluated in a quantifiable way.*
- 6). *Estimation of the quantity of solid waste possibly caused by the construction and operation of the LRT system and stations is suggested. In particular, methods of chemical waste disposal should be suggested in order to meet the requirements under local laws and relevant international conventions.*
- 7). *The adjustment of some of the stations will cause damage to existing vegetation in the city and therefore measures for prevention or compensation should be taken. The guidelines of tree transplantation provided by the Civic and Municipal Affairs Bureau (IACM) should be observed in the first place. In case new planting of trees or plants is needed, technical opinions should be sought from the IACM in order not to introduce external species and affect the ecological system of Macao.*
- 8). *We suggest compiling and updating the EIA report.”*

Moreover, the GIT states on its official website that:

“LRT system is an effective, convenient, eco-friendly and reliable public transport system which does not produce any pollution and noise. For the issues of noise that concern the citizens, the government will consider installing noise barrier or adopting a design of full-roofed track, in order to further elevate the standard. Moreover, respective mitigation measures will be implemented for the places possibly affected through on-site monitoring. In 2008, GIT commissioned a Hong Kong-based

consultancy company to conduct a comprehensive EIA on the route and operation of the LRT Phase I, which was initially confirmed at that time. Based on the demands brought by social development and the said EIA, a supplementary research on the environmental impact on the selection of location of factory and the construction of tunnel sections was also commissioned in order to formulate the environmental standards for different phases of the construction of the LRT system. On 31st August 2011, GIT released the EIA report, which indicates assessment of potential impact on noise, air, water quality, ecology, landscape, the cultural heritages, waste disposal and light pollution. Respective mitigation measures were raised in order to meet the standards provided by the laws of Macao and the environmental criteria of Hong Kong applied here and try the best to minimise the impact on Macao citizens. After the mitigation measures were taken, the standards are basically met. GIT stresses that the Macao government makes citizen's lives and property as priority. Therefore, during the construction of the LRT system, the authority will jointly conduct strict supervision of the design and the works done by the contractors with other related departments, in order to ensure that all requirements and safety standards are met and that a convenient, comfortable and eco-friendly LRT service will be provided to the citizens and thus enhance their quality of life. The report of comprehensive EIA on Phase I of LRT system construction is downloadable on the GIT's website at www.git.gov.mo."

- (1) - Here comes the same question. The decision to build the LRT system was made in 2009, but why was the EIA report not released until 2011? Did the competent department have no need to release the information because no one had raised objection? We have reiterated that: Information related to technical standards and scientific data shall be fully made public as soon as possible because this is about citizens' right to know but not secrecy or confidentiality of the information and national or regional safety.
- (2) - For the EIA reports and their content, some of them were made and compiled by companies which are not specialised in related domains. Therefore, those information and conclusion were not convincing.

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Point 4: Technical considerations reflected on the drawings

Analysis on the technical drawings:

GIT passed a number of technical drawings to the CCAC, including annexes no. C10a, C10b, C10c, C11, C12, C13 and C14. Here is our analysis on the important parts.

- C10a (analysis on the impact of LRT Phase I on surrounding buildings along the route based on the fire safety regulation of Macao **written on 18/05/2010**) [see P. 1-39 of the annex] points out which parts of the overground track and stations from station no. 1 to no. 23 of Phase I do not meet the requirements provided by Article 8 (Conditions of accessibility and intervention) in Chapter II of the *Fire Safety Regulation* (Decree Law no. 24/95/M of 9th June). There are 15 parts that do not meet the standards, including:
 - (1) Pak Tou Garden at the intersection between Avenida do Comendador Ho Yin and Rua dos Currais ahead of station no. 1 (See P. 5 and 9 of the annex);
 - (2) Hoi Nam Garden at the intersection between Avenida de Artur Tamagnini Barbosa and Praça das Portas do Cerco (See P. 5 and 10 of the annex);
 - (3) Jardim San Pou at Rua dos Hortelãos (See P. 5 and 11 of the annex);
 - (4) Macao Government Service Centre at Avenida do Almirante Magalhães Correia (See P. 5 and 12 of the annex).
 - (5) Edifício Kin Wa at Estrada Marginal da Areia Preta (See the other side of P. 5 and 12 of the annex);
 - (6) Edifício Kin Wa, Edifício Hoi Pan Garden and Veng Kin Industrial Building at the intersection between Estrada Marginal da Areia Preta and Rua do Canal Novo (See the other side of P. 5 and P. 13 of the annex);
 - (7) Edifício Nam Wa San Chun at the intersection between Estrada Marginal da Areia Preta and Avenida do Dr. Francisco Vieira Machado (See the other side of P. 5 and P. 14 of the annex);

- (8) Nam Fung Industrial Building at Avenida do Dr. Francisco Vieira Machado (See the other side of P. 5 and P. 14 of the annex);
 - (9) Chong Fong Industrial Building at Avenida do Dr. Francisco Vieira Machado (See the other side of P. 5 and P. 14 of the annex);
 - (10) Bai Yun Garden at Avenida do Dr. Francisco Vieira Machado (See P. 6 and P. 14 of the annex);
 - (11) Sands Hotel at Avenida Dr. Sun Yat-Sen (See P. 6 and P. 17 of the annex);
 - (12) Macao Cultural Centre at Avenida Dr. Sun Yat-Sen ahead of the entrance of Rua de Londres (See P. 6 and P. 18 of the annex);
 - (13) A construction site at Rua Cidade do Porto, between Edifício Brilhantismo and Edifício Vista Magnífica Court;
 - (14) A construction site at Rua Cidade do Porto, between Edifício Kam Yuen and Edifício Hoi Keng Jardim (See P. 6 and P. 19 of the annex);
 - (15) Edifício Kam Yuen at the intersection between Rua Cidade do Porto and Avenida 24 de Junho (See P. 6 and P. 19 of the annex).
- All these 15 sites that do not meet the requirements under the *Fire Safety Regulation* refer to overground track and stations. The clear width between them and the surrounding buildings is less than 6m (See the other side of P. 4 of the annex).
 - **Annex C10b [see P. 40-49 of the annex], written by EFS Consortium on 27/07/2011, shows the locations of section C220 of the route at NAPE, i.e. locations no. 11 to 15 mentioned in Annex C10a (See the photo on P. 65 of the annex), does not meet the requirements under the *Fire Safety Regulation* and indicates how to solve this problem, such as making slight adjustment of the route to enable the sections at the Sands Hotel, the Macao Cultural Centre and Rua Cidade do Porto to meet the requirements under the *Fire Safety Regulation*. For this purpose, it explains Article 8 of the regulation and asserted that it is possible to fulfil the requirements under this article (See the**

other side of P. 42, P. 46 and 48 of the annex). Finally, the sectional view of the overground section at Rua de Londres, which indicates that the distance between the track and the surrounding buildings is 7.54m (See P. 49 of the annex].

We are skeptical about GIT's approach of management of this project: The parts of the design which did not meet fire safety requirements were still being amended in July 2011 but it repeatedly told the public that the route had been finalised.

Take the Taipa section as an example, after the CCAC commenced investigation, it was not until 2011 that the GIT suggested the Chief Executive confirming the LRT route in Taipa, while the latter officially signed to confirm the route of Taipa section on 25th August 2011.

As to the section in Macao Peninsula, the CCAC has not yet found out any official documents proving that the Chief Executive had already signed to confirm the relevant route and construction plan.

- Annex C10c (See P. 50-57 of the annex) is an assessment report given by Mitsubishi Heavy Industries, Ltd. to EFS Consortium on 29/07/2011. Written on 24/07/2011, the report indicates the solution to the problem concerning the insufficient width between the overground section at Rua Cidade do Porto and Avenida 24 de Junho and the surrounding buildings. For this purpose, the requirements for stations and overground sections adopted in neighbouring regions such as Singapore and Hong Kong and Paragraph c) of Article 8 of the *Fire Safety Regulation* are taken as reference. The conclusion is that the distance between a station or overground section and surrounding buildings should be 6m. The last page indicates a draft drawing of the relevant section which shows the adjustment of the distance between the overground section at Rua Cidade do Porto and Avenida 24 de Junho and the surrounding buildings to be 6m. (See P. 57 of the annex).
- Annex C11 (See P. 59-60 of the annex) is official letter no. 5095/DT/2011 dated 15/08/2011 from CB, as a reply to official letter GIT-O-11-1180 (Request for technical opinions on “Basic Plan of Design of routes and stations of LRT sections at Nam Van Lake and Barra”) dated 14/07/2011 from GIT. **It indicates that the design of station no. 9 (Nam Van Lake station) does not meet the**

requirements and that NFPA can be applied to the design to supplement the *Fire Safety Regulation* when there is no relevant provision under the latter. Although the DSSOPT did not oppose to the suggestion, it requested for approval by the competent department regarding the scope of application of the NFPA and evaluation and testing based on the section about design under the NFPA conducted by a third entity which is internationally recognised.

- Annex C12 (See P. 62-167 of the Annex) is a report about fire safety of section C220 of LRT Phase I conducted by XXX Construction and Design Consultancy Company Ltd., which defines the distance between emergency exits based on the NFPA since the overground sections at Rua de Londres and Rua Cidade do Porto are full-roofed.
- Based on the regulation applied to the MRT system in Taipei and Article 8 of the *Fire Safety Regulation*, in the section at NAPE, only the sections at Sands Hotel and Macao Cultural Centre (locations no. 11 and 12 mentioned in Annex C10a) do not meet the standard. The document is enclosed with a design chart of the section of NAPE area, part of which indicates that some of the flowerbeds on the route should be removed in order to leave enough space for fire engines pursuant to Paragraph 3c) of Article 8 of the *Fire Safety Regulation*, which stipulates that the minimum bending radius shall be 13 m. (See P. 84-102 of the annex).

[Note: Obviously, this is one of the remedies for the adjustment of the route to run through Rua de Londres and has reflected that there were many loopholes and deficiencies of the design at that time!]

- Some parts of the annex (See P.103-122 of the annex) highlight the issues about 6 m distance between the track and surrounding buildings with drawings attached. The sections at Sands Hotel [See P.105 and 107 of the annex] and Macao Cultural Centre [See P. 108 of the annex] do not meet the requirement of maintaining a 6m distance from surrounding buildings. On the other hand, some parts highlight the requirement for minimum width of 3.5m provided by Paragraph 3a) of Article 8 of the *Fire Safety Regulation*, which is basically met.
- Finally, there are profiles of the LRT route and surrounding buildings (See P.

144-167 of the annex), among which the profile no. A-A of Sands Hotel (P. 146 of the annex), **profile no. C-C of Sands Hotel (P. 150 of the annex) and profile no. D-D of Macao Cultural Centre (P. 152 of the annex) show that the distance between these three sections and the surrounding buildings is less than 6 m.**

- Annex C13 (See P.169-171 of the annex) **is official letter no. 5097/DT/2011 dated 15/08/2011 from the CB.** As the reply to official letters no. GIT-O-1198 dated 15/07/2011, GIT-O-1245 dated 22/07/2011, GIT-O-1256 dated 25/07/2011 and GIT-O-1322 dated 01/08/2011 from GIT, **it points out that the whole design of LRT system should relate with the conditions for intervention of fire service in case of emergency. In the reply, CB requested GIT to solve the problem concerning accessibility of fire engine to a section at the Macao Cultural Centre, from which the distance to the surrounding building is only 4.77 m (location no. 12 in annex C10a).**
- **Regarding the relevant distances of only 3.32 m and 5.51 m at two sections at the Sands Hotel** (location no. 11 in annex C10a), **CB considered that they might not cause significant impact on the project but suggested improving the pedestrian zones at relevant areas of the Sands Hotel.**
- Annex C14 (See P. 173-297 of the annex) is a report of risk assessment of Phase I of the LRT system conducted by a company in Hong Kong. Written on 15/03/2011, the report analyses the risk of the nearby oil depots, gas stations, petroleum gas depots and underground natural gas pipelines posed to the route of LRT Phase I.
- Annex C15 (See P. 293-295 of the annex) is a compilation of related regulations in Macao and neighbouring regions, including Paragraphs 3 a) and 4 c) of Article 8 of the *Fire Safety Regulation* of Macao, **some laws provided by the Land Transport Authority of Singapore and the Buildings Department of Hong Kong, and the Regulations Governing Prohibitions and Restrictions on Construction along the Routes of Mass Rapid Transit System of Taiwan. All of them have one point in common: the stipulation that the distance between the metro system and surrounding buildings shall be 6 m.**
- To sum up annex C10a to annex C14, for the design of LRT Phase I by GIT, the section between stations 1 (ST1, Barrier Gate) and 9 (ST9, Nam Van Lake), including the stations and the track, will be elevated. **Following analysis, it**

is discovered that there are 15 sites along the elevated route that do not accord with Article 8 of the *Fire Safety Regulation*, i.e. the distance between the respective sections and surrounding buildings is less than 6 m. They are listed and illustrated to show the relative locations.

- In order to solve the problems, Mitsubishi Heavy Industries, Ltd., EGIS Rail, FASE and Setec Its” Consortium (EFS) and a local construction and design consultancy company, based on the examples of the metro systems of neighbouring regions, suggested the standard, which is that the distance between the elevated sections and surrounding buildings should be 6 m.
- NFPA is applied to the distance from the emergency exits to the elevated section when there is no provision in this aspect under the *Fire Safety Regulation*. The DSSOPT did not oppose to this point, **but CB requested for approval by the competent department regarding the scope of application of the NFPA and evaluation and testing based on the section about design under the NFPA conducted a third entity which is internationally recognised.**

- As to the solution to the problem concerning less than 6 m between the elevated sections of LRT Phase I and the surrounding buildings, the EFS (See P. 48 of the annex) adopted the suggestion raised by Mitsubishi Heavy Industries, Ltd. (See P. 57 of the annex), **which is to make a slight change of the track at Rua Cidade do Porto towards Avenida 24 de Junho, so that the track will be slightly leftward at the rightward turning corner to Avenida 24 de Junho so as to leave sufficient space for the turning when driving a car. Finally, the local construction consultancy company also adopted this suggestion** (See P. 114 of the annex). Therefore, the problem at locations no. 13, 14 and 15 in annex C10a can be solved. **If the change is made, the section at Avenida 24 de Junho will be closer to Wynn Hotel with a distance of 7.67 m** (See P. 114 of the annex). **The change of the turning curve can be seen in annex C10a** (See P. 19 of the annex), **C10b** (See P. 48 of the annex) and **C12** (See P. 114 of the annex).
- **However, for locations no. 11 and 12, both EFS and the local consultancy company have never raised any effective solutions. As shown in the annex, the distance between them and the surrounding buildings is still less than 6 m.** (See P. 145-146 and P. 149-152 of the annex).

- Therefore, based on the design of LRT Phase I, there are 16 places which failed to meet the requirements under the *Fire Safety Regulation* at the very beginning mainly because of inadequate distance to surrounding buildings [under Article 4c of Article 8]. In order to solve the problem, adjustments have been made to the route and relevant standards adopted in neighbouring regions have been taken as reference. As a result, **it is found that locations no. 13, 14 and 15 (at Rua Cidade do Porto) have been amended. However, no. 11 and 12 (Sands Hotel and Macao Cultural Centre), still have not been improved. Moreover, no amendment to no. 1 to 10 (from Barrier Gate Station to Bai Yun Garden) was seen in the Annex.**
- The drawings in the annex showed that the requirement about accessibility of emergency vehicle (Paragraph 3 of Article 8 of the *Fire Safety Regulation*) was basically fulfilled.
- In the official letter from the CB indicated in C13, only the direction of amendment to 11, 12, and 13 was mentioned, but the solution was not indicated in the annex. **This shows that what the annex indicated was not the final version and the solutions to the parts which failed to meet the requirement under the regulation were still to be revised.**

Therefore, up to 2011, GIT has still been revising the design in order to solve the technical problems but has never revealed any substantial data related to safety. Therefore, it is reasonable for the citizens living in this area to question the safety of the LRT system, since it is directly related to their safety of life and property.

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As to whether there was any discrepancy between the measurements of the sections at Rua de Londres and Rua Cidade do Porto and the design, the CCAC has collected the following data after it dispatched staff to the site for measuring:

1. The distance between Zhu Kuan Building and Kao Ip Secondary School at Rua de Londres is 23.88m. **Although there is a difference of 12 cm from the 24 m distance shown in the drawings, it still meets the requirement for 6 m distance between the LRT and surrounding buildings.**

2. The distance between Edifício Wan Yu Vilas and Edifício Tong Nam Ah Jardim is 24.01 m.
3. The distance between Edifício Brilhantismo and the fencing boards outside the construction site at Rua Cidade do Porto is 22.594 m. **Although there is a difference of 1.406 m compared to the 24 m distance shown in the drawings, the distance could not be accurately measured due to the fencing boards.**
4. The distance between Edifício Kam Yuen and the construction site at Rua Cidade do Porto is 21.58 m. **Although there is a difference of 2.42m from the 24 m distance shown in the drawings, the distance could not be accurately measured due to the fencing boards.**
5. The intersection between Rua Cidade do Porto and Avenida 24 de Junho (the corner of Rua Cidade do Porto toward Wynn Hotel) is 52.42 m (from Kam Yuen Building to MGM), 40.84 m (from another corner of Kam Yuen Building to the fencing boards of Wynn Hotel). **Since there is no information and drawing of the area, the CCAC is not able to make any comparison.**

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Analysis of the annexes

Let us take a look at ANEXO 1, ANEXO 2, ANEXO 3, ANEXO 4 and ANEXO 5 provided by GIT.

