



# **2011**

**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 *2011 Annual Report of the CCAC of Macao* to the Chief Executive, Dr. Chui Sai On

## FOREWORD

According to the stipulation of Article 15 of Law no. 10/2000 of 14<sup>th</sup> August, the *Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*, the Commissioner shall submit to the Chief Executive, no later than 31<sup>st</sup> March of every calendar year, a report of its activities in relation to the previous year. Concerning the work of the CCAC in 2011, it could be concluded as: (1) effectively fulfilling the functions assigned to it; (2) enhancing the effectiveness in the prevention, investigation and punishment of the crime and (3) making progress while ensuring stability.

In the area of anti-corruption, the CCAC continued to uphold the two-pronged strategy of combating and prevention, to conduct investigation upon the obtaining of evidence on any cases to curb corruption. In 2011, the Anti-Corruption Bureau investigated over one hundred cases. There was an increase in the number of bribery cases for investigation in both public and private sector, indicating an elevated awareness on law-abidingness, integrity and fair business environment, and also a stronger pursuit for fairness.

Two aspects are noteworthy:

- (1) The number of cases lodged by complainants willing to provide personal data has for the first time recorded a significant increase, amounting to over 60% of the total number of cases received. This shows that the citizens' willingness to lodge a complaint and the awareness of safeguarding their rights were enhanced significantly and their tolerance towards corruption was greatly lowered.
- (2) The law *Prevention and Suppression of Bribery in the Private Sector* has entered into force for almost two years, there was a significant increase in the number of complaints and enquiries. This proved that the legal knowledge of both the industries and the general public has been increasing and more emphasis was placed on the importance of a fair business environment.

In the area of ombudsman, the CCAC handled nearly 1,000 petitions and complaints in 2011. The CCAC basically managed to grasp the comprehensive range of information in aspects such as the problems faced by the administrative system in its operation, the factors affecting administrative efficiency, the reasons of grievances

among citizens and the issues that are being criticized. In order to overcome the current dilemma, the Administration should have the mindset of self-reflection, to learn from past lessons, to abolish the outdated and to innovate. An imperfect system and poor management are always some of the main reasons for the problems.

On the education front, as always, the CCAC invested a large portion of its manpower and resources in this area. Over the past year, the publicity strategy of going into the community and visiting civil association was implemented to broadly promote the awareness of integrity and law-abidingness as well as to publicize the concept of fair business. In 2011, the CCAC has organized a total of nearly 400 sessions of seminars and symposia with more than 25,000 participants including public servants, teenaged students, employees of commercial institutions and the general public. This is basically in line with the provisions of Paragraph 1<sup>1</sup> of Article 5 and Article 12<sup>2</sup> of the *United Nations Convention against Corruption*. Promotion and education is an essential part in anti-corruption and the saying “prevention is better than cure” has its own truth. In fact, the role and the position of the corruption monitoring entity itself needs to keep pace with the times, just as the traditional concept of the hospital, in the past the first importance was to make a diagnosis and give treatment, however, in modern concept, the hospital has already shouldered the functions of pathology and regular health check-ups in order to achieve the prevention effect.

<sup>1</sup> The contents of the respective Paragraph: “1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”

<sup>2</sup> The stipulations of the respective Article: “1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

- (a) Promoting cooperation between law enforcement agencies and relevant private entities;
- (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
- (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate

To face the community, listen to the views of society and make progress while ensuring stability are the deployment of the CCAC in fulfilling its duties. In addition, the strengthening of cooperation with civil associations to obtain support and participation of citizens is one of the key elements in the building of a clean society. The CCAC will continue to dedicate its full efforts in curbing corruption and promoting integrity as well as the building of a clean and fair society in accordance with the established guidelines and policies.