- **ANEXO 1** comprises five parts, namely 1.1 to 1.5 (See P. 1-95 of the annex). 1.1 to 1.3, 1.4 and 1.5 correspond to C10a, C12 and C15 respectively in the analysis report dated 24/10/2011.
- **ANEXO 2** comprises two parts (See P. 97 to 204 of the annex):
- The first part is a report “Comprehensive EIA of Phase I of LRT system” written by YY Consultancy Co. Ltd. (See P. 97-186 of the annex) **dated August 2011**, which is an assessment of environment impact of the Phase I of LRT system (on the route starting at Barrier Gate, running through Areia Preta, NAPE,

Nam Van Lake, Sai Van Lake and Barra, Taipa Pequena, Jockey Club, Cotai District, Macao East Asian Games Dome, Macao University of Science and Technology ending at Avenida Wai Long) in the aspects of noise, air, water quality, landscape, cultural heritages, disposal of waste, ecology and light pollution. The report pointed out that since there is no statutory EIA procedure and regulations in Macao, the assessment was conducted based on not only related regulations of Macao but also guidelines and criteria adopted in Hong Kong and Mainland China. In addition, the report also suggests some measures to be taken during construction and operation, so as to meet the relevant laws of Macao and the requirements of Hong Kong adopted in the EIA. To conclude, the report indicates that if the suggestions are adopted, the requirements can be met basically and that if there is any update of the project, the company will update the EIA and render relevant suggestions.

- The second part is the summary of data for presentation during the “Briefing Session on the EIA on LRT Phase I on 31st August 2011” (See P. 187-204 of the annex), which is based on the content of the EIA report mentioned above and includes a compilation of the data about the train to be used. As to the environmental impact, all information is based on the EIA report, including regulations, observation points and relevant solutions (mitigation measures). Finally, the conclusion suggests that statutory requirements should be met and environmental supervision and examination should be carried out during the construction in order to ensure effective implementation of all mitigation measures.
- **ANEXO 3** comprises two parts (See P. 206-218 of the annex).
- The first part is “ESTUDO DE IMPLEMENTAÇÃO DO SISTEMA DE METRO LIGEIRO PARA MACAU, RELATÓRIO DE CONSULTAS PÚBLICAS” (hereinafter “Public Consultation Report”) (see P. 206-201 of the annex) written by the Infrastructure Development Office (GDI) in May 2007 based on the public’s opinions and suggestions (including views and suggestions collected through meeting with organisations and representatives of different sectors such as transportation, construction, environmental protection and gaming as well as questionnaire surveys) and surveys and researches conducted by the University of Macau. According to the views collected, the factors which should be considered included connection with other public transportation tools, harmony with the landscape, price ranges and environmental impact of noise. The conclusion was that the public’s perception on the LRT system is positive

in general and they were concerned with the possible approaches to perfect the transport network. Moreover, 70% of them favoured the construction of LRT system.

- The second part is “ALINHAMENTO E ESTAÇÕES DA FASE 1 DO SISTEMA DE METRO LIGEIRO DE MACAU, OPTIMIZAÇÃO DO TRAÇADO, RELATÓRIO” (hereinafter “Report of Route Improvement”) (See P. 211-218 of the annex) written by the GDI in 2007, which firstly pointed out 11 points that deserve public attention as the Public Consultation Report had mentioned:
 - (1) Connection with buses;
 - (2) Connection with taxis;
 - (3) No station at the Inner Harbour and the Central District;
 - (4) Underground track in Taipa;
 - (5) Privacy;
 - (6) Parking lots;
 - (7) Visual affect on cultural heritages;
 - (8) Noise caused by construction;
 - (9) Coverage of LRT network;
 - (10) Prepaid card recharging system;
 - (11) Monorail system.
- For these 11 points, the Public Consultation Report had already addressed part of them. Therefore, the Report of Route Improvement only analysed no. 7 and 9. For the route of Phase I, there were options A (running through Avenida de Venceslau de Moraes and Rua dos Pescadores to Avenida da Amizade) and B (running through Avenida do Dr. Francisco Vieira Machado to Avenida da Amizade) for the section in the Northern District (See the other side of P. 217 of the annex), while there were options C (running through Avenida da Amizade

and Avenida Dr. Sun Yat-Sen to Avenida 24 de Junho) and D (running through Avenida da Amizade and Rua de Londres to Avenida 24 de Junho) for NAPE as well (See the other side of P. 217 of the annex). The report suggests choosing B and D because B is located in a residential area with large influx of people, from which the walking distance to the stations is short, but A would only pass an industrial area. D was suggested because it is far away from Kun Iam Statue (located at line C) and thus visual impact and possible affect on Avenida Dr. Sun Yat-Sen, which would become a new transportation centre, will be minimised. Moreover, the report also suggests that the route should run through Praça de Ferreira do Amaral instead of Arts Garden and Nam Van Lake in order to avoid visual impact on the Military Club. For the route in Taipa, the report proposes having one line instead of two due to technical issues and difficulties for passengers to transfer to other means of transportation.

- **ANEXO 4** is “Summary of Technical Analysis on Building NAPE Section of LRT Phase I in Underground” (hereinafter “Analysis on Underground”) (See P. 220-246 of the annex) written by GIT on a date unknown (The content reflected that the date might be 17/10/2011 or later). It comprises two appendices:
 - Appendix 1 is “data to be presented at meeting with citizens for clarification” (See P. 222-236 of the annex), which comprises two parts:
 - Part 1 is an introduction of the section at NAPE of the LRT Phase I and the stations;
 - Part 2 is an analysis on the plans of building the section at Rua de Londres underground in response to citizen’s suggestions, which contains the following three plans:
 - Plan 1 is “to build the section at Rua de Londres underground”, for which two options were provided:
 - A. “Underground section starting at Rua de Londres” (See P. 231-233 of the annex): At the section between Rua de Londres and the Cultural Centre, starting from Kao Yip Secondary School/Zhu Kuan Building, the elevated track at 5.5m height would sink gradually by 5% inclination (See P. 232 of the annex) through Edifício Tong Nam Ah/Edifício Wan Yu Vilas. Finally, at Dr. Carlos d’Assumpção Park, the route will run underground. The required length of this section is at least 293m. In this case, the driving

routes at Avenida do Governador Jaime Silvério Marques and Alameda Dr. Carlos d'Assumpção will be blocked permanently (See P. 236 of the annex).

B. “Underground section starting at Avenida Dr. Sun Yat-Sen (next to Sands Hotel)” (See the other side of P. 233 of the annex): Since the relevant section of the road is elevated, **it should be removed first. However, the removal might increase the cost, lengthen the construction period and disconnect Avenida Dr. Sun Yat-Sen from Avenida da Amizade.**

- **Plan 2: to replace the section at Rua de Londres by an underground one via Avenida Dr. Sun Yat-Sen (See P. 234 of the annex). GIA pointed out that this solution would affect the views and the future planning of Avenida Dr. Sun Yat-Sen. Like Plan 1, there is also an elevated section 293 m in length sinking gradually into underground, which will end up becoming a barrier. Since within a radius of 300 m of the surrounding area of the station, 40% will be situated on water, the service might not cover more citizens.**

- **Plan 3: to replace the section via Rua de Londres by an elevated one via Avenida Dr. Sun Yat-Sen (See the other side of P. 234 to P. 235 of the annex). GIT pointed out that this solution would affect the views and the future planning of Avenida Dr. Sun Yat-Sen. Since within a radius of 300 m of the surrounding area of the station, 40% will be situated on water, the service might not cover more citizens.**

[Note: We consider that all these reasons were not backed by sufficient basis and therefore they were unconvincing. Take Plan 3 as an example. In this case, given that Rua de Londres and Avenida Dr. Sun Yat-Sen are very close to each other, what is the basis for the reason that 40% of the surrounding area will be situated on water? Even if the route will run through Rua de Londres, for the side of Kun Iam Statue, there is still no residence in this seaside zone. It is normal that 40% of the stations will be on water. In this sense, why the route is set to run through Rua de Londres? Once again these reasons are not convincing. We do not understand why the percentage of water surrounding the station was considered as a factor of the issue. Is it impossible to adjust the locations of the stations?]

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- Appendix 2 is “Data for presentation at Legislative Assembly” (See P. 237-246 of the annex), which is an introduction to the section of LRT Phase I at NAPE with a brief summary of the three solutions indicated in Appendix 1. Finally, GIT concludes that the alteration of the route at NAPE will cause eight problems:
 - (1) The social consensus achieved through the public consultation conducted in 2007 cannot be adopted;
 - (2) The efficiency of service will decrease drastically;
 - (3) Negative impact on the seaside urban landscape will be caused;
 - (4) Bypass roads will be blocked during construction;
 - (5) Construction cost will increase dramatically beyond expectation;
 - (6) Traffic condition will be difficult to improve and thus society will pay a heavy price for it;
 - (7) Relevant awarded contracts will have to be altered or suspended;
 - (8) Even if the current route is replaced by a route via bypass roads, there will be opposite opinions. At the end of the summary, there are suggestions of improvement measures for remaining the route via Rua de Londres.
- **ANEXO 5** comprises two parts (See P. 248-279 of the annex):
- The first part is “Technical analysis on the impact of including the construction of NAPE section into LRT system Phase 2” (hereinafter “impact analysis”) (See P. 248-254 of the annex) without specified date, which analysed the feasibility of including the NAPE section in Phase 2 of LRT project in the following three aspects:
 - (1) The construction of NAPE section cannot be postponed in terms of overall strategies and sustainable development;

- (2) The construction of NAPE section cannot be postponed in terms of technical conditions of LRT system;
 - (3) The construction of NAPE section cannot be postponed in terms of social and economic situations.
- The impact analysis lists various reasons against including the construction of NAPE section into Phase II, including:
- (1) The effectiveness of LRT system as a public transport tool cannot be exerted as its role in relieving traffic congestion will be weakened when the route of Phase I is shortened and consists of only a section from Taipa to Nam Van Lake;
 - (2) If the NAPE section is included into Phase 2, the construction of north-east section needs to be postponed. Moreover, in order to maintain normal operation of the entire route during construction, it will be necessary to expand and upgrade the control centre being in use, which will cause technical difficulties and significant increase of costs;
 - (3) The contracts of design of details of Phase I have already been outsourced after referring to “Supplementary study on integration of LRT system into Zone B”. Excluding NAPE section from Phase I might cause problems concerning compensation and alternative options. Finally, the analysis cites the content of the supplementary study as solutions to the eight problems listed in the second part of ANEXO 4:

Problem	Conclusion
Will the social consensus achieved through the public consultation in 2007 not be adopted?	Because the proposal in 2009 has reflected the social consensus on the route and the public’s support, the consultancy company did not suggest disusing the social consensus achieved through the public consultation conducted in 2007.

Will a proposal that will affect the efficiency of service for citizens be accepted?	Comparing with the alternative route, the proposal in 2009 accords the best with the principles of the traffic strategies adopted in Macao and maximises the effectiveness of LRT service.
Will a proposal that will have negative impact on the seaside urban landscape be accepted?	The alternative route has a negative impact on the seaside corridor and is against the will of a majority of Macao citizens, so it is unacceptable.
Can the effect on the bypass roads during construction be accepted?	During the construction period, the impact of the alternative route on the mainline will be bigger than that of the proposal in 2009. Moreover, it will also affect the design of circular tunnel, causing significant impact on the overall planning of the new urban areas as well as the traffic condition.
Can the dramatic increase of construction cost be accepted?	The cost for the construction of the alternative route will increase by 2.3 billion to 3.1 billion, which may be considered as ineffective use of government resources.
Can the difficulties caused by significant delay of the construction be accepted?	As calculated by the consultancy company, the estimated social cost for the adoption of the alternative route will amount to 8.2 billion to 10.7 billion.
Can termination of related outsourced contracts be accepted?	The government has to pay a compensation amounting to about 500 million, which may damage the government's image and credibility and cause a waste of public fund.
If there are public opinions against the replacement of bypass routes, is it necessary to conduct review or consultation again?	The consultancy company did not suggest conducting another consultation or review on the proposal as this approach would contradict the purpose of public consultation and trigger a vicious circle.

- The second part is “Final report: Supplementary study on integration of LRT system into overall planning of Zone B (revised)” (hereinafter “supplementary report”) (See P. 255-279 of the annex). Written on an unknown date, it focuses on evaluating the impact of the integration on the completion and inauguration of LRT Phase I and proposes the following three plans (See the other side of P. 259 and P. 260 of the annex):
 - Plan 1 – to set up a station at Macao Science Centre, from which the elevated track sinks into underground and runs through the seaside of Zone B;
 - Plan 2 – to set up a station at Macao Science Centre, from which the elevated track sinks into underground and runs through Avenida Dr. Sun Yat-Sen;
 - Plan 3 – to set up a station at Macao Science Centre from which the route will run through Avenida 24 de Junho and connect to the Arts Garden and Nam Van Lake stations.
- The supplementary report pointed out that Plan 1, Plan 2 and ANEXO 4 had the same problem concerning building the section at Rua de Londres underground, which is that **a certain length of ramp (based on the information indicated on the other side of P. 260, the inclination is 6%) will be required for the connection between elevated section and underground section, which will cut the roads and affect the views. The utilisation rate in the initial stage will be lower. Plan 3 will affect the construction of underground tunnel at the new urban areas.** Moreover, the supplementary report also indicates that since some relevant contracts have already been outsourced, changing the design will cause problems concerning compensation for cancelling the contracts and a loss due to increase of construction costs, which is estimated to be MOP10,720,000,000 (See P. 271 of the annex). Therefore, according to the report, improving the original plan will be a more reasonable approach. The conclusion drawn by the consultancy company has responded to the eight problems listed in appendix 2 of part 2 of ANEXO 4 (the table above).

* * *

Upon a synthetic analysis on ANEXO 2 to 5, our initial conclusion is the following:

- (1) The public consultation about the LRT system of Macao was conducted in 2007. At the same time, the University of Macau was commissioned to conduct a research about it. Based on them, the GDI wrote the Public Consultation Report and the Report of Route Improvement (ANEXO 3), which respectively show the data collected through the public consultation and indicate a revised version of the route of LRT Phase I, which runs through Avenida do Dr. Francisco Vieira Machado instead of Avenida de Venceslau de Moraes, because the former is closer to residential area, which will thus cover larger residential area (within a radius of 330m), boosting convenience for citizens and utilisation;

- (2) **As to the NAPE section, the plan to replace the section via Rua de Londres by an elevated one via Avenida Dr. Sun Yat-Sen was given up because it will have negative visual impact on the area at Kun Iam Statue and affect the construction of underground tunnel at NAPE. Moreover, the station at Rua de Londres would have a larger coverage of users (if the route runs through Avenida Dr. Sun Yat-Sen, 40% of the coverage of the station would be on the sea). Therefore, the route of Phase I has been finalised basically.**

- (3) As to the route of Phase I, GDI and Mitsubishi Heavy Industries, Ltd. respectively commissioned YY Consultancy Co. Ltd. to conduct an EIA (ANEXO 2) on the route and depots. In the end, suggestions about the construction and operation of the LRT system based on the result of the research were raised.
- (4) Facing the demands brought by the residents living at Rua de Londres at NAPE, the GDI conducted the Analysis on Underground, in which three plans were proposed. The first one is that the route will run through Macao Cultural Centre and sink into underground gradually by 5% inclination starting from Rua de Londres. The sinking section, which is required to be 293 m in length, however, will cut Avenida do Governador Jaime Silvério Marques and Alameda Dr. Carlos d'Assumpção. Therefore, this plan is considered unfeasible. **The remaining two plans provide two options – to run through Avenida Dr. Sun Yat-Sen underground or overground, which are considered by GDI to have negative visual impact and insufficient coverage following analysis** (sharing the same perspective as the Report of Route Improvement in ANEXO 3).

- (5) At the same time, the GDI was also considering the feasibility to include the NAPE section of LRT Phase I in the overall planning of new urban areas (Zone B) (ANEXO 5). Following analysis, the GDI considered that it would lead to an economic loss corresponding to MOP10,720,000,000 and technical difficulties in the construction of the tunnel to be built at NAPE (for example, the inclining section into underground by an inclination of 6% would crash into the tunnel [See the other side of P. 260 of the annex]). Therefore, the GDI suggested improving the original plan by increasing soundproof boards and green areas and improving the landscaping along the route.

However, there are problems including:

- (1) These documents show that the route of LRT Phase I was finalised by the GDI with reference to the result of public consultation and the research done by the University of Macau, **but there were no original documents that presented the information. For example, there was no information to support how the coverage area within a radius of 300 m was defined (The GDI might refer to the experience of other countries and regions).**
- (2) The GDI factored a maximum inclination of 5% into the rejection of the plan of building underground section at Rua de Londres, **but for the analysis of the feasibility to integrate LRT system into the overall planning of new urban areas (Zone B), the inclination that the GDI referred to is 6%. For the same LRT system, different calculation methods have been adopted. Since there is a lack of original documents, it is difficult to know whether the difference was due to typo mistake or other reasons. The CCAC has no intention to ponder on this matter.**
- (3) For the tunnel to be built at NAPE which was mentioned several times, since there is no source of information, it is difficult to ponder on it.
- (4) For another alternative plan to build underground section at Rua de Londres, which will start to sink into underground at Avenida Dr. Sun Yat-Sen (next to Sands Hotel), **according to the information, this plan is not impractical from a technical perspective, in spite of the fact that society will have to pay a higher price for it as mentioned in ANEXO 4. However, this is directly related to the mistake of management made by the competent authority.**

- (5) **There is indeed a lack of scientific data and technical criteria. In this sense, what is the reason for changing the section running through in front of Headquarters of Macao SAR Government to the underground design? We do not believe that the technical conditions for constructing tunnel at this area are better than that for Avenida Dr. Sun Yat-Sen.**

* * *

A report made by a local consultancy

XXX Civil Construction and Design Consultancy Co. Ltd. (See P. 70 of the report) made a consultant report named Abstracts on Preliminary Design on 13th July 2011 and sent it to the GIT on 19th July 2011. Here we reveal part of its content:

*“ Plan for Construction of Section C220 of LRT System of Macao:
Abstracts on Preliminary Design*

The graph above shows that the distance between the buildings at both sides of Rua de Londres and Rua de Cidade do Porto is 24 m. After due consideration of various factors, the width of the elevated track has been narrowed down to 9 m, leaving a distance of 7.5 m to surrounding buildings, while the height (the distance between the surface of the track to the road) is 10 m, which is similar to that of the podia of surrounding building, so that the impact on the residents nearby will be minimised.

Landscape

The elevated section located at Rua de Londres and Rua de Cidade do Porto will have negative impact on the landscape, so we suggest taking the construction of some overpasses in Macao as reference, such as the overpass at Avenida do Comendador Ho Yin, of which the pillars are surrounded by plants in order to increase green areas to minimise the impact.

Noise

After consulting the EIA report enclosed with the tender documents, we suggest installing soundproof blocks at the elevated section at Rua de Londres and Rua

de Cidade do Porto in order to decrease noise pollution and negative visual impact on residents caused by operation. We also suggest referring to some construction projects in progress in Hong Kong, where vertical greening has been adopted as soundproof barrier.

Utilisation of the space under the track

There are many streets surrounding Alameda Dr. Carlos d'Assumpção, but the traffic condition at Rua de Londres and Rua de Cidade do Porto is not very heavy. If these two street are reserved exclusively for pedestrians and the green space under the elevated track is enlarged to improve the conditions for pedestrians and tie in with the pedestrian facilities of the station at Alameda Dr. Carlos d'Assumpção (station no. 7), the pedestrian conditions in east-west direction at this area will surely be improved, encouraging citizens to travel on foot. With better distribution of traffic flow, it is expected that this will not cause serious pressure on the traffic.

Fire safety

*According to the fire safety laws in Macao, adjoining buildings with 50% accessible exterior walls that are served by areas with a clear width of 6 m fulfil the requirements for access of fire engines **pursuant to Article 8 of Chapter II of the Fire Safety Regulation of Macao.** For the buildings nearby, the free access areas which do not directly face the LRT route already allow sufficient space for access of fire truck required by the law. Nevertheless, in order to facilitate access of fire truck, the two streets can be reserved exclusively for pedestrians as mentioned above. As a result, there will be sufficient space to be reserved as an emergency passage way and a clear width of more than 6 m and thus the residents' worries about fire safety will be eliminated.*

B.3 Integration of Station at Alameda Dr. Carlos d'Assumpção (station no. 7) into the park

Requirements

- 1. The station situated at Dr. Carlos d'Assumpção Park will undoubtedly bring an increase of the flow of people on the both side of the park. In order to decrease the conflict between the increase of passers-by and the traffic condition, improvement of the pedestrian facilities between the*

buildings surrounding the park and the station is the main point which should be considered.

2. *The station will occupy the space intended for greening. In order to make up for the loss of space and beautify the surrounding environment, another main point which should be considered is to improve the exterior design of the station in order to integrate it into the greening of the park.*
3. *Features of station no. 7*
 - *Change of exterior design of the station in order to match the greening of the park*
 - *A platform for scenic viewing on the top in order to make up for the occupation of spaces of the park*
 - *A pedestrian passage beneath the ground floor of the station which allows free access of passengers*
 - *Outdoor elevators to the platform (stairs and elevators)*

C. Major problems concerning the alternative plan (Avenida Dr. Sun Yat-Sen)

C.1 Conflict with government's infrastructure planning

According to the research and proposal submitted by GIT to Urban Planning Department of DSSOPT, an underground driveway and a coastal corridor with greenery will be built at Avenida Dr. Sun Yat-Sen. If the LRT track is built there, the future planning will be affected. At the same time, the planning of the land reclamation project at Zone B is ongoing. If LRT route is included in the plan, the objective to put LRT Phase I into operation by 2015 will be affected;

C.2 Visual impact of the overground track on the coastal line and Kun Iam Statue

If the elevated section of LRT system is built at Avenida Dr. Sun Yat-Sen, there will be a visual impact on the coastal line of the road and Kun Iam Statue as well as the coastal corridor being planned by the government;

C.3 Service radius and convenience for citizens

Plan for reference

The station is located within Dr. Carlos d'Assumpção Park, near office and residential buildings. Within a radius of 300 m, it covers a terrestrial area of 244,000 m², which allows more efficient service for the citizens;

Alternative plan

The station is located next to Kun Iam Statue at Avenida Dr. Sun Yat-Sen, which is far away from the buildings surrounding the Dr. Carlos d'Assumpção Park, covering a terrestrial area of 156,000 m² within a radius of 300 m. Compared with the plan above, this is less convenient and citizens are less likely to be encouraged to use the station;

C.4 Pedestrian facilities at Avenida Dr. Sun Yat-Sen

Due to existence of LRT station, the flow of people between the station and surrounding buildings will dramatically increase. If the station is built at Avenida Dr. Sun Yat-Sen, the pedestrian facilities will have visual impact on the coastal line and the Kun Iam Statue. Meanwhile, in view of the traffic flow of high speed at Avenida Dr. Sun Yat-Sen, if citizens walk across the road directly instead of using the pedestrian facilities, the risk of traffic accident will increase dramatically.

D. Comparison

Comparison in terms of environment ("A")

Order	Item	Plan for reference	Grade	Alternative plan	Grade
A.1	Landscape	<i>The width of the part of the road occupied by the elevated track 37.5% ($9/24=0.375$), Visual impact on inner streets and lower-level residences.</i>	6	<i>Visual impact on the coastal line of Avenida Dr. Sun Yat-Sen and Kun Iam Statue.</i>	8
A.2	Noise	<i>Place soundproof blocks in order to reduce the impact of the elevated track located at an inner street on surrounding residents</i>	4	<i>Located on coast and far away from residential areas, the station has low impact.</i>	6
A.3	Air pollution and ventilation	<i>As the elevated track is located at inner streets, appropriate test and simulation on computer should be conducted to analyse the air pollution and change of ventilation.</i>	5	<i>Due to the development of new urban area Zone B, the buildings surrounding the track will be affected by air pollution and noise</i>	6
A.4	Light pollution	<i>No need to use strong lighting system as the trains are automatic</i>	6	<i>No need to use strong lighting system as the trains are automatic, but the impact on the Kun Iam Statue will be more obvious at night</i>	4

A.5	<i>Impact of location of station on surrounding environment</i>	<i>The station is located to the south of Alameda Dr. Carlos d'Assumpção, so its exterior design should match the park in order to minimise the impact.</i>	6	<i>Citizens' right to enjoy the views of coastal line should be taken into account as it will be affected.</i>	4
		<i>Subtotal of A =</i>	27		28

Comparison of issues related to citizens' daily life ("B")

<i>Order</i>	<i>Item</i>	<i>Plan for reference</i>	<i>Grade</i>	<i>Alternative plan</i>	<i>Grade</i>
B.1	<i>Conflict with government's infrastructure development project</i>	<i>As Rua de Londres and Rua de Cidade do Porto has been developed, there is no large infrastructure development project so far</i>	8	<i>The exterior road will be rebuilt as a green coastal corridor and an underground driveway will be built in order to increase the capacity of flow of vehicles. The construction of LRT system along the coast will have significant impact on the traffic planning</i>	3
B.2	<i>Issues about fire safety</i>	<i>Accord with fire safety laws of Macao</i>	5	<i>Accord with fire safety laws of Macao</i>	6

B.3	Accessibility to LRT (radius of service) and connection with other transport tools	As the station is located at Alameda Dr. Carlos d'Assumpção, it is well connected with other transport tools (especially there is an existing bus stop)	8	As the station is located on the coast, the pedestrian conditions and facilities between Alameda Dr. Carlos d'Assumpção and the coast need to be improved, resulting in increase of cost and visual impact on Avenida Dr. Sun Yat-Sen	5
B.4	Utilisation of the space under the track	The elevated track will occupy the centre of the road, but the parking spaces under the track will be complement to the parking spaces cancelled. There will be no construction of new facilities	6	Community facilities can be built under the track, such as basketball field or gymnastic amenities to make up for the lack of sports facilities in this area	7
		Subtotal of B =	27		21

Comparison of impact of the construction, length of construction period and cost ("C")

<i>Order</i>	<i>Item</i>	<i>Plan for reference</i>	<i>Grade</i>	<i>Alternative plan</i>	<i>Grade</i>
C.1	Noise and vibration produced by construction	As done at inner streets, the residences nearby will be affected	4	Done at seaside, far away from residential area, less impact on citizens	6
C.2	Air pollution during construction	The branch roads near the inner streets can release the pressure on traffic flow despite of temporary block of relevant sections	4	Located at a main road at outer circle, having large impact on traffic	6
C.3	Impact on traffic	The branch roads near the inner streets can release the pressure on traffic flow despite of temporary block of relevant sections	8	Located at a main road at outer circle, having large impact on traffic	4
C.4	Construction period	Shorter track will take shorter time	8	Longer track will take longer time	5
C.5	Cost	Lower cost for shorter track	8	Higher cost for longer track	5
		Subtotal of C =	32		26

Total ("A" + "B" + "C")

<i>Order</i>	<i>Item</i>	<i>Plan for reference</i>	<i>Alternative plan</i>
A	Environment	27	28
B	Citizens' daily life	27	21
C	Impact of the construction, length of construction period and cost	32	26
	Total =	86	75

E. Conclusion

The team working on section C220 conducted a preliminary research on both the plan for reference and the alternative plan, during which they also paid attention to society's suggestions and demands about the construction of LRT system. In the stage of preliminary research and design, we, the team, carried out preliminary exploration and more professional analysis on the two plans.

According to the plan for reference, the section C220 begins at Station no. 5 (near Fisherman's Wharf) located at the north-east corner of Avenida Dr. Sun Yat-Sen towards Macao Cultural Centre (in south-west direction), where it turns to Rua de Londres towards Station no. 7 at Alameda Dr. Carlos d'Assumpção, to Station no. 8 at the Arts Garden via Rua de Cidade do Porto and Avenida 24 de Junho and ends at Station no. 9 next to Lam Van Lake via Rotunda de Ferreira do Amaral. Within C220, the sub-sections at Rua de Londres, Alameda Dr. Carlos d'Assumpção and Rua de Cidade do Porto are the closest to residences, causing great concern among the residents nearby. In this sense, thorough consideration of the concerns about noise pollution, air pollution, ventilation, light pollution and location of stations on this section and a lot of supplementary facilities and improvement of the design of the track and Station no. 7 is needed.

In response to the request indicated in the tender document of C220, the company also conducted preliminary research on the alternative plan. The section begins at Station no. 5 in south-west direction and runs through the Kun Iam Statue along Avenida Dr. Sun Yat-sen instead of Rua de Londres, Alameda Dr. Carlos d'Assumpção and Rua de Cidade do Porto, and turns to Avenida 24 de Junho at MGM and finally towards Station no. 8 via the route originally planned.

In the preliminary research, we compared the plan for reference with the alternative plan and analysed thoroughly the problems concerning the route. Based on the preliminary research and analysis on the concerns to the residents at NAPE, the alternative plan will actually solve many of the problems they will face, such as noise pollution, air pollution, ventilation and fire safety issues. However, the LRT system is the largest infrastructure project ever in Macao. It involves many issues about the society and economy and has tremendous influence on the transportation, economic and urban developments. Therefore, when comparing the plan for reference with the alternative plan, we have to conduct an in-depth analysis on other influential factors to different LRT routes

due to the limitations caused by the special objective conditions of this project.

After cooperating with several government departments for months and gathering various information, we found that there is a significant conflict between the alternative route and the new urban planning projects to be commenced shortly and the existing facilities in relevant important districts, such as the issues about negative impact on the cost-effectiveness of extension of the track, visual impact on the area near the Kun Iam Statue, the significant obstruction to the future development caused by the alteration of the south-east coastal line of Macao Peninsula. And the locations of the stations at marginal areas of the peninsula will weaken the economic dynamics of the NAPE. On the contrary, the route in the plan for reference has positive impact on the development of NAPE and even the whole peninsula as the areas surrounding the route have been developed. Therefore, the plan for reference matches the objective of construction of LRT system better. However, without doubt, a lot of supplementary facilities should be built at the sections at inner streets in the plan for reference in order to eliminate surrounding residents' worries.

In view of the comparisons and impacts of environment, citizens' daily life and construction, we found in the first stage of designing period that the plan for reference is slightly better than the alternative one. The subsequent basic design will be based on the plan for reference."

We remained reserved about the nature, function and purpose of this report because:

- (1) **What is the purpose for requesting the consultancy to provide such a report which is not supported by any scientific and testing data in July 2011?** The construction should have begun at that time?
- (2) In the report, we do not find any analysis based on scientific data. It only concludes the issues and tries to make an expected conclusion by grading.
- (3) **Take the grading table as an example, the grading criteria is unknown. In what way? What are the reasons? The result is ineffective and as reference, its value is in doubt.**
- (4) Obviously, the purpose of the report is to try to support the stance of GIT (to have the track running through inner streets), **but it does not indicate any**

convincing scientific analysis and technical data. Even there is no big difference between the grades of the two plans, which is only within 100 points, showing that the plan with the higher score does not have any apparent advantage.

- (5) The conclusion of the report is unrealistic, as it does not mention any technical and scientific data, especially the issues about fire safety, but only reiterates the stance of GIT without any substantial basis.

* * *

In fact, some other companies have already suggested building the LRT track underground:

- In December 2005, the MTR Corporation of Hong Kong made a report named “Summary of Final Report of Feasibility Study on Macao LRT System” (See P. 1968-2516 of the annex), which is based on the ideas of the GDI, i.e. making it a subway system. The research was done on the route which consists of an underground section in Macao Peninsula and an elevated section in Taipa and suggests that the most feasible system for Macao is **Automated People Mover (APM)**, which allows a maximum inclination of 6% and a bending radius of less than 100 m. The report also suggests a station coverage radius between 300 m and 500 m (See P. 2025 of the annex), while the route is basically the same with slight modification. Running through Avenida de Amizade and Avenida da Praia Grande is proposed.
- Later, another consultancy and MTR company conducted analysis on the route designated by the GDI respectively. Coincidentally, both of them suggested a maximum inclination of 6% and a design comprising of both underground and elevated sections. The section at NAPE proposed by the GDI runs through Avenida Dr. Sun Yat-Sen, but there is no information showing why the GDI chose this route.
- After that, the consultancy conducted a research regarding the feasibility study made by the MRT Corporate of Hong Kong and pointed out that building the track underground will lead to increase of not only costs for construction and operation but also risk due to more complicated technical issues. However, this is not backed by any detailed scientific data and arguments.

- In 2007, GDI made a report of route improvement. Since there were plans A and B for the northern section and C and D for the NAPE section, the GDI, considering the service coverage radius of 300 m, the visual impact on the Kun Iam Statue and the conflict with the driveway to be built, gave up the plan of running through Avenida Dr. Sun Yat-Sen and **proposed running through Rua de Londres**, which is also not backed by any comprehensive scientific data and arguments.

Therefore, building an underground section at Avenida Dr. Sun Yat-Sen is not an absolutely impossible plan (Nevertheless, we certainly believe that the cost may be higher than building an elevated section).