March 2012

The Commissioner Against Corruption  
Fong Man Chong

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*entities;*

- (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;*
- (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;*
- (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.*





# **PART I**

## **CASE PROCESSING SUMMARY**





PART I

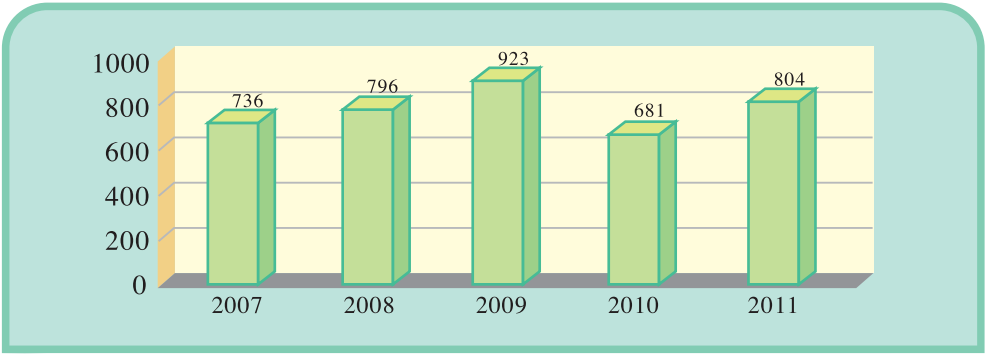
CASE PROCESSING SUMMARY

I. Number of cases recorded

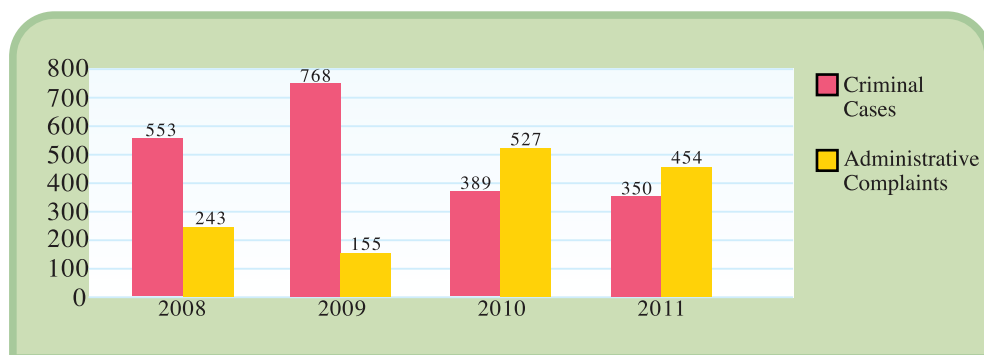
In 2011, the Commission Against Corruption (hereafter the CCAC) has handled a total of 916 cases (804 reports received in total throughout the year and 112 cases carried over from 2010), a slight increase over the 681 reports received in 2010.

Meanwhile, the number of administrative complaints decreased slightly compared with the previous year. However, judging from the content and quality of the complaints, they were more informative and substantial. A majority of complainants were willing to provide specific information and disclose their genuine identities. They also indicated clearly the purpose of complaint and their expectations towards the government departments concerned.

TREND OF NUMBERS OF COMPLAINTS RECORDED FROM 2007 TO 2011



### COMPARISON OF THE NUMBERS OF COMPLAINTS BY TYPE FROM 2008 TO 2011



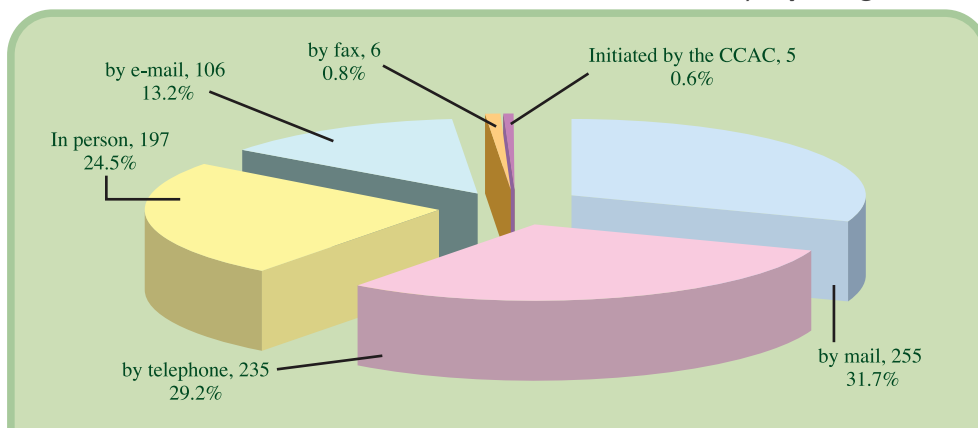
Among the 804 cases received, 5 cases were initiated by the CCAC and 13 cases required assistance. The remaining were all reported by citizens, of which 482 cases were lodged by complainants willing to provide personal data and 293 cases were anonymous or requested anonymity by complainants. This shows that the citizens' willingness to lodge a complaint and the awareness of safeguarding their rights were enhanced significantly and their tolerance towards corruption was greatly lowered.