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Part VIII: Conclusion

In view of the complexity and speciality of the LRT system construction project, the CCAC is unable to propose a single feasible plan, but is absolutely able to analyse the technical and safety issues as well as point out the problems that have caused doubts and the things overlooked and the defects appearing in the course of making decision by the competent departments. To sum up, the CCAC believes that:

1. In the course of deliberating and deciding the design of the route, **approach and procedure adopted by the competent department are inappropriate, leading to an unconvincing result, because comprehensive technical data and criteria were not publicised.**
2. **Facing such a large and influential project, GIT did not handle the technical and administrative issues properly, which led to numerous problems and conflicts. It should have considered and made decisions on many technical issues instead of doing it after the design has been finalised.** Whether to adopt NFPA130 is a typical example. After the plan was finalised and even right before the construction started, GIT still consulted the CB about whether to adopt NFPA130 or not. It is hard to understand which standard has been adopted for the design.
3. **During the public consultation period, unconvincing rules and procedure**

were still adopted. The organisations commissioned and the interviewees were not representative and there was no convincing standard for the consultation, which will only lead to disappointing results.

4. **For the consultation about the track, i.e., the structure of the track and the route, the procedure and approach** also do not meet the requirements of modern public administration, as the technical data and safety issues have never been explained to the public. This has inevitably raised doubts.
5. **For the selection of route plan,** choosing to run through Rua de Londres instead of Avenida Dr. Sun Yat-Sen is not backed by convincing basis and the reason stated is not scientific and technical.
 - (1) If this change was based on technical consideration, the original design should be a defective one.
 - (2) If the original plan was satisfactory, the plan of running through Rua de Londres should be inappropriate.
 - (3) If both the two plans are feasible on condition that they accord with technical and safety standards, the one that meets the following requirements should be chosen:
 - (a) The lowest cost;
 - (b) The highest degree of safety;
 - (c) The least impact on the rights and interests of surrounding residents or having regard to their legitimate rights and interests;
 - (d) Matching up with urban development plan and the plans that have already been confirmed.

Regarding these, GIT has never stated any systematic and scientific basis.

6. The reason that was stated for not choosing to have the track running through Avenida Dr. Sun Yat-Sen is for satisfying the demands brought up by the projects of land reclamation and the west-bound motorway. However, it should be noted that: the so-called development of west-bound motorway is simply

a preliminary idea of GIT which has not been finalised. If we have a look at the urban development plan which has come out recently, it is not difficult to discover that the traffic network project stated by GIT does not exist, or this urban development plan is not the case. In this sense, given different prerequisite, why does GIT insist on adopting the original plan? Moreover, where did the idea of the east-west motorway come from? The competent authority has never approved this idea. The reasons stated by GIT are groundless and unconvincing.

7. **Other reasons for citizens' resentment are the lack of effective coordination between the relevant public departments and their inability to provide prompt solutions to problems. The relevant departments include GIT, CB and DSSOPT.** For the technical issues, they should not keep procrastinating. If the project accords with technical standard, there is no need to delay. As a Chinese proverb goes, "true gold is fire-resistant".
8. There are slight differences between the data shown in the drawings submitted and those measured on site. We think that this is unacceptable since it occurs in a real project.
9. It was not until the residents raised concerns about some details or technical problems that the GIT commissioned consultancies to conduct technical analysis. Those consultancies are unconvincing in technical aspects, so the results are also unconvincing, showing the lack of in-depth consideration of many problems concerning the designing and optional plans, and especially the consideration of technical standards and degree of safety.
10. According to the abovementioned report submitted to GIT by the consultancy, the difference between the two options of passing Rua de Londres and Avenida Dr. Sun Yat-Sen is 11 points (based on a 100-point scale). What does the difference actually mean? We think it does not mean much. The competent department should have clarified the truth and stated the technical and scientific criteria instead of meaningless words.

[Note: If a more thorough and comprehensive analysis is conducted on the current plan of LRT project, we believe that there will be many more issues worth exploring, but here we only address the key problems above.]

* * *

Part IX: Recommendations

1. Since the LRT system construction project is large in scale, demanding in technical aspects and complex, the CCAC, as mentioned above, is unable to propose a single feasible plan, but any of a suggestion that accords with safety requirements and technical standards is worth consideration. We are confident to bring out the following opinions:
 - (1) To have the LRT route running through Avenida Dr. Sun Yat-Sen instead of Rua de Londres and build it underground, and re-develop Rua de Londres as a road only with driveway and walkway (cancel all parking spaces), thus it will serve as one of the main driveways that connect the NAPE and the future Eastern and Western Districts.
 - (2) The merits of the above suggestion are that it will bring a balanced utilisation of the spaces at the zone, protect residents' legitimate rights and interests and the coastal landscape and meet the demands brought by the future development of Eastern and Western Districts, thus minimising the impact and even facilitating underground development of the coastal area for urban development in the future.
2. Although we understand that any change will involve extra spending or delay of the construction, it is important to understand that it is such a large-scale project that has significant influence on the development of Macao and the life of its citizens in the following decades. Every decision shall be made carefully. Once the project is completed, everything is irreversible. (The lower deck of Sai Van Bridge is the best example.)
3. If GIT insists in the option of running through Rua de Londres, it should disclose to the public all evidence and basis which can prove that the plan meets the safety standards instead of elaborate it by meaningless words.
4. GIT should explain the technical analysis to all Macao citizens but not only to those living near Rua de Londres or the CCAC, because this is a public project for Macao and all citizens. As it is funded by the government, financial management and the management concept and style of "good father of a family" are the key factors.

* * *

Moreover, according to the information gathered so far, since the preliminary work was not well prepared, it is expected that there will be many technical problems to be solved during the construction, involving different competences of public departments. Therefore, we suggest the Chief Executive issuing an order to establish a technical task force which reports directly to him or any authorised official. The members should include officials of DSSOPT and CB to centralise relevant works and promptly solve all technical problems (those coming out due to alteration or new problems), in order to avoid delay and confusion.

* * *

Since the report involves technical issues, government policies and final decision, the following parties will be notified:

- (1) The Chief Executive;**
- (2) The Secretary for Transport and Public Works;**
- (3) The Transportation Infrastructure Office;**
- (4) The complainant (Macao Community Development Association).**

* * *

The Commission Against Corruption, 5th September 2012.

Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of the case:

- (1) For making administrative decisions on general matters, the law (Articles 114 and 115 of the *Code of Administrative Procedure*) requires administrative bodies to give adequate explanation. The same provisions shall be observed when facing technical issues;
- (2) The departments responsible for public works enjoy certain degree of discretion in technical aspect, but this is still subject to regulation. Therefore, since all plans and decisions related to the project are, in fact, within their scopes of competence, they shall observe the principles of the aforementioned articles;
- (3) Adoption of NFPA130 should have been confirmed in the stage of design, GIT should not linger on the question whether to adopt NFPA130 or not;
- (4) For the matters involving citizens' interests, public consultation should be conducted in a fair, just, transparent, effective and objective way;
- (5) Significant transport system development project should match up with overall urban planning and should be assessed and approved by competent body;
- (6) Lack of coordination between technical departments or adopting inconsistent standards leads to failure to satisfy citizens' demands and eliminate public's worries;
- (7) The supervisory department has the power to supervise the concepts and plans provided that they respect the technical decisions made by competent departments. If there is technical mistake or inappropriateness, it is still related to management of public works and the decision-maker is responsible for it;

- (8) Due to professionalisation of different industries, regulation also follows the trend. Overall supervision and technical supervision are new models of modern regulation. For example, for Beijing Olympic Games, Asian games in Guangzhou and Universiade in Shenzhen, the relevant supervisory departments regulated everything of the event to guarantee every detail. These examples are valuable references;
- (9) The technical problems found by the supervisory department from the drawings should be solved by the competent department in priority; otherwise they shall be liable for mismanagement;
- (10) The final decision on solution to a problem is not within the scope of competence of the supervisory department. The competent department shall make the best decision which caters the best to citizens' interests based on technical requirements and principles of public works management (only one of those plans is the case).

Case IV

Analysis report on a complaint related to an administrative omission

Key points:

- Interpretation of law shall be done according to Article 8 of the *Civil Code*;
- If the law provides the obligation to establish a norm, the norm shall be substantial and clear so that the one who enforce the norm can fulfil his/her duties;
- The norm established first still can be one of the ways to implement the one established afterwards. There is no conflict between the two.

* * *

Part I: Subject

1. The New Macau Association presented, in 11th September 2012, the following complaint to the Commission against Corruption (hereinafter referred to as the CCAC):

“11th September 2012

The New Macau Association hereby requests the CCAC to follow up a case of omission by the Government of the Macao SAR

According to Article 19 of Law no. 2/99/M, Regulation of Rights of Association, it is incumbent upon the Governor (currently the Chief Executive) to publish annually the accounts regarding subsidies allocated to associations, and the associations that benefit from subsidies of public entities in an amount greater than the value set by the Governor (current Chief Executive), should publish their accounts in the local press within the period of a month.

The New Macau Association, mailed in July (2012) a letter addressed to the Chief Executive requesting to publish as soon as possible the aforementioned value pursuant to law. However, the Macao SAR Government, despite not having published so far the referred value, did not yield any justification to society or to the New Macau Association of the reasons.

Macao SAR public entities (namely the Macao Foundation) have awarded annually high-value subsidies to certain local associations, an issue that has been the subject of criticism by the public and by members of the legislature, raising doubts concerning the impartiality and the lack of rigor in assessment and authorization of these subsidies as well as on the monitoring of the related procedures. The strict compliance with this law constitutes a booster of an improved supervisory factor on the part of citizens concerning the use of public money. On the contrary, if the SAR Government failed to abide by the law, it could hardly self-defend, and it would be certainly qualified as an accomplice of those high-spending associations.

New Macau Association”

2. After collecting, comprehending and accessing the materials related to the complaint, the CCAC will proceed to a more complete analysis.

* * *

Part II: Analysis

The two main issues of this complaint are:

- (1) **The interpretation and application of Article 19 of Law no. 2/99/M of 9th August;**
- (2) **The relationship between the provisions in force governing the publication of a list of financial support (subsidies) assigned to associations by Public Services and the cited article.**

* * *

A – About the aforesaid law

Article 19 of Law no. 2/99/M of 9th August provides:

*“Article 19
(Publication of accounts)*

1. The associations benefited from subsidies or from any other financial contributions from public entities, in an amount greater than the value fixed by the Governor, should publish annually its accounts in the month following that in which those accounts are approved.

2. The publication is made on one of the newspapers registered in the Territory.”

With regard to the content of the complaint, in fact, either before the handover, or after the establishment of the Macau SAR, the value referred to in Article 19 of Law no. 2/99/M, of 9th August, which regulates the right of association was never defined nor published. Is this an omission? Is this a gap in legislation? Or lack of supervision? We can analyze this matter at various levels.

I – Analysis on the textual structure of the rule

Article 19 of the aforementioned law provides:

*“Article 19
(Publication of accounts)*

1. The associations benefited from subsidies or from any other financial contributions from public entities, in an amount greater than the value fixed by the Governor, should publish annually its accounts in the month following that in which those accounts are approved.

2. The publication is made in one of the newspapers registered in the Territory.”

1. As to the content of Article 19, it is not difficult to notice that, at the time, the legislator did not anticipate, compulsorily and imperatively, the formulation of the respective Order within a given period and left, at least, to the Governor, before the transfer of sovereignty (Chief Executive, after the establishment of

the Macao SAR)³⁸, the discretionary power to decide on the two strands:

- a) Time – when will the said Order be produced and published, it is not expressly stated in the legal diploma;
 - b) Amount – As it is not provided for in Article 19, the power of decision on this matter was left to the Governor (i.e. Chief Executive, after the establishment of the Macao SAR).
2. With regard to the right timing of a legislative act or the elaboration of a statute, some scholars understand that:

“Administrative acts of omission include the omission of acts in concrete under the administrative level and the omission of a legislative act. The administrative and legislative omission constitute acts that bring together these two characteristics, i.e. the omission of a legislative act and the omission of an administrative act, meaning that certain legislative bodies or administrative authorities fail to enforce the discipline imposed by a superior rule, not assuming, unjustifiably, the responsibilities created by law, for example, to set in a timely manner the shapes and suitable conditions for the establishment of regimes through acts of legislative innovation, revocation and amendment of legislation. The administrative and legislative omission constitutes acts of clearance of administrative and accountability responsibility, on the part of the administrative or legislative body. On a doctrinal approach, administrative and legislative omission integrates three key factors:

- 1) *Normative responsibility of administrative and legislative bodies;*
- 2) *The normative power of the administrative and legislative bodies;*
- 3) *An omission or negative act practiced by the administrative and/or legislative bodies.*

(...)

³⁸ See paragraph (4) of Annex 4 of Law no. 1/1999 of 20th December, *Reunification Law*.

3. *The relationship between the regulatory omission by the administration and the use of discretionary power in the area of legislative production*

*We can distinguish the various types of omissions, that is, a violation of the obligation of action. According to the "theory of restrictive discretionary power", the abuse of discretionary power is one of the reasons that give rise to the practice of an administrative illegality by omission. In terms of the degree of freedom of the normative power of the Administration, the omission of the Administration in this respect has two modalities: omission in fulfilment of what is imposed by a superior law and omission in the exercise of discretionary power in the field of legislation. Such modalities are closely linked to the clarity degree of coercion and rigor of the regime of authorisation of legislative power of the State. At the same time, such a regime is also an important criterion for verifying the manifestation of illegality of the omission of the Administration. This is because it is precisely the lack of coercive strength, of clarity and logic in the authorisation regime of normative power in the Administration that affects the justifiability of the use of the discretionary power of the Administration in the field of legislation. This phenomenon raises many difficulties in identifying whether or not there are administrative illegalities by omission, from the viewpoint of the rule of law in the formal sense, and also in determining the type of omission of the regulatory power. When there is an absence of legislative rules delegated by a superior law or there is ambiguity or weakness of enforceability, we can only evaluate whether or not there is omission of normative power considering the historical background of the development of the respective administrative legislation and the needs and development of society.(...)"*³⁹

This is the specificity of the normative omission by the Administration.

* * *

³⁹ See the study on the normative omission by the Administration by Yu Lishen, in *Legal Regime and Social Development*, no. 2 of 2011.

II – The analysis of the objective of Law no. 2/99/M and the content of Article 19

1. It is obvious that the law above referred to is not intended to regulate the financial support allocated to associations, but rather to declare freedom of association, which is a fundamental principle.
2. All associations enjoy freedom in terms of its inner operation, on the condition that they do not violate the law. As a general rule, the Administration cannot arbitrarily intervene in the internal affairs of associations, namely concerning their financial situation. In accordance to Article 19, the associations benefiting from financial support, in an amount exceeding a value to be fixed by Order, need to publish their accounts. If the content of Article 19 is considered as an "order to regulate", there are considerable ambiguity in it, which is why the executing entity faces immense difficulties, namely:
 - (1) With regard to the publication of the accounts, which accounts shall be published? The total of the accounts? Or only the part of the accounts related to the financial support provided by the Government?
 - (2) It will only be the subsidised projects which will be the subject of publication? Or it must be published the specific way of application of the subsidies received?
 - (3) The accounts will be published in details? Or in a synthetic form?

Given the lack of clarity of the content of the referred article, its fulfilment and implementation become difficult. If the limits laid down in the law are exceeded, the act may constitute a case of usurpation of power.

* * *

B – Concerning the provision on the publication of the list of subsidized associations

In fact, before the publication of Law no. 2/99/M, the allocation of financial support was already regulated by an administrative order – See Order no. 54/GM/97 of 1st September, which provides:

“1. The allocation of financial support to individuals and private institutions (codes 04-02-00-00, 04-03-00-00, 08-02-00-00 and 08-03-00-00 of the Territory General Budget – economic classification of public expenditure, in accordance with annex II to Decree-Law no. 41/83/M, of 21st December, amended by Decree-Law no. 49/84/M, of 26th May), shall be governed by the following principles:

1.1. Private institutions can benefit from financial support if they develop activities of public interest, are legally constituted and proceed to non-profit-making and also those individuals that promote activities considered also of public interest and non-profit making.

1.2. The financial support should be granted for specific activities well defined in time, and may also, exceptionally, aim to ensure the operation of private institutions.

(...)

2. Autonomous services and funds covered by this Order shall publish in the Official Gazette, in the months of January, April, July and October, listings referred to the previous quarter, identifying the recipients of financial support and the amounts allocated.

(...).”

We can proceed to the analysis of the order above in many ways.

I – The analysis of subject regulated by the Order

1. Strictly speaking, the subject under discussion in the Order must be regulated by an Administrative Regulation. However, the then Governor of Macao enjoyed legislative power in some matters. It is clear that the matter under consideration is not a matter of the Administration itself, but rather a regime of allocating financial aid, which should be regulated by a higher-ranking norm. In short, the matter under consideration must be the subject of a "Regulation".
2. Considering that what bound to the Order are not only the Administration but also the entities that are not part of it - applicants and associations, the effects go beyond the sphere of Administration.
3. In a normal situation, in the case of abstract provisions and of reiterated application, the form of a Regulation should be adopted, being that the Order applies to specific and individual cases.