### COMPARISON OF NUMBERS OF CASES RECORDED FROM 2009 TO 2011 (by source)

Sources		2009		2010		2011	
		Number	Percentage	Number	Percentage	Number	Percentage
Reports from Citizens	Anonymous or requested anonymity	443	48.0%	385	56.5%	293	36.4%
	Signed or willing to provide personal data	423	45.8%	275	40.4%	482	60%
Referred/reported by public entities		30	3.3%	0	0%	11	1.4%
Cases requiring mutual assistance		13	1.4%	17	2.5%	13	1.6%
Initiated by judicial institution		4	0.4%	0	0%	0	0%
Initiated by the CCAC		10	1.1%	4	0.6%	5	0.6%
Total recorded cases		923	100%	681	100%	804	100%

In 2011, mail and telephone were still the main methods to report cases to the CCAC (490 cases in total), which amounting to 60.9% of the total number of reports received, while in-person reports totaled 197 cases, amounting to 24.5% of the total number of cases received.

#### DIFFERENT COMPONENTS OF CASES RECORDED IN 2011 (by reporting method)



#### COMPARISON OF NUMBERS OF CASES RECEIVED FROM 2009 TO 2011 (by reporting method)

Reporting method	2009		2010		2011	
	Number	Percentage	Number	Percentage	Number	Percentage
By mail	360	39.0%	256	37.6%	255 <sup>3</sup>	31.7%
By telephone	267	28.9%	164	24.0%	235	29.2%
In person	154	16.7%	155	22.8%	197	24.5%
By e-mail	116	12.6%	96	14.1%	106	13.2%
By fax	12	1.3%	6	0.9%	6	0.8%
Initiated by judicial institutions	4	0.4%	0	0%	0	0%
Initiated by the CCAC	10	1.1%	4	0.6%	5	0.6%
<b>Total</b>	<b>923</b>	<b>100%</b>	<b>681</b>	<b>100%</b>	<b>804</b>	<b>100%</b>

<sup>3</sup> Including 13 cases that required assistance outside Macao.

## II. Case processing

Among the 804 cases received in 2011, 119 cases were not qualified for follow-up due to the reasons that they were beyond the scope of the CCAC's powers or the information was insufficient, amounting to over 10% of the overall cases.

**CASES HANDLED IN 2011**

Types of cases		Number	Percentage
Cases qualified for follow-up	Commenced for investigation	575	71.5%
	Handled by informal methods	110	13.7%
Cases not qualified for follow-up		119	14.8%
Total		804	100%

In 2011, the CCAC commenced a total of 575 cases for investigation, of which 112 were criminal cases and 463 were administrative complaints. Regarding the criminal cases, by December 2011, investigation for a total of 64 cases were completed. Those cases were referred to the Public Prosecutions Office or filed accordingly.

In the area of ombudsman, a total of 463 case were commenced for investigation in 2011. Together with the 85 cases carried over from 2010, there were 548 cases to be handled throughout the year, of which 453 have been completed and archived. Moreover, there were 232 cases in which no signs of administrative illegality/ malpractices were discovered after preliminary investigation.

Besides, the CCAC has received 1,391 counts of requests for help and consultation of different natures in 2011. There were 958 counts of consultation of criminal matters or those of similar nature and 433 counts of consultation in the aspect of ombudsman.

# **Part II**

# **ANTI-CORRUPTION**







## Part II

### ANTI-CORRUPTION

#### I. Numbers of reports and cases commenced for investigation

In 2011, the CCAC received a total of 398 criminal reports<sup>4</sup>, including 262 cases qualified for preliminary handling. Together with the 49 cases carried over from the previous year, the CCAC had to process a total of 311 criminal reports in 2011.

The CCAC commenced a total of 112 criminal cases for investigation in 2011, more than the 88 cases in 2010, which is mainly due to an increase of reports about bribery in the private sector, where 45 cases were commenced.

Regarding criminal cases, by December 2011, investigation of a total of 64 cases were completed and the cases were referred to the Public Prosecutions Office or archived accordingly.

#### CRIMINAL CASES RECEIVED FROM 2009 TO 2011

Statistics	2009	2010	2011
Total number of case recorded	923	681	804
Criminal reports	768	389	398
Criminal cases qualified for handling	107	133	182
Commenced cases	44	88	112

<sup>4</sup> Some of the complaints involve both administrative illegalities and criminal reports. Therefore, one complaint may result in a file for criminal investigation and one for administrative complaint investigation.

## **II. Summary of some of the cases investigated by the CCAC**

### **Case 1:**

The suspect was a leadership of the Cultural Affairs Bureau who allegedly violated the functional obligations of impartiality and confidentiality by deliberately revealing the quotations offered by other bidders to his/her relative in several bidding procedures and enabling the latter to adjust the quotations of his/her company through revising the relevant proposals. As a result, his/her relative's company was awarded the contracts of daily maintenance services for the premises under the Cultural Affairs Bureau. The public servant has allegedly violated the regulation of compulsory recusal many times by participating in the procedures of contract awarding in tenders where his/her relative was one of the bidding parties. He/She was also suspected of committing irregular acts related to the development of cultural industry.

After collecting evidence and investigating, the CCAC has arrested the suspect and referred the case to the Public Prosecutions Office (MP). Following analysis of the case and evidence, the MP considered that there were clear signs showing that the suspect had allegedly abused his/her power. Therefore, coercive measures were taken against the suspect as proposed to and approved by the judge. The measures included recording his/her identification documents and his/her home address, demand for bail and prohibition against contact with relevant parties, etc.

### **Case 2:**

The CCAC received a report of suspected money laundering.

Since there was no sign showing existence of corruption and fraud related to public servants, the complaint against money laundering and relevant information has been referred to the Financial Intelligence Office for follow-up. At the same time, the illegal acts committed by a police officer of the Public Security Police Force (PSP) discovered during the investigation have been reported to the PSP.

Subsequently, the CCAC was notified by the PSP that disciplinary action had been taken against the police officer.

**Case 3:**

The CCAC received a report from a citizen, alleging that his/her friend had been used by a company to launder illicit money or pay bribes.

The result of the investigation showed that the bribery case which might involve the private sector and the methods of money laundering mentioned by the complainant were merely his/her assumption and suspicion. The alleged crimes were groundless and there were no concrete details and targets. The money laundering methods did not accord with the facts.

The report was not related to corruption and fraud committed by public servant. Although it might involve corruption in the private sector, the facts happened in 2008, before the law *Prevention and Suppression of Bribery in the Private Sector* entered into force. Therefore, the CCAC archived the case.

**Case 4:**

The CCAC broke a case of bribery in the private sector and arrested six suspects, of whom two were from Hong Kong and four were from Mainland China. One of them was an executive of a construction company in Macao.

According to the intelligence obtained, the CCAC suspected that a senior staff of a local construction company took advantage of his position to receive illicit advantages in the process of recruitment of construction workers, contravening the rules of the company.