II – From the analysis of the Order recipient

Paragraph 1 of Order no. 54/GM/97 of 1st September, states:

*"The allocation of financial support to **individuals and private institutions** (codes 04-02-00-00, 04-03-00-00, 08-02-00-00 and 08-03-00-00 of the Territory General Budget – economic classification of public expenditure, in accordance with annex II to Decree-Law no. 41/83/M of 21st December, amended by Decree-Law no. 49/84/M of 26th May shall be governed by the following principles:*

1.1. Private institutions can benefit from financial support if they develop activities of public interest, are legally constituted and proceed to non-profit-making and also those individuals that promote activities considered also of public interest and non-profit making.

1.2. The financial support should be granted for specific activities well defined in time, and may also, exceptionally, aim to ensure the operation of private institutions."

Hence we can see that the abovementioned Order is intended to the following two groups:

- Private individuals;
- Associations (Private institutions).

On the contrary, the Law no. 2/99/M of 9th August, through its Article 19, is intended exclusively for associations, being relatively restrict its scope.

III – About the allocated amount

Pursuant to paragraph 2 of Order no. 54/GM/97 of 1st September:

“Autonomous services and funds covered by this Order shall publish in the Official Gazette, in the months of January, April, July and October, listings referred to the previous quarter, identifying the recipients of financial support and the amounts allocated.”

Therefore, even if the public services (including the autonomous services) give financial support to the value of just MOP1, they have to publish in the Macao SAR *Official Gazette* the list of financial support granted. So, what is its purpose? The purpose is to comply with the principles of transparency and publicity of public finances, in the way to familiarise the citizens and produce a monitoring effect.

IV – In relation to the form of publication

1. Pursuant to Order no. 54/GM/97, it is required that public services publish the decision awarding financial support and its contents, in the Official Gazette of Macao SAR Government, which is the official periodical publication, and constitutes the appropriate mean to publish the documents with legal value or the subjects of solemn nature.
2. Differently, Article 19 of Law no. 2/99/M only requires that the covered associations publish their accounts in one of the newspapers and the referred publication is held on the initiative of the beneficiary associations. Therefore, the Order no. 54/GM/97 chooses and defines a way of publication with a higher level, a more stringent surveillance and a greater accuracy.

V – About the order of the dates of entry into force of the various diplomas

In terms of the analysis of the order of the dates of entry into force of the various diplomas, there may be a doubt: the Order no. 54/GM/97 was drawn up before Law no. 2/99/M. And what is the relationship between the two?

The answers are simple:

1. Prior to the entry into force of Law no. 2/99/M, the competent authority to address this matter had already chosen a form of regulation more solemn and at a higher level and, so far, this form is still in force;
2. Although the legislators require, through Law no. 2/99/M, the definition of another content, Order no. 54/GM/97 almost fully contains it and goes beyond the contents of that one. In this regard, Order no. 54/GM/97 is still one of the ways of implementation of Article 19 of Law no. 2/99/M.

VI – About the informatics development and the ease of consultation

1. Both the Law no. 2/99/M and the Order no. 54/GM/97 require the publication of the value and content of financial support, and this aims to inform the general public and allows a certain supervision. In order to do this supervision, first it is necessary to have knowledge of the situation. And to have knowledge of the situation, there must be opportunities to query the respective information.
2. At present, with the computer development, the *Official Gazette of Macao SAR Government* is accessible on the Internet and its query is more convenient than reading the local newspapers. Public services have to carry out the publication in the defined periods (quarterly) and therefore this information is more concentrated and more convenient for the query by the general public. In spite of the fact that several newspapers are also accessible on the Internet, some still have not offered this service. This may cause inconvenience or other problems to familiarise citizens (for example, in the case of associations that choose the publication of their accounts in a weekly newspaper with only a few readers, the effectiveness of supervision will be much diminished). And, in conclusion, the publication in the *Official Gazette of the Macao SAR Government* prevails.

VII – About the use of resources

In case it is required that the associations shall publish their accounts, it is the associations who must pay the publications at their own costs. And this may result in additional costs, because the repetition of the act practiced by public services (services that allocate subsidies) may or may not correspond to a procedural efficiency and a subject of discussion.

* * *

Part III: Conclusion

In view of the above, the CCAC considers that:

1. Pursuant to Order no. 54/GM/97 of 1st September, all the public services (including the autonomous services) which give subsidies to associations must publish on the *Official Gazette of Macao SAR Government* the value, the date and purpose of the financial support. This already fulfils its functions and has the effect of supervision of the financial sources of associations;
2. Even if the financial support is just on the value of MOP1, public services must comply with the provisions of the above mentioned Order, this, to some extent, already produces the effects that Article 19 of Law no. 2/99/M seeks to achieve;
3. Regardless of the form of publication (publication in the *Official Gazette of Macao SAR Government*) or the publishing content (any value of subsidy has to be published), the requirements of the regime laid down in Order no. 54/GM/97 of 1st September, is more complete, its form of execution is more rigorous and the strength and the supervisory role is stronger in comparison with the provisions of Article 19 of Law no. 2/99/M of 9th August;
4. In this sense, we conclude that the Order no. 54/GM/97 of 1st September also constitutes one of the ways of implementation of Article 19 of Law no. 2/99/M of 9th August. A gap in the regulation of this matter cannot be

found;

5. Being this, as mentioned before, as a principle, it is to the competent authority to determine the opportunity of enacting the law or regulation, except if a timetable is set by the constitutional law. This case is not an example of an exceptional case, and therefore there is no omission on the part of the administration;
6. It is obvious that the government should follow the development of society and should define a more perfect regime regarding the form, procedure and supervising of subsidies. However, that is another matter and is not the subject of the complaint.

* * *

The report shall be submitted to his Excellency the Chief Executive.

A certified copy of this report shall be sent to the association to which the complainant belongs.

* * *

After being executed the present proceeding must be filed.

* * *

Commission against Corruption, 7th November, 2012.

Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of this case:

- (1) The norm established first still can be one of the ways to implement the one established afterwards and there is no exclusiveness between them;
- (2) The law provides the obligation to establish a norm shall be substantial and clear. Otherwise, it will be difficult for the application;
- (3) If the rights of associations and the basic rights of individuals are of similar nature, matters involving associations should not be regulated through administrative orders;
- (4) If one considers that the government's supervision of granting of subsidies to associations is incomplete or insufficient, he/she has to request the competent body to perfect the relevant measures in terms of general systems. For example, legislative and administrative methods worth consideration.

[Note: After the report was released, the CCAC received a letter from the complainant about their disagreement of our conclusion. The post-analysis is to be carried out in 2013 and therefore is not published in this Annual Report.]

Case V

About the investigation report on the basis for termination of fixed-term appointment of Deputy Director of Fire Services Bureau and relevant complaints⁴⁰

The CCAC did not make public this report in 2012 because:

1. The behaviours being complained about were considered by the CCAC to constitute violation of discipline based on investigation. Therefore, the CCAC suggested the Secretary for Security opening a file for disciplinary inspection. These facts should be kept confidential in the current stage, since they may influence the disciplinary inspection if they are disclosed to the public;
2. On 19th December 2012, the entity that received the recommendations made a response concerning the report and later sent the second sets of documents of the reply to the CCAC on 18th January 2013. The CCAC is conducting an in-depth analysis on the response. Before the final decision is made, the CCAC considers that it is not suitable to disclose the report of analysis.
3. Currently (March 2013), the CCAC is still handling the matters about the report, given that it shall fulfil the obligation of confidentiality – Paragraph 1 of Article 294 of the *Statute of Personnel of the Public Administration of Macao* (hereafter the *Statute*):

“Article 294 (Confidentiality of Procedure)

1. *Before a complaint is filed, the disciplinary procedure is confidential. However, it may be viewed by the defendant at his/her request on the condition that s/he shall not disclose the content.*

(...) .”

⁴⁰ It is necessary to cite many witnesses' testimony in the analysis. Under the principles of confidentiality and moderation, these witnesses are identified by letters.

Therefore, disclosure of the information may contradict the law.

4. Paragraph 13 of Article 4 of the *Organic Law of the Commission Against Corruption of Macao Special Administrative Region* (as amended by Law no. 4/2012 of 26th March) states:

“The Commission Against Corruption is entitled to:

(...);

13) Publicize, through the mass media, its opinions pursuant to the aims enshrined in the Subparagraphs of Paragraph 1 of the preceding Article, subject to its duty of secrecy;

(...).”

Therefore, in order to strike a balance between the general public’s right to know and the duty of secrecy, the CCAC partly reveals the contents of the report – only the conclusion of the response to the complainant:

Conclusion and recommendation

- I. Subject to which the complaint refers and which was not given precedence after the investigation
 1. From an objective point of view, the fact that the complainant has not reported, on 12th April 2010, to the Director, the day after being absent due to sickness and without any evidence that the referred absence has been verbally authorised by the Director, the act committed by the complainant violates the provisions of subparagraph e) of Paragraph 1 and Paragraph 2 of Article 76 of the *Internal Service Regulation of the Fire Services Bureau (CB)*; on the other hand, after investigation, there are not sufficient evidence that the Director has said publicly that the complainant would have to assume criminal liability for committing this act.
 2. Querying the *Statute of the Macao Militarized Security Forces (EMFSM)*, there is no rule that determine explicitly that when a superior criticise

a subordinate, he cannot do it in the presence of other subordinates of the one being criticised or any staff of a less category. To this extent, the complaint concerning the matter in which, according to the complainant, the Director should not criticise him in front of his subordinates and that this act constituted a violation of the *EMFSM*, is dismissed.

3. Both in the *EMFSM*, as in the *Internal Service Regulation of the Fire Services Bureau* and in the *Statute*, there is no regulation that determine the mandatory publication of the vacation plan in the service order. Therefore, the complaint, in the part where the complainant considers that it is necessary to the Director of the CB to approve his vacation plan of year 2011 for publication on a service order pursuant to law, is dismissed.
4. It is true that the Director of the CB, in some occasions, did not distribute to the complainant, but rather to the Deputy Director S, documents intended for the management, since such documents referred to the operations of the CB and that in this case it is the duty and responsibility of the Director of the CB to decide which Deputy Director is responsible for those operations and for receiving the referred documents. Moreover, when it came to documents pertaining to activities organised by the Fire Services Bureau Welfare Association, the secretary to the Director O distributed spontaneously those documents to the complainant. Therefore, there is no reason on the claim that its access to information had been sealed.
5. The internal instructions of the CB establish that its personnel, including the leadership and management staff, is obliged to sign the registry book at the beginning and ending of the normal working periods. In this instruction, there is no infringement of the principles of equality and good faith. Therefore, it is considered unfounded the argument of the complainant, that the fact of having been requested to comply with the fixed working hours schedule, constitutes a violation of the law.
6. Whereas the guard-doorman also processes the registration of the entry and exit of other chiefs whenever they leave their workplace during the normal business hours, there's no reason on the claim by the complainant that the measure in question, implemented by order of the Director, was manifestly directed against the complainant, this argument was based on the internal instructions for the control of attendance of the CB staff, which

provides that the personnel belonging to divisions or superior organic units are exempted from the registration carried out by the referred guard-doorman.

7. It was due to the existence of problems related to the attendance of the complainant that the Director of the CB has determined to the subordinates to proceed to the guard and conservation of the video that has the record of the entries and exits of the complainant. For this reason there are no irregularities on the demarche made by the Director of the CB.
8. The head of the Resource Management Department **T** referred that the complainant could not summon the Department staff to attend meetings nor could force them to participate in the drafting of the Administrative Guide, carried out by the Department. He informed the complainant that, if necessary, he would have to seek instructions and obtain his prior authorization. There was no gross illegality in this act.
9. The head of the Department **T** ordered **AA** to send by fax, at 09:01 am and 2:31 pm daily, the timesheet regarding the Central Operating Station to the Resource Management Department and to the Secretariat and Reception at the Director of the CB at the Sai Van Lake. This was a special request and not a usual one, and above all, this was put into practice only after the transfer of the complainant to the Resource Management Department. However, taking into consideration that the timesheet of the other employees in the same Department who work at the Headquarters at Sai Van Lake is also collected at 09:00 and 02:30 pm and immediately submitted to the head of the Department for checking, there are no conditions, at present, to conclude that these measures adopted by the head of the Department **T** constitute a violation of the principle of good faith and a lack of justice.
10. Being this, it is not possible to conclude that the claims of the head of the Department **T** were unreasonable, according to which the complainant had arrived late.

II. Administrative illegalities and irregularities detected after investigation

Concerning the Director of the CB

1. On the *Performance Evaluation Report of the Management Staff* drafted on 6th May 2011, the Director of the CB, used several events occurred before 18th August 2010 (outside the evaluation period) to evaluate the performance of the complainant, which the content presents contradictory information and shows lack of reasoning.
2. Without having done the proper hearing for the complainant to comment, it was included on the *Performance Evaluation Report of the Management Staff* of 6th May 2011, facts against the complainant that the Director considers real harvested merely of conversations among some fellow CB officers, this act violates the provisions of Article 10 of the Code of Administrative Procedure (Principle of participation).
3. The Director refers in the *Performance Evaluation Report of the Management Staff* of 6th May 2011, that the complainant violated his duties enshrined in the EMFSM, without having instructed any disciplinary proceedings aimed at the discover of the true facts.
4. As for the transport service requested by the complainant to the staff (drivers) of the CB between his home and his workplace, for the provision of work, the Director stated that such could not be considered for “reasons of service” and had constituted a violation of the legislation concerning the use of government vehicles and the Order of the Secretary for Security no. 38/SS/2002. Objectively, there is no legal basis for this claim.
5. Some CB staff referred that they have received orders and implications by the Director with the aim to avoid personal as well as professional relationships with the complainant. Other CB officials claim they have been pressured by the Director, who could reduce the classification of their performances, if they maintained close relationships with the complainant, a situation that may jeopardize their promotion opportunities, forcing them to marginalize the complainant. Some officials, because they were close friends of the complainant, in addition to not being appointed to positions of leadership, have had a lower performance evaluation, and they were withdrawn from the tasks for which they were initially responsible, becoming totally outdated and functionally impaired with regard to career development, etc.

6. Several officials of the CB referred that the Director, without sufficient evidence, made several allegations about the complainant, such as that he would take meals and set up a businesses with a certain leader and several influential figures in order to "obtain some advantages".
7. A leader of the CB stated explicitly, by written form, that the Director told him that he, by manipulating his own power, had prevented the complainant from the enjoyment of holidays in December 2010.
8. The Director of the CB did not indicate clearly, to the participants at the meeting in question, that the document submitted by the complainant was to transfer his holidays to the following year. This act gave the participants the impression that the complainant had changed his vacation purposely, opting for a vacation period coincident with the one of the Director, which is unfair to the complainant.
9. By his own order, the Director of the CB ordered the complainant to perform "individually and confidentially" a study and analysis of the internal operation of the Bureau, being this order formulated in terms contradictory and unreasonable. In his statement, the Director explained that the work distributed to the complainant through his order was a routine task which consisted in the preparation of the annual activity report and the plan of activities for the following year. However, from the mere analysis of the order in question, it is impossible to reach that conclusion. This shows that the Director, with his order, could not properly convey his orders and instructions to his subordinates.
10. The Director asked the chiefs of the several subunits of the CB not to report to the complainant of the work of the Bureau during the period in which he has exercised the functions of Director in his replacement, which clearly violates the provisions of Article 42 of the *Code of Administrative Procedure*.

On the issues concerning the internal management and operation of the CB

11. It should be noted that, on one hand, it is not appropriate that the registration of the complainant's attendance had to be endorsed by the Commander of the Central Operating Station and, on the other, there were also problems within the internal communication of the CB, since the complainant was not unequivocal

notified after the timesheet template was modified and approved by order of the Director. Thus, with the modification of the model of the timesheet, the problem of the "register of attendance of senior staff to be endorsed by the lower category personnel" ceased to exist, having, the complainant, also been expressly notified by the Director in the way to sign the timesheet already modified, at which time the complainant should have asked for clarification from the Director in relation to his questions concerning the entity empowered to approve the new model of the timesheet.

12. In relation to the specific record of the timing of entrance and exit of the complainant, such an act clearly offended the dignity of the person concerned, in violation of the principle of good faith.
13. With regard to the use of private vehicles for the exercise of public functions, there is no specific and clear guidance in the CB. In reality there are various practices – namely with regard to situations in which some staff in the performance of their duties, drive to and from the workplace in their own private vehicles. There are also circumstances in which government vehicles are required to do the transport service to travel between home and the workplace of the officials. However, the CB should carry out the review of the use of government vehicles regime to avoid unnecessary disputes and the worsening of conflicts among the staff.
14. The CB must undertake the review of the *Internal Service Regulation of the Fire Services Bureau* aiming for its improvement.

On the issue concerning the head of the Resource Management Department of the CB

15. During the elaboration of the *Fire Services Bureau*, the head of the *Department Resource Management Administrative Guide* of the T did not provide the complainant enough manpower and informatics support.
16. With regard to the allocation of the workplace of the complainant, the head of the Resource Management Department T has not achieved a fair allocation and he allocated an inappropriate workplace to the complainant.

17. T claimed that the complainant did not report to him in the terms of subparagraph e) of Paragraph 1 of Article 76 of the *Internal Service Regulation of the Fire Services Bureau*. This is an allegation that misses “*de facto*” and legal basis.
18. The head of the Resource Management Department T mentioned that the complainant, without superior authorization, had given orders to staff who do not belong to the same Department, being this an allegation without legal grounds and an unjustified one.

Concerning the processing of the complaint directed to the head of the Resource Management Department T and its hierarchical appeal by the respective authority

19. Part of the subject to which the complaint against T refers, that was presented to the Deputy Director S is, to a certain extent, founded. Therefore, the orders no. 16/CB/2011 and 17/CB/2011 by the Deputy Director S, stating that the complaint presented by the complainant is “completely unfounded” and that “there is no irregularity or improper act practiced by T”, is unsubstantiated.. Simultaneously, the order of the Director of the CB in which he maintains the previous decision taken by the Deputy Director is also unsubstantiated.
20. It was requested, in the request made by the complainant, the annulment of the Order no. 04/CB/2012 of 20th January 2012, by the Director of the CB and of the Orders no. 16/CB/2011 and 17/CB/2011 of 21st December 2011 and 27th December 2011 respectively, by the Director of the CB. Besides, it was requested in those orders the investigation and reform of the acts practiced by the leadership and management staff of the CB against the complainant. However, the said request has not yet been handled by the Secretary for Security nor any decision was taken.

III. Proposals

Taking into consideration that it is the competence of the Secretary for Security to initiate disciplinary proceedings against the leadership and chiefs and the supervision of the internal operation of the CB, the CCAC has communicated to the Chief Executive and to the Secretary for Security the illegalities and administrative irregularities detected, as well as the alleged practice of disciplinary infringement by the officers. In addition, pursuant to subparagraphs

6) and 7) of Article 4 of the *Organic Law of the Commission Against Corruption of Macao Special Administrative Region*, we request to the Secretary for Security the adoption of due diligence for the follow-up of the case, namely:

1. Undertake research and appropriate follow-up of the case, considering the starting of a disciplinary or investigation procedure, in accordance with the provisions of the *EMFSM* in relation to the alleged practice of disciplinary offences by the Director of the CB and the internal operation problems of the CB.
2. Proceed, again, to the assessment and to the investigation of the complaint filed by the complainant against the head of the Resource Management Department T in accordance with Article 253 of the *EMFSM*.

* * *

Having in consideration that this Report reveals a number of serious problems related with the operation and management of the CB, the CCAC proposes to the Secretary for Security to consider the application of the mechanism of inquiry provided for in Paragraph 2 of Article 354 of the *Statute of Personnel of the Public Administration of Macao* with the objective to solve the various problems currently existing in the CB.

(...).

Case VI

Investigation and analysis report on complaints regarding the information requested when handling birth registration by Civil Affairs Registry

Key points:

- Administrative procedure always consists of a series of acts, with some obligatory and some voluntary. The supervisory authority should grasp them accurately and execute them clearly;
- Exceptional cases should be differentiated from normal ones and solve the problems raised in the exceptional cases with appropriate legal provisions.

* * *

Part I: Background

1. This case originated with a complainant named A coming to the Commission Against Corruption (hereafter CCAC) to lodge a complaint on 13th August 2012. The details are as follows: the complainant indicated dissatisfaction with the attitude of the Head of the Civil Affairs Registry. He expressed grievance with not yet receiving the call from the superior of the staff surnamed Chan from the Legal Affairs Bureau and indicated dissatisfaction with the Civil Affairs Registry for delaying to handle/not handling the birth registration of his baby.
2. To follow up the above complaint, the CCAC sent a letter to the Legal Affairs Bureau on 31st August 2012 requesting for details of the issue (see P. 9).
3. The CCAC received a reply letter and a disc from the Legal Affairs Bureau on 11th September 2012 (see P.10-12).
4. Upon preliminary analysis, the CCAC sent another letter to the Civil Affairs

Registry to request for supplementary information on 16th October and a reply was received on 17th October.

* * *

Part II: Analysis

The details of complaints are as follows. The complainant was:

1. Dissatisfied with the attitude of the Head of the Civil Affairs Registry during their meeting and communication;
2. Dissatisfied with not yet receiving call from the superior of the staff surnamed Chan from the Legal Affairs Bureau;
3. Dissatisfied with the Civil Affairs Registry for delaying to handle/not handling the birth registration of his baby.
 - i. First of all, with the CCAC's intrusion into the issue by flexible means, the birth registration procedure of the complainant's son was completed on 13th November 2012. Therefore, it is meaningless to claim that the Civil Affairs Registry has delayed handling the birth registration at this moment. However, other points are worth analysing.
 - ii. The major reason why the complainant indicated his dissatisfaction was that he was requested to fill in the marital status on the "Supplementary information form". Upon viewing the video surveillance, the CCAC found that:
 - a) - During the first half session of the birth registration procedure, the complainant and the staff talked to each other peacefully without any problem.
 - b) - However, when the complainant was requested to fill in the "Supplementary information form", the situation became worse. Firstly, the complainant asked why he needed to fill in the marital status. The staff replied that **if it was not filled in, the birth registration could not be handled. (...) The application could only be processed upon approval of the Head of the Registry. (...)** Afterwards, the complainant

requested to obtain the photocopy of the “Supplementary information form”, but he was rejected by the staff, saying that this was an internal document which could be shredded. However, its photocopy could not be provided. Then there was quite a lot of conversation with the Head of the Registry, words indicating dissatisfaction and conversation regarding the complainant requesting to meet the superior of the Head of the Registry (...).

The key points lie in:

1. **Is the applicant obliged to fill in the marital status for birth registration?**
2. **If the applicant refuses to provide the marital status, is it that only the Head of the Civil Affairs Registry has the power to approve the handling of birth registration?**
3. **If the applicant refuses to provide the marital status, is it that the application of birth registration cannot be processed?**

* * *

We try to analyse these problems, especially on the stipulation of the provisions.

- 1) Paragraph 2 of Article 1657 of the *Civil Code* in force states:

“2. The husband of a mother is determined as the father of the child. For a child born out of wedlock, the identity of the father has to be confirmed for verification.”

In this case, the complainant applied for registration of the child’s birth in person and signed to declare his paternity. Thus, the identity of paternity would not be a big problem.

- 2) In addition, Article 27 of the *Civil Registry Code* stipulates:

“For each registration, the interested party refers to the declarant, the person who is directly related to the fact registered or the person whose consent must

be sought in order to make a registration completely effective.”

Article 28 of the same *Code* states:

“(Declarant)

1. *With the full name and ordinary residence presented in the originals of relevant records, the identity of a declarant shall be authenticated.*
2. *With the presentation of the identity document which is recognised by the provision in force or on the evidence of two witnesses, the identity of a declarant shall be verified.”*

In addition, Article 76 of the aforementioned *Civil Registry Code* also stipulates:

“(Declaration)

All births in this region have to be orally declared in the competent registry within 30 days.”

This is the rights of a new born baby. The person who has the obligation to make the registration shall protect the rights of the baby.

- 3) With regards to the information required for birth registration, Article 81 of the *Civil Registry Code* stipulates:

“(Content of the record)

1. *Apart from the required document, **the birth record shall also include the following information:***
 - a) *Full name of the registrant, with capital letters presented for romanisation;*
 - b) *Gender;*
 - c) *Date of birth;*
 - d) *Place of birth by parish of residence;*

- e) Full name, place of birth and ordinary residence of parents;
 - f) Other issues required due to particular circumstances according to law.
2. *All information shall be provided by the declarant and the identity documents of the registrant's parents shall also be presented whenever possible.*
 3. *The public servant who is responsible for making the record should ensure the accuracy of the declaration through checking the presented or archived documents, or any information which could be obtained and meanwhile undergoing necessary investigation."*

Thus, it can be seen that neither articles in the above quoted provisions nor any law request the complainant to submit information regarding "marital status".

- 4) The staff of the Registry has pointed to the complainant in their conversation, *"If the martial status is not pointed out, the Registry will send the information to the court for handling."* This statement is worth considering because:
 - a) The parents of the new born baby are not Macao residents and Macao is not their ordinary residence;
 - b) Due to the fact that the Personal Law of the parents is not the law of Macao⁴¹, even if the identities of the parents have to be investigated (The mother went to make the application in person, thus her identity did not have any problem.), the law of Macao is not applicable and the court of Macao does not have the jurisdiction⁴² as well.
- 5) Therefore, the major reason for this complaint is that the Registry regarded this case as a normal case and requested the complainant to fill in the marital status

⁴¹ See Article 30 of the *Civil Code*.

⁴² See Article 17 of the *Civil Procedure Code*.

(although the law does not have this requirement), resulting in the occurrence in this issue.

6) Information required for birth registration indicated in the website of the Legal Affairs Bureau:

“When handling the relevant procedure, the presence of the baby is not required. However, if the parents have not yet completed their marriage registration or are unmarried, both of them have to go to the Civil Affairs Registry or its branch office for registration. For those who have their marriage certificate, either the father or the mother can make the application.

When applying the registration, the following documents have to be provided:

- 1. Identity documents of the parents;*
- 2. If either spouse or both of the parents do not hold the Macao identity cards, entry permits or residence documents such as temporary residence permits (yellow cards), non-resident worker’s identification cards (blue cards), Hong Kong identity cards or passports have to be submitted;*
- 3. **Parent’s foreign marriage certificates (except for those who have their marriage registration at the Macao Registry);***
- 4. Name of the baby;*
- 5. Birth notification of the baby issued by the hospital.*

Note:

- Originals of the above documents have to be exhibited for verification.*
- Upon signing on the birth record, the declarant will be issued a “birth report” (white card) for the application of “birth certificate” in the future.*
- If the mother of the baby handles the birth registration in the Registry in person but refuses to disclose the identity of the father of the baby, she has to make a declaration and the Registry will not record the name of the*

father in the birth registration.”

The requirement in Point 3 obviously does not comply with the relevant provisions. If the applicants (father and mother) claim that they divorced previously, but get back together later without making the remarriage registration, will the Registry request the applicant to present the marriage certificate or the divorce certificate? Or if the applicants (father and mother) claim that they are unmarried but live together, will the Registry request them to present their marriage certificate in order to handle the birth registration? These examples explain that **the documents required in Point 3 are not necessary documents and thus the statement has to be adjusted.**

- 7) Therefore, the CCAC suggests the Registry to improve the procedure and requirement regarding this aspect in order to prevent similar issues from happening. Not only does it affect service efficiency and quality, it is also an irrational requirement which will arouse applicants' dissatisfaction.
- 8) Finally, regarding the other two points of complaint, as this case originated with the Registry requesting the applicant to submit document which was not mandatory according to law, and the dialogue between the Head of the Registry and the applicant reflected that the applicant did not understand thoroughly the current civil affairs registration procedure of Macao whilst the frontline staff provided information worth considering. All these resulted in misunderstandings. As the problems have been solved, no follow-up has to be done at this stage. However, the Registry definitely has room for improvement in handling similar cases.

* * *

Part III: Conclusions and Recommendations

According to the aforementioned facts, **Paragraph 12⁴³, of Article 4 of the Organic Law of the Commission Against Corruption recommends the Civil Affairs Registry to take improvement measures for the problems aroused from this complaint and make adjustment on the documents to be submitted for**

⁴³ Law no. 10/2000 of 14th August, amended by Law no. 4/2012 of 26th March.

birth registration according to the law in force.

* * *

**Notifying the Director of Legal Affairs Bureau and the Head of Civil Affairs
Registry of the content of this report.**

* * *

Notifying the complainant of the content of this report.

* * *

Archiving this case after execution.

* * *

Commission against Corruption, 20th November 2012.

Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of this case:

- (1) Avoid requesting the interested party to provide unnecessary information during administrative procedure;
- (2) If the interested party refuses to provide non-mandatory information, the supervisory authority should handle the case according to law instead of adopting normal steps;
- (3) Information on authority's website should be comprehensive and accurate. Update it as soon as possible if it is obsolete.

Case VII

A report (excerpt) on handling of complaint that local mobile phone users can only use 3G service from 9th July 2012 and suggested measures

Key points:

- The operation of 2G and (or) 3G telecommunications services within the Macao SAR have to be approved by the Chief Executive;
- The various problems caused by forbidding the operators to provide 2G telecommunications services to local consumers through administrative means, but at the same time “allowing” them to provide 2G services to roaming customers;
- Granting licences of 3G services only to telecommunications operators, but at the same time requesting them to provide 2G telecommunications services to roaming customers, which is obviously equivalent to “unlicensed operation”;
- The external announcement of the decision of extending the 2G services licences without the consent and written approval of the Chief Executive also caused a number of problems;
- The legal issue of unfairness caused by treating local consumers and foreign consumers differently.

* * *

Part I: Cause

Ever since the Bureau of Telecommunications Regulation (hereafter the “DSRT”) publicly announced that local mobile phone users can only use the 3G service starting from 9th July 2012, the Commission Against Corruption (CCAC) has received quite a few complaints about the new measure. Some believe that it is unfair to local users as they are forced to get new handsets due to the transition.

Due to time constraints and taking into account the specificity of the matter concerned, we will not reveal or analyse here in detail the content of those complaints but select some of the most relevant problems in the field of telecommunications policies implemented by the Government in order provide his Excellence, the Chief Executive over a benchmark that can serve as the basis for the application of appropriate interventional measures.

* * *

Part II: Brief introduction of 2G and 3G

The 3rd generation of mobile telecommunications technology (third generation and collectively known as 3G) refers to the mobile communication technology that can support high-speed data transmission, is a set of standards used CDMA2000 and its reference standard. 3G technology can simultaneously transmit voice (call) and data information (e-mail, instant messaging, etc.). The characteristic of 3G is to provide high-speed data transmission services, the rate usually exceeds several hundred kbps (kilobyte).

The 3G specification can be considered the ultimate result of IMT-2000 standard defined by the International Telecommunication Union (ITU). The initial vision of specifying the 3G system was to promote the standardization of international communication system based on this standard, however, four standards are typically branded 3G at present: CDMA2000, WCDMA, TD-SCDMA and WIMAX.

3G refers to the 3rd generation of mobile digital technology. The first generation of analogue mobiles (1G) appeared in 1995 could make voice calls only; the second generation of digital mobiles (2G) such as GSM, TDMA that emerged in years 1996 to 1997, was facilitated with the function of data reception, for example, receiving

e-mail or webpage; the main difference between the third generation and the two previous generations is the upgrade of the speed in voice and data transmission. It can better facilitate seamless roaming across the world to process multimedia data such as images, music and videos and provide various information services including internet browsing, conducting conference calls and e-commerce, while taking into account the good compatibility of the existing 2G system. In order to provide this kind of service, the wireless networks must be able to support different data transmission speeds, for example, to provide transmission speeds that could support 2 Mbps (megabits/second), 384 kbps (kilobits/second) and 144 kbps for indoor, outdoor and vehicular environments respectively (but the rates may vary depending on the network environment).

3G stands for the 3rd generation mobile telecommunications. From a technical standpoint, 3G enables the high-speed transmission of data and information, supports multi-code multiple access way to encrypt data and voice transmission. Meanwhile, 3G also features with a signal covering technology that could provide signals to users evenly, thus, in aspects such as network coverage, quality network operation, environmental protection and security, intelligent applications, mobile internet services of the 3G system, these are things that 2G technology could not realize or accomplished.

According to the tests carried out on Wuhan-Guangzhou High-Speed Railway by China Telecom, when the speed reaches 400 kilometres per hour, the transmission of data or voice signal through the 3G network E-surfing is still very satisfactory. From the perspective of technical analysis, 2G technology has the below problems:

- (1) Outdated network transmission technology that can only reach the speed of several tens of K, which is impossible to achieve high-speed data transmission.
- (2) Outdated signal coverage technology, the coverage model of “close strong far weak” adopted by 2G makes it impossible to provide users with excellent communication reception.
- (3) Outdated technology of sending and receiving signal, the transmission power is over a hundred times larger than the 3G which is not environmental as well.

- (4) Outdated security technology in the transmission of signals, cannot match up to the level of security and safety of 3G.
- (5) Outdated Mobile Internet technology, which cannot carry high-bandwidth data flow such as video.
- (6) Outdated mobile phone technology. In aspects such as the smart features of the mobile phones, the operating systems or application software support, it cannot match up to the level of 3G mobile terminals. The elimination of 2G by 3G in the development of telecommunications technologies is inevitable.