The CCAC commenced an investigation and evidence search and subsequently arrested six suspects in an operation. The evidence showed that the senior staff recruited workers from Mainland China via five non-resident foremen and solicited around MOP2,000 to 4,000 from each of the candidates as entry requirement. The act has allegedly violated the rules of the company and Paragraph 1 of Article 3 of the law *Prevention and Suppression of Bribery in the Private Sector* – passive bribery in the private sector.

During the investigation, the CCAC discovered that some people, by using the excuse that the construction project was done on an outsourcing basis, embezzled MOP50 per day and part of or the entire bonus for every non-resident worker and claimed that the money served as the guarantee that they would not be laid off arbitrarily and the fee for assigning them better duties. These acts have allegedly constituted fraud. It was also discovered that some people had kept the ATM cards and passwords of the non-resident workers' payroll accounts. It was also discovered that the workers were threatened with violence or dismissal and were forced to pay a certain amount of money every month. Such acts have allegedly constituted menace.

The case involved around 70 non-resident workers who were solicited for entry fee and suffered from embezzlement of wage and bonus. The sum amounted to around MOP700,000 in total. The case was referred to the Public Prosecutions Office.

#### **Case 5:**

The CCAC received a report from an employee of a company, indicating that the company was in arrears of bonus for a few months, while the owner of the company said that the bonus had been passed to a supervisory staff for distribution. Therefore, the complainant suspected that the supervisory staff engaged in corrupt acts.

During the investigation, it was discovered that the company authorized the supervisory staff to be in charge of the distribution of bonus. Therefore, he/she was empowered to decide the amount of bonus for every employee and even who would not get the bonus. Since the complained party neither got any advantage of the distribution of bonus nor breached the code of conduct, the corruption mentioned in the complaint was groundless and subsequently the CCAC archived the case.

**Case 6:**

The CCAC received a report alleging that the manager of the security department of company A abused his/her power by overstating the working hours of the temporary security guards dispatched by a security company B in order to gain illicit benefits.

During the investigation, it was covered that A and B had signed a cooperation agreement, under which B provided security guards for A on a temporary basis, while A paid a certain amount to B for the service. The contract also stipulated the minimum daily working hours of the security guards. In fact, the working hours allegedly overstated by the manager had already included the minimum working hours and did not exceed the maximum working hours under the contract. Since there was no sign of and ground for the suspicion that the manager had received any advantage, the CCAC archived the case.

**Case 7:**

There was a complaint indicating that property administration company X won the contract outsourced by company Y. Y then offered X a sum as bonus for X's employees, but X did not distribute the "bonus" to some of the staff. Therefore, some staff members suspected that A had embezzled the money.

During the investigation, it was discovered that there was a condition that X had to meet when Y offered the "bonus" to X's employees. The rules of distribution of the bonus were totally determined by the chief of Y and X should follow the rules. Some of the staff members of X, indeed, did not meet the requirements and thus were not offered the "bonus". X did not embezzle the money. Since the crime mentioned by the complainant did not exist, the CCAC archived the case.

### **Case 8:**

The CCAC received a report alleging that a casino made use of its partnership with a local gaming company and treated the dealers dispatched to station at the casino as local workers it employed and requested them to fill out the entry forms and provide personal data, which were thus submitted to the Human Resources Office in order to apply for a large number of quotas for non-resident workers. Moreover, it was reported that the application had been approved.

During the investigation, it was discovered that all gaming companies could not hire non-residents as dealers. Therefore, it is impossible to apply for quotas for non-resident workers to fill in other positions based on employment of a certain number of dealers.

The guidelines on the procedure of application for non-resident labour specify that it requires the pay-in slips of contributions to the Social Security Fund submitted by the employer. Therefore, the companies intend to apply for the quotas have to submit the documents of contributions in order to prove that they have local employees. In this sense, only personal data is not sufficient to fulfil the requirement. Since no illegal act was found, the CCAC archived the case.

### **Case 9:**

The CCAC received a report from a trustee of a private construction project management company, alleging that the senior project manager of the company solicited bribe from a staff of one of the companies that participated in the bidding for a contract in exchange for confidential commercial information about the contract.