The 3rd generation (3G) mobile phones focus mainly on the communication of data through broadband wireless communications, i.e., bringing mobile phones into the world of Internet. The most significant difference between 2G and 3G systems is that 3G mobile phones are defined with a minimum data transmission rate of 144 kbps data rate for situations of high mobility and 384 kbps data rate for indoor. The 3G system uses CDMA as its core technology standard, currently in 3GPP and 3GPP2, three sets of 3G technology standards were admitted, namely, the European standard WCDMA, the United States standard and Chinese standard TD-SCDMA.

* * *

Part III: Actual Situation in Macao

1. Companies with licence to operate telecommunications services in Macao and their current status:
 - (1) **Macau Telecom Company, Ltd** – see the Order of the Chief Executive no. 399/2008 of 30th December (published in the *Official Gazette of the Macao Special Administrative Region* dated 12th January 2009);
 - (2) **Hutchison Telephone (Macau) Company Limited** – see the Order of the Chief Executive no. 400/2008 of 30th December (published in the *Official Gazette of the Macao Special Administrative Region* dated 12th January 2009);

- (3) **Smartone – Mobile Communications SA** – see the Order of the Chief Executive no. 401/2008 of 30th December (published in the *Official Gazette of the Macao Special Administrative Region* dated 12th January 2009).

In addition, the SAR Government, through Administrative Order no. 10/2009, approved the “specific regulation for public tendering of the licence of operation of third generation public land mobile telecommunications network and provision of respective services of land mobile telecommunications of public use in the Macao Special Administrative Region of the People's Republic of China” in 2009. According to Item 11.1.1, it only stipulates: “*11.1.1 For the application of the provisions of Paragraph 11.1, the holder of public land mobile telecommunications services licence (GSM standard) shall abide by Item 2 of Paragraph 1 of Article 9 of Administrative Regulation no. 7/2002 and proceed with the application for amendment of its public land mobile communications services licence (GSM standard) within thirty days from the date of publication of the 3G licence, or else its 3G licence will be cancelled.*”

[Note: It is different from what is stated by the DSRT in item 3) of point 2 of its official letter no. 1411/07.01.00-180: “(3) (...), and according to the provisions stated in Paragraph 11.1 of the specific regulation, the licence holders themselves or members of consortium who have already held the public land mobile communications services licences (GSM standard) issued by the Macao SAR Government, shall surrender the licences previously held from 9th July 2012 onwards. (...)”.]

In the same year, the Macao SAR Government granted the 3G licence to Smartone – Mobile Communications SA through the Order of the Chief Executive no. 350/2009; subsequently, by the Order of the Chief Executive no. 423/2009, amended the licence attached to the Order of the Chief Executive no. 159/2002 licence of “Public land mobile telecommunications services”, the period of validity is until 8th July 2012.

2. The DSRT announced earlier that the reasons for mobile phones of Macao can only use 3G starting from 9th July 2012 could be seen in the proposal (no. 172/07-01.00-180) dated 13th May 2011, which has obtained the order of “I agree” of the Secretary for Transport and Public Works on 23rd May 2011.

3. Below is part of the proposal:

- “1. *The MSAR Government, in 2006 and 2009, has initiated the public tendering of the licence of operation of third generation public land mobile telecommunications network (hereafter 3G) and provision of respective services of land mobile telecommunications of public use in the Macao Special Administrative Region through Administrative Order no. 15/2006 and Administrative Order no. 10/2009 respectively. The Macau Telecom Company, Ltd (hereafter CTM), Hutchison Telephone (Macao) Company Limited (hereafter Hutchison) and China Telecom (Macao) Limited (hereafter referred to as China Telecom) were granted the licence in 2007, where Smartone – Mobile Communication, SA (hereafter Smartone) was granted the 3G licence in 2009. According to the provision stated in Paragraph 11.1 of the regulation of specific tender approved by the above mentioned Administrative Orders, if the winning bidder holds licence of Mobile Telecommunications Service for Public Land Use (2G), the renewal of such licence shall be subject to specific restrictions to ensure the healthy development of the mobile telecommunications market.*

2. **Therefore, in accordance with the stipulation of Paragraph 1 of Order of Chief Executive no. 399/2008, Paragraph 1 of Order of Chief Executive no. 400/2008 and Paragraph 1 of Order of Chief Executive no. 423/2009, the 2G licences that were granted to CTM, Hutchison and Smartone were renewed to 8th July 2012. This means that after this date, there will no longer be any 2G licence and service.** (The emphasis is added by the CCAC)

3. *The existence and renewal of telecommunications licence should comply with the relevant provisions at the time of issue of the licence. Given the special features of the dynamic development of the telecommunications industry itself, including the rapid evolution of technology and market changes, all relevant factors must be carefully weighed in the evaluation process for renewal. All the licences referred to in Point 2 adopt the Global System for Mobile Communications (GSM) standard, to analyse from the technical level, GSM system could use its core network to establish the Wideband Code Division Multiple Access (WCDMA) system to provide*

3G mobile telecommunications services to the users. This model is widely adopted throughout the world and the GSM operators in Macao to launch their services and is accepted by the market. Thus, the development plan on the technical level is well defined; the GSM network will eventually be replaced by WCDMA network. With regard to the market situation, the number of users and its growth trend are the most representative indications, and the government's attitude also has a certain impact. In view of the development of the tourism industry of Macao, coupled with the determination of the Government to transform Macao into a centre of tourism and leisure in the world, therefore, when speaking GSM users in Macao, in addition to the local residents, it is necessary to take into account the tourists visiting Macao. Below is the evaluation of the development of GSM services in Macao and the analysis of the respective market situation through the study of the number of GSM subscribers in Macao, the pace of growth and the number of GSM subscribers in the major origins of the tourists visiting Macao, the pace of growth, as well as the position of foreign governments.

(1) *The development of the GSM service in Macao and its trend*

Since the opening of the market of mobile telecommunications services and the issuing of the respective 2G licences in Macao in 2001, the number of users of mobile services has been in a rising state. Even in a period of time after the successive launch of 3G mobile services from mid-2007 by CTM, Hutchison and China Telecom, the number of 2G users (mostly users of GSM) has continued to grow.

Until end of April 2008, the number of 2G (GSM and CDMA20001X) users reached a historical high of 763,000. After that, because of the users switching to 3G services, the number of 2G users began to decrease. As of the end of March this year, the number of GSM users was 266,000; a decrease of 497,000 compared to the peak number, that is, an average monthly decrease of 142,000. If the number of average monthly decrease remain unchanged, there will no longer be any local 2G users by September 2012.

However, the above prediction is subject to certain variables. First, the number of decline of future GSM users may not follow the same rhythm of the past trend; the fall may accelerate or slow down. Second, the

existing WCDMA users may continue to use their GSM mobile phones, thus, it may cause the number of hidden users of GSM to increase. Third, when a general product enters the final stage of its life cycle, without any particular policy to be implemented for this purpose, there will usually be a quite long period of very little demand but have not yet reached the stage of absolutely no demand. For example, Packet Switching network services had dropped from the peak of 256 in 1996 to 108 in 2001, but the number of users ultimately dropped to zero in this year. Fourth, the market is flooded with GSM mobile phones at low price which will attract users who do not intend to spend more money on telecommunications to continue to use the GSM services.

Given the above factors, the DSRT has already taken strategic measures, such as the orderly reduction and suspension of launching promotion plans of GSM services in the market in order to reduce the increase of new GSM users. Later on, promotion plans for 3G services could be loosen appropriately depending on the circumstances, so as to accelerate the transition from GSM to 3G services. In addition, publicity of the expiry of GSM licences to the public could be carried out in a timely manner, so that they can understand and accept the Government's policy, thus to reduce the negative impact brought by the termination of GSM licences.

(2) Situation and development trend of GSM services in the major origins of tourists visiting Macao

According to data released by the Statistics and Census Bureau in Issue no. 4, Tourism Statistics Indicators 2011, the visitor arrivals reached a record of 25 million. The majority of the tourists were from Mainland China, Hong Kong, Taiwan and Japan, accounting for 53%, 30%, 5% and 2% respectively. The following is the analysis of the situation of GSM services available in the above locations (excluding Japan) in order to assess the future needs of visitors to Macao in relation to GSM services.

(...)

4. Proposals

In accordance with the provisions in Point 1 of the aforementioned Administrative Order, there will be no 2G licence and service after 8th

July 2012, coupled with the analysis in Point 3 (1), it is expected that in line with the implementation of relevant policies, the local demand for GSM services in the second half of 2012 will drop to very low or even null. Thus, **in principle, 2G licence is no longer necessary.** However, taking into account the analysis in Point 3 (2), the demand for GSM services by visitors to Macao remains strong, in order to match up with the policy on the development of Macao as a world centre of tourism and leisure, it is necessary to meet the needs of its visitors. **For this reason, it is proposed to make amendments to the 3G licences granted to CTM, Hutchison and Smartone, so that after the expiration date of the 2G licences, they could still provide roaming services to visitors from places that have not upgraded to 3G network so that their needs could be met.** If we could obtain the consent of His Excellency, the Secretary, the DSRT will contact the operators and commence the relevant procedures as soon as possible in relation to the amendment of licences.

For the consideration of His Excellency, the Secretary.”

4. **With regard to what is claimed in Point 2 of the aforementioned proposal: after the expiration date of the licences, there will be no 2G service in Macao, we hold major reservations towards such remarks. In fact, this is not the case, the 2G services were not eliminated, but rather a restriction is imposed on the object of service.**
5. Let us first quote the words said by the Director of the DSRT in response to the queries of the Members of the Legislative Assembly:

*“(...) to this regard, Tou Veng Keong expressed in his response that from 9th July 2012 onwards, the local mobile telecommunications services of Macao will be operated on 3G technology entirely. **However, considering that Macao is a tourist city with a significant number of visitors, many of them will purchase 2G handsets in Macao and use them when they return to their places of residence, coupled with the long-existing trading activity of 2G handsets as merchandise for resale purpose, therefore, it is not planned to impose restrictions on the trade of 2G mobile phones in Macao.***

In order to ensure the smooth transition of 2G users to 3G network, the DSRT has already sent official letters requesting mobile phones retailers to remind potential handset buyers to pay attention to the respective arrangement, so

as to reduce the chance of mispurchase. In addition, the DSRT will continue to enhance the dissemination of the relevant information through radio, newspapers, television, the Internet and promotional brochures, etc. Meanwhile, with regard to those specific social groups such as the elderly, the DSRT plans to collaborate with the relevant departments and civil associations, after obtaining the solid information, they could take the initiative to contact them and arrange the telecommunications operators to conduct explanation sessions for them and complete the necessary formalities in a more convenient way.

He stated that the DSRT and the operators understand that certain users, particularly the elderly; their only requirement for the mobile phone is to make phone calls. For this reason, “tailor-made” mobile phones were ordered and respective promotion plans were launched for this group of users. Besides, if the users think that services such as mobile data or roaming are not necessary, they may request the operators to terminate the respective services. Therefore, there would be no extra fees for those users to switch from 2G to 3G and the 3G mobile phones that are provided are almost free of charge. Nevertheless, he admitted that although the transition from 2G to 3G services was already stated in the contract at the time of issuance of the licence in 2010, the relevant information was not disclosed to society in a timely manner. Thus, it is hoped that any shortcomings could be addressed through the usage of various channels for the dissemination of relevant information.

Furthermore, he also explained that the 2G network has been in use in Macao for a long time and judging by this stable service, most operators will not be willing to invest in the development of 3G networks. However, due to the popularity of smart phones in recent years, in view of such development needs, therefore, it is necessary for 2G networks to step down in order to enhance the quality of 3G spectrum. Concerning the blind spots of 3G, he said that operators were asked to seek improvement with their best efforts. He also believes that with the ceasing of 2G, it will facilitate the optimisation of the coverage, penetration and usability of the 3G networks.⁴⁴ (...)”

Hence, it appears that 2G services will still be maintained but with different target of service. Moreover, certain measures adopted are also subject to question – we will analyse this part later on.

⁴⁴ See Macao Daily News dated 23rd March 2012.

* * *

Part IV: Current situation of the use of 2G and 3G telecommunications networks

1. Base on the analysis of the data obtained by the CCAC from the operators of telecommunications services in Macao, basically the 2G and 3G telecommunications systems coexist and in use. When the signal of the 3G network is too weak, or comes across blind spots, the mobile phones will automatically be switched to 2G systems to ensure normal communications.
2. If what was said by DSRT becomes reality, i.e., the local mobile phone users will not be able to use 2G while the operators are prohibited from providing 2G telecommunications services to them, then failure of telecommunications services may occur in locations where 3G network signals are weak or where there are blind spots.
3. According to information provided to the CCAC by one of the operators, currently the broadcast stations of 2G network covers virtually most areas of Macao, thus ensuring the fluency of telephone communications. In order to implement 3G services, although operators have been improving the new 3G transmission stations, taking into account the time constraints and the fact that the 3G technology itself still needs improvement in certain areas, resulting in the following question: why the Government cannot extend the time of coexistence of 2G and 3G? At a minimum, the operators are willing to get and expecting the extension of this transitional arrangement.
4. If only the 3G system will be retained for local mobile phone users from 9th July 2012, once any mechanical failure or other network problems happens; **there will be a possibility of another overall or large-scale break down of mobile telecommunications service in Macao. Has the department in-charge given any in-depth consideration of this situation?**
5. Even the situation is not as serious as the above example, if the operator needs to carry out maintenance or inspection of the transmission stations due to technical problems, it might affect or even interrupt the telecommunications services. However, if the operators are allowed to provide telecommunications services through 2G network under such circumstances that the 3G system is expected to be affected temporarily, it could greatly avoid the risk of large range

of telecommunications services being affected and would also be favourable for the exploitation and operation of the operators. However, we have never seen any official document allowing operators to adopt this compromise measure.

6. Let us consider the issue from another perspective: the perspective of the rights and interests of the mobile phone users, that is, considering the issue from the point of view of the rights and interests of consumer.
 1. Any government, when regulating the operators of telecommunications services, under the prerequisite of not prejudicing to the rights of the operators assigned by the concession contract, shall consider the rights and reasonable interests of local consumers, one of which is not allowing the operators to interrupt the services at their will and make arbitrary collection of fees.
 2. According to the notice of the DSRT, from 9th July 2012 onwards, only foreign mobile phone users, that is, those roaming customers, can use 2G services (i.e., only the mobile phone numbers that are not registered in Macao can use the 2G network). The local phone numbers have no access to the 2G system and cannot use the respective services - clearly a discrimination against local residents and a detriment of their legitimate rights and interests since it deprives their right to choose. Contrarily, only users who are holders of non-local mobile phone numbers can choose between 2G or 3G services and this seems to contradict the stand that the Government ought to possess: the principle to protect the rights and interests of local consumers.

* * *

7. After looking up the relevant records, it is not difficult to find that most of the countries and regions of the world are implementing the coexistence of 2G and 3G systems. It is the consumers who decide on their own the type of service they use, rather than forcing consumers to use a certain system only by administrative means (the key is at present both systems co-exist, but the Government eliminates one of them coercively through administrative means, rather than leaving it to the decision of the market and the operators).

8. **We do not oppose the full implementation and usage of 3G system.** We also believe that the full replacement by 3G is inevitable since 4G will be launched in the near future. However, our point of view is that: in a situation where there is no additional burden, considering the current conditions of 2G and 3G systems already in operation, coupled with the technical conditions that are still under observation, why not extend reasonably the period of coexistence of 2G and 3G systems? For instance, an extension of 1 or 2 years? Or let the market make its own adjustment? It is because from the point of view of the government, when resorting to use of administrative means to intervene coercively in a particular area, several requirements must be taken into consideration:

- (1) **The intervention is justifiable;**
- (2) **The intervention will not lead to any other more serious problems;**
- (3) **The intervention is the only means and is able to solve immediately certain pressing issues that are existing;**
- (4) **The intervention will not prejudice the legitimate rights and interests of either party;**
- (5) **The intervention is necessary and cannot be delayed.**

However, after considering all the factors, we believe that the intervention by the DSRT does not meet the above requirements; therefore, it is necessary to postpone the execution of the measure.

9. In terms of long-term plan, the next objective of the government is possibly the “triple play”. However, according to the information gathered by the CCAC, the Government does not have a concrete plan and timetable so far for the implementation. Therefore, when and how will the “triple play” be fully implemented? These are questions still undetermined. In this context, it is not suitable to forcibly eliminate 2G telecommunications services system.