It came to light in the investigation that the project manager was in charge of the bidding and evaluation of a construction project and thus obtained the reports of the bidding proposal by consultancies, which covered confidential information such as preliminary quotations and the merits and shortcomings of the bidding companies.

The suspect met a staff of one of the bidding companies and asked for a reward amounting to 1% to 2.5% of the total cost of the project (the reward was around MOP1 million to 2 million) in exchange of the confidential information, but the latter rejected the request immediately.

The manager allegedly violated the law *Prevention and Suppression of Bribery in the Private Sector* and the case was referred to the Public Prosecutions Office.

#### **Case 10:**

Following investigation and evidence collecting over a period of time, the CCAC carried out an operation, in which four auxiliary staff members of the Hospital Conde S. Januário who were suspected of bribe accepting and two alleged bribers were taken to the CCAC for investigation. Moreover, a number of auxiliary staff were asked to assist in the investigation.

Evidence showed that the four auxiliary staff members mentioned above colluded with some individuals running funeral business in an organized and systematic way for a long time. First, they introduced some funeral business operators they were familiar with to the relatives of the deceased. After they paid the relevant funeral service fees, the auxiliary staff solicited rewards amounting to about MOP2,500 each from the operators. During the operation, the CCAC seized the relevant account records and other evidence.

The CCAC also discovered that some other auxiliary staff of the hospital had violated the law by entering casinos several times for gambling.

The suspects have allegedly committed the offence of “receiving bribe for performing licit acts” and “active bribery” under the *Penal Code*. The case was referred to the Public Prosecutions Office upon completion of the investigation.

### Case 11:

The CCAC received a report alleging that a dermatologist of the Hospital Conde S. Januário referred his/her patients to a beauty care centre owned by his/her spouse to receive treatments and worked for the centre during sick leave. Also, he/she used the items that belonged to the hospital at the beauty care centre.

During the investigation, it was discovered that the dermatologist had many times introduced the beauty care treatments provided by the centre to his/her patients and distributed its name cards. Moreover, the suspect also went to the centre to provide medical opinions and introduced treatments to the clients and thus received medical fees without approval by the Hospital Conde S. Januário or the Health Bureau.

The dermatologist has allegedly violated the principles of exclusiveness and impartiality stipulated by the *Statute of Personnel of the Public Administration of Macao*. The CCAC reported the case to the Health Bureau, which subsequently commenced disciplinary proceedings against the dermatologist.

### Case 12:

The CCAC received a report alleging that a staff of the Department of Gardens and Green Areas of the Civic and Municipal Affairs Bureau (IACM) had a close relationship with the owner of a horticultural company which always bid for the contracts outsourced by the IACM, suspecting that there was favouritism in the procurement procedure.

During the investigation, it was discovered that the public servant started a relationship with an executive of the company since 2008.

The public servant always participated in bid evaluation. There were 14 projects awarded to the company, of which the staff was involved in the bid evaluation. In 10 among the 14 projects, the public servant worked as member or the president of the bid evaluation committees. As for the remaining four, he/she was responsible for writing the proposals for evaluation criteria. The CCAC found that in the process of bid evaluation, the staff deliberately concealed the close relationship between them, which contravened the provisions of recusation prescribed by the *Code of Administrative Procedure*. Moreover, according to the criteria proposed by the staff, experience constituted an important part of the grade. In this sense, the company was



favoured, leading to suspicion of partiality.

The staff allegedly violated the stipulation about self-resusal under the *Code of Administrative Procedure* and the obligations of impartiality and loyalty of public servants. The CCAC reported the case to the IACM that subsequently commenced disciplinary investigation.

Moreover, the CCAC raised opinions to the IACM about the possible loopholes existing in the grading criteria of bid evaluation of outsourced contracts, which may cause the monopoly of a certain bidder, and urged the latter to review the relevant criteria.

### Case 13:

The CCAC received a complaint against a public servant who was suspected to work illicitly at a piano studio at the central district during weekend and in the afternoon and at night during weekdays on a part-time basis.