* * *

Part V: Legal issues

1. According to the stipulation of the “*Operation of Public Land Mobile Telecommunications Network and Provision of Respective Services of Land Mobile Telecommunications of Public Use*” (see Paragraph 5 of Article 5 of Administrative Regulation no. 7/2002 of 15th April), the licences granted to the three local telecommunications companies to operate 2G and 3G telecommunications services are approved by the Chief Executive with the various conditions for granting being set out, **it is apparently referring to the absence of permit to operate 2G service from 9th July 2012.**
2. And now, the DSRT claimed to allow the three companies mentioned above to provide 2G services to roaming mobile phone customers from 9th July 2012 onwards, apparently it is without any legal document as basis since the Chief Executive has never signed any approval documents. However, the DSRT has already taken the lead and disclosed this measure to the public.
3. Communication bands apparently are “public properties”, the usage is undoubtedly to seek public interest, and especially the public interest is mainly of the region. For example, for security reasons, a country or region may close certain bands or reserve them for specific purposes, such as military or diplomatic purposes. However, this decision has to correspond to their own benefits and not the benefits of others or other countries. If restrictions are set in this context, its purpose must be protection of higher level of public interest.
4. In this case, we cannot understand why only the interests of roaming customers are being taken care of and the interests of the local long-term service users is neglected. How to ensure the change of mobile phones of citizens? How to set policy of incentives? How to call for collaboration with operators? These are remedy measures, but not where the problem lies. The crux of the matter is: whether the government has sufficient legal basis to force telecom operators to provide 2G and 3G services to foreign mobile phone users, while the local users can only use the 3G services. By doing this, what kind of higher level public interest it is seeking?

5. Article 2 of the *Code of Administrative Procedure* of Macao stipulates:

**“Article 2
(Scope of application)**

1. *The provisions of this Code shall apply to all organs of public administration authorities that establish relations with individuals in the performance of administrative activity, as well as to the administrative acts carried out by organs of the Territory that are non-public administration bodies when exercising their administrative duties.*
2. *The provisions of this Code shall also apply to acts conducted by concessionaries in the exercise of the powers of the public administration authorities.*
3. *By law, the provisions of this Code may also apply to the activities carried out by private institutions seeking public interests.*
4. *The general principles of administrative activities as defined in this Code apply to all activities of the administration authorities, even if the activities implemented are merely technical or management of private law.*
5. *The provisions of this Code relating to administrative organisations and administrative activities are applicable to all activities of the Administration in the field of public management.*
6. *The provisions of the Code are also supplementarily applicable to specific procedure, provided that they will not diminish the protection of individuals.”*

It is worth paying special attention to the contents of Paragraph 4, which states that even technical management is also required to comply with the relevant provisions in the *Code of Administrative Procedure*.

In this sense, the competent authorities should be fully aware that the purpose of cancelling 2G and retaining only the 3G telecommunications services must be to pursue better public interest. Besides, the measures and the procedures to be taken must be legal and conform to the basic principles and rules of the Code

of Administrative Procedure.

6. We consider the action of the DSRT violates the “principle of moderation” and the “principle of good faith”, that is, a violation of the provisions of Articles 5 and 8 of the *Code of Administrative Procedure*.
7. Regarding the “principle of moderation”, Article 5 of the *Code of Administrative Procedure* stipulates:

**“Article 5
(Principle of equality and principle of moderation)**

1. *In the relations with individuals, Public Administration shall abide by the principle of equality and may not favour, benefit, harm, deprive of any of their rights or waive away any of their obligations on the basis of ancestry, sex, race, language, place of birth, religion, political beliefs, ideological beliefs, education, economic situation or social status.*
 2. *When the decision of the Public Administration is in conflict with the rights or legally protected interests of individuals, such rights or interests could be affected under the condition that it is appropriate and proportionate to the objectives pursued.”*
- (1) In this case, **in terms of technical level**, we may ask: Is the cancellation of 2G systems the premise of the provision of 3G telecommunications services? The answer is naturally negative. There is no exclusive relationship between the two; on the contrary, **the two are still playing the complementary role within a certain period of time.** Because of this, we understand why the majority of the world’s countries and regions are still implementing 2G and 3G systems simultaneously.
 - (2) **From the point of view of public services management**, after the compelling launch of the 3G telecommunications services, does it mean that all mobile phone users in Macao will inevitably use the services under the 3G system? Or is there still a part of citizens who continue to use only traditional telephone communications services, and for them, is it sufficient to use 2G network? Obviously, the answer is that 2G is adequate for this group of citizens.

In other words, the implementation of 3G system is not the only way or the best

way to pursue the public interest.

- (3) **From the perspective of market and operation autonomy**, the compulsive launch of 3G system services and cancellation of 2G system services of the DSRT has resulted in forcing a portion of citizens in Macao to replace their phones with 3G mobile phones. Apparently it is an excessive intervention in the operating conditions of the market. On the one hand, it will affect the right to choose of Macao citizens as consumers and on the other hand, the operation of the telecommunications market is intervened under the condition of unjustifiable reason.
- (4) **From the perspective of the rights and interests of Macao citizens**: this technical solution has also produced an unfair result: the Macao citizens are without options in their consumption, on the contrary, foreign mobile phone users are allowed to choose, which is unfair for the citizens of Macao.
- (5) **To consider from the perspective of operation technique**, even if 2G service is only provided to roaming customers, thus expecting a decrease in the number of users, that does mean that operators could remove the existing transmission stations, instead, the transmission stations must be kept and this batch of transmission machine needs to be in good operational condition. In other words, for the operators, whether the 2G service is cancelled or not, they still need to retain the 2G system, but the objects of the services they provided are restricted by administrative means which failed to couple with a sound reason of seeking a more significant public interest. Therefore, this “decision of partial cancellation of 2G services” constitutes a breach of the “principle of moderation”.

* * *

Moreover, the decision also violated the “principle of good faith”.

Article 8 of the current *Code of Administrative Procedure* stipulates:

**“Article 8
(Principle of good faith)”**

1. In the exercise of administrative activity, and in any phases of the administrative activity, the Public Administration Authority and individuals should act and relate according to the rules of good faith.

2. *In compliance with the provisions of the preceding paragraph, should consider in the specific circumstances the legal basic values that need to pay attention to, and in particular:*

a) The confidence produced in the counterparty from the related activity;

b) The intended objective to be achieved with the action taken.

- (1) In terms of telecom operators, they are requested to retain 2G system and at the same time, the objects of their services are restricted — they can only provide these services to roaming customers while there is no guarantee that all local mobile phone users will use the services of 3G systems. This is undoubtedly an inappropriate measure for the operators.
- (2) In terms of mobile phone users, whether they use the 3G services or not, they have to be equipped with the devices operating on 3G system and 2G devices can no longer be used. This is also considered an inappropriate measure for consumers.

Furthermore, Article 7 of Law no. 14/2001 (*Telecommunications Basic Law*) of 20th August also stipulates that consumers should not be treated discriminately:

***“Article 7 Users' Rights*”**

To the telecommunications services users, the following rights are guaranteed:

- 1) *Of the inviolable and secret communications in terms of law;*
- 2) *Of the privacy respected in the charge documents and in the use of their personal data by the service provider;*
- 3) *Of the access and use of public telecommunications services, with due quality, availability and constancy in the whole area of the Special Administrative Region of Macao;*
- 4) *Of the liberty of selecting a provider of public telecommunications services, as well as of the respective number portability of customer;*

- 5) *Of the non-discrimination as to the conditions of accessing and enjoying the services;*
- 6) *Of being informed of the tariffs, prices and conditions of the services rendered;*
- 7) *Of the non-suspension of public telecommunications services, except for the occasions of non-fulfilment of the respective contractual conditions and of unavoidable circumstances;*
- 8) *Of knowing previously the conditions of suspension and cancellation of the service;*
- 9) *Of receiving responses, in valid time, to their claims from the service provider.”*

* * *

Part VI: Conclusion

Given the above, the CCAC considers that the decision of the DSRT contains the following defects:

1. Up till now, the Chief Executive has never granted any formal authorisation to the three operators on the supply of 2G mobile services for roaming customers.
2. It is the competence of the Chief Executive to grant the licences since it must be published by way of Order of the Chief Executive (see Paragraph 5 of Article 5 of Administrative Regulation no. 7/2002).
3. The “announcement” that local mobile phone users can only use 3G services starting from 9th July contradicts the provisions of the *Code of Administrative Procedure* – particularly with regard to the “principle of moderation” and the “principle of good faith”.

4. The “announcement of cancellation of 2G services” also contradicts the “principle of equality” in Article 4 of the same *Code*, as it deprives the local consumers’ right to choose and violates their right of equal treatment.
5. The “announcement of cancellation of 2G services” does not conform to the public interests and the fundamental interests of local mobile phone users.

* * *

Part VII: Recommendations

For these reasons, in order to prevent problems of telecommunications services from happening and hampering the rights and interests of the local mobile phone users, **the CCAC proposes to his Excellency, the Chief Executive to consider the following buffering measures:**

1. **Consider extending the period of coexistence of 2G and 3G mobile phone systems for one or two years**, without prejudice to require the operators to accelerate the process of improving the quality of the 3G system within this period;

[If the proposal is accepted, the DSRT should be instructed to prepare the relevant orders and documents as soon as possible, so as to allow the three operators to continue to provide services to all 2G mobile phone users (including local users).]

2. Whether or not the proposal referred to in Point 1 is accepted, the following measure should be adopted: **to allow transient replacement of 3G services with 2G services by telecom operators under certain special conditions**, for example, during maintenance of broadcast stations, or because of failure of 3G system that could not be immediately repaired, or other special circumstances. In these cases, it is necessary for operators to notify the DSRT before or after the occurrence of these situations and timely release relevant information to the public.

* * *

Commission Against Corruption, 11th May 2012.

Commissioner Against Corruption
Fong Man Chong

* * *

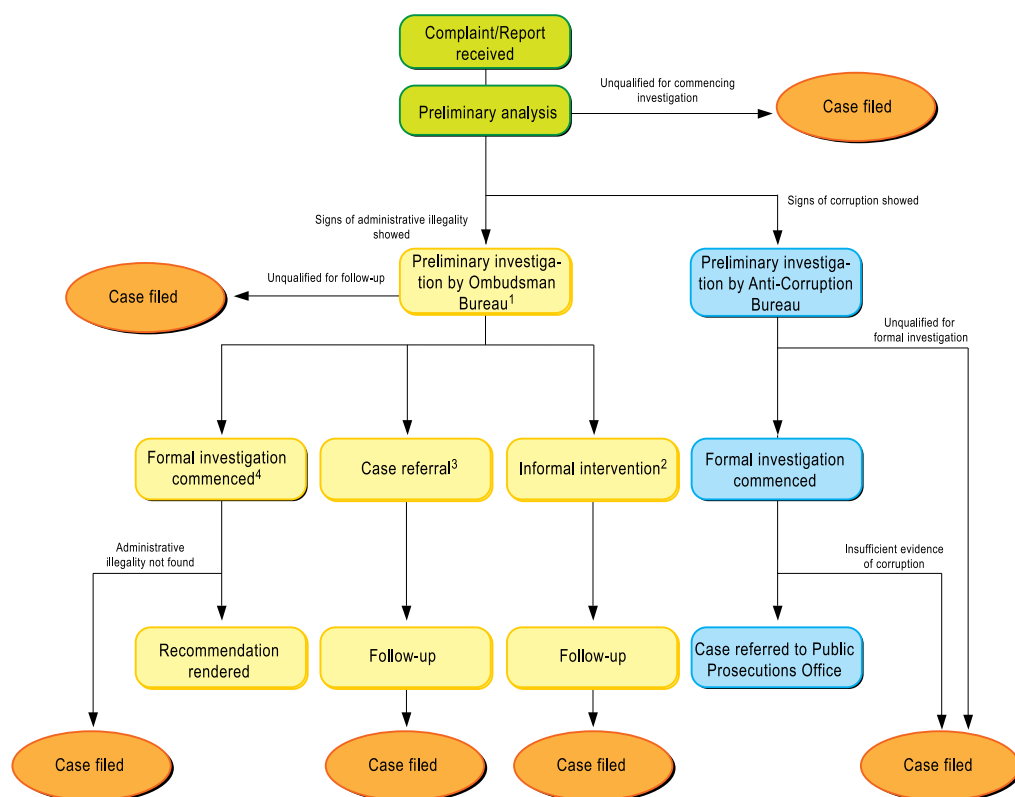
Conclusion:

Inspiration of the case:

- (1) Up till the date of the publication of this report, the Chief Executive has never granted approval to the three operators to provide 2G telecommunications services to roaming customers (it is the Chief Executive's competence to grant licence since it needs to be published in form of an Order of the Chief Executive – see Paragraph 5 of Article 5 of Administrative Regulation no. 7/2002).
- (2) The “announcement” of local users could only use 3G services starting from 9th July 2012 violets the stipulations of the *Code of Administrative Procedure* – especially the “principle of moderation” and the “principle of good faith”.
- (3) This “announcement of cancellation of 2G services” also violates Article 4 “principle of equality” of the same *Code*, depriving the right to choose and the right to equal treatment of local consumers.
- (4) The “announcement of the cancellation of 2G services” does not conform to the public interest and the fundamental interests of the local mobile phone users.

Appendix III

THE CCAC'S COMPLAINT HANDLING PROCEDURE

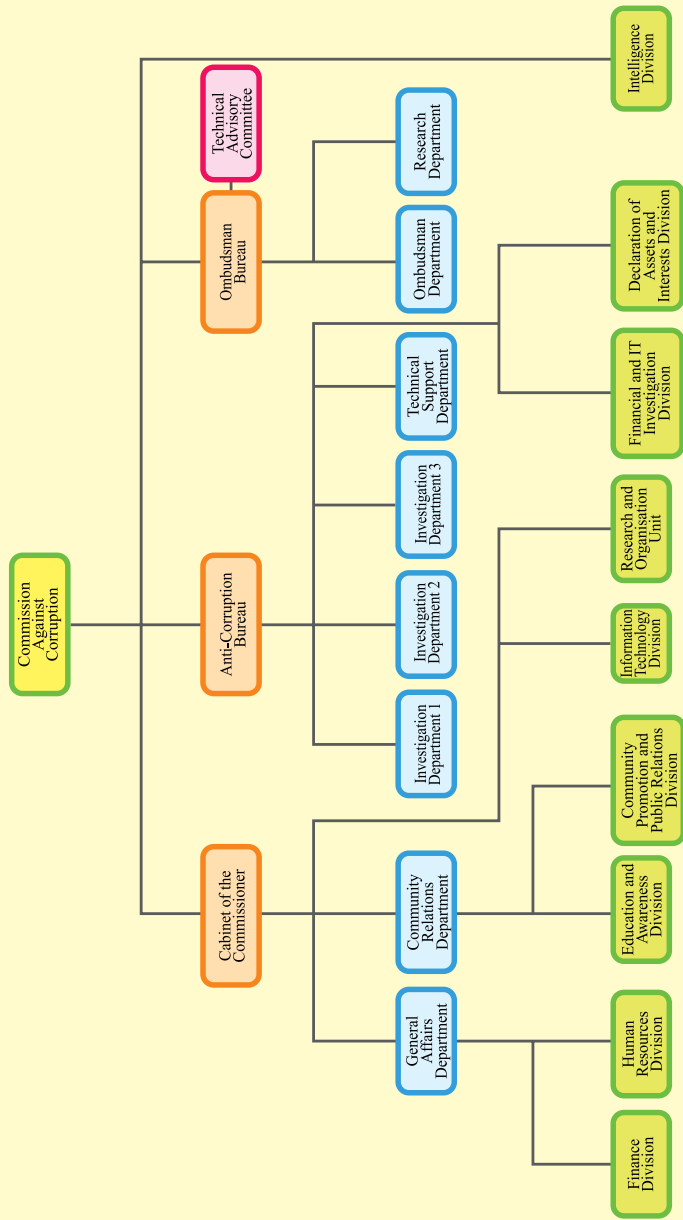


Notes:

1	Preliminary investigation by Ombudsman Bureau	It is conducted under the stipulation of the <i>Organic Law of the CCAC</i> and the <i>Code of Administrative Procedure</i> . In particular, the Principle of Defense shall be observed. That is, both the complainant and the complained side have the chance of pleading.
2	Informal intervention	If the procedure has not been completed or the relevant act has not yet entered into effect, the CCAC will guide the relevant departments or entities in this way so that they will make prompt correction.
3	Case referral	In some cases, since the relevant administrative departments are the competent departments that possess related information (the CCAC only has the information provided by the complainants, which may not be sufficient or detailed), it is appropriate for the relevant departments to handle the cases according to statutory procedures. With the complainant's consent, the CCAC will refer these cases to the competent departments or entities and will follow up their progress.
4	Formal investigation	Due to the severity of the case and the scope involved, the CCAC will commence a formal investigation. Under Paragraph 12 of Article 4 of the <i>Organic Law of the CCAC</i> , the CCAC directly renders recommendation to the competent administrative department for the purpose of rectifying illegal or unfair administrative acts or procedures. Under Article 12 of the <i>Organic Law of the CCAC</i> , in case of non-acceptance of any recommendation, the competent department or entity shall give its reasoned reply within 90 days. Meanwhile, the CCAC may report the case to the Chief Executive or reveal it to the public after reporting the case to the hierarchical superior or supervisory entity of the competent department or entity.

Appendix IV

Organisational Structure of the Commission Against Corruption



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