During the investigation, it was discovered that the public servant worked as a teacher at a government school under the Education and Youth Affairs Bureau (DSEJ) between 1995 and 2008. Later, he/she shifted to the Cultural Affairs Bureau (ICM) in October 2008. Between October 2007 and 1<sup>st</sup> June 2009, the public servant, without approval by the DSEJ or the ICM, worked as musical instrument teacher of extracurricular activities at a local secondary school and received MOP1,200 as monthly reward. Moreover, since 2004, the public servant had been teaching irregularly at the piano studio owned by his/her father and the musical centre run by his/her spouse occasionally.

The public servant has allegedly breached the principle of exclusiveness stipulated by the *Statute of Personnel of the Public Administration of Macao*. The CCAC reported the case to the ICM, which subsequently commenced disciplinary proceedings and issued a written warning against the public servant.

#### Case 14:

The CCAC received a complaint from a woman, E, over some plainclothes police, who were suspected of power abuse as the complainant said that they took her to police station many times without any reason and penalized her with fine by falsely accusing her of breaching the *General Regulations Governing Public Places*.

It is discovered in the investigation that E's job was to distribute handbills of massage service with pornographic allusion near casinos. In fact, the police have been striving to suppress prostitution. They have broken pimping gangs according to the information on the handbills for a multiple times, while the people responsible for distribution of the handbills were related to the crimes. With reasonable suspicion, the police have the power to request any people for assistance in investigation. The CCAC also found that some people who distributed such handbills deliberately dropped them at flowerbeds or streets, breaching the *General Regulations Governing Public Places* and liable for fine. Therefore, the police have the power to prosecute them. Since the case mentioned by the complainant was merely the result of the performance of ordinary duties by the police, and, without any evidence of illegal and irregular situations, the CCAC archived the case.

#### Case 15:

The CCAC received a report from a hotel, alleging that the supervisor of one of its restaurant, A, secretly requested the cook, B, who was a local, to offer part of his/her. salary every month to a staff, C, who came from Mainland China, when offering B the job. Therefore, it is suspected that some people have violated the law *Prevention and Suppression of Bribery in the Private Sector*.

During the investigation, it was discovered that A and B had reached the private agreement, but such practice was a tradition followed by old-style restaurants and it did not involve any illicit benefits. Since there was no evidence proving breach of the law *Prevention and Suppression of Bribery in the Private Sector* and the *Penal Code*, the CCAC archived the case. However, A has violated the internal rules of the hotel and thus was dismissed.

**Case 16:**

The CCAC received a report alleging that a public servant, E, was absent without authorization and defrauded over shift allowance when he/she worked as the supervisor of a public department.

During the investigation, it was found that the shift allowance received by E when he/she worked in the position as supervisor accorded with the *Statute of Personnel of the Public Administration of Macao*. Also, E was not absent from his/her duty without authorization when working on shift. In fact, the time of E's on-shift duty was different from that of another staff who used to work for the same job, leading to the complainant's misunderstanding. It was proven that there were no unauthorized absence and fraud over shift allowance. Therefore, the CCAC archived the case.

**Case 17:**

The CCAC received a report alleging that A, the chief of a management company which provided health care service for staff of large companies, conspired with a medical practitioner, B, to solicit kick-back from the doctors who participated in the health care service network managed by the company as the fee for introducing them to join the network.

During the investigation, it was found that A, who was in charge of the health care service management company, requested B to recommend doctors to join the network, but they did not have employment relation with each other. B has introduced a few doctors to A and dealt with the administrative routines on behalf of them and therefore received administrative charge from them every month. Since the case did not involve bribery and illegal taking, it was archived. During the investigation, B stopped doing the administrative work for the doctors in order to avoid misunderstanding and thus no longer received the charge.

### **Case 18:**

The CCAC received a report alleging that some people were bribed in the course of the ballot for market vendor booths, resulting in certain people being granted particular booths.

The ballot held by the IACM was held publicly. Before the ballot took place, the list of applicants and the date, time and venue were publicized in order to let the general public and the media oversee the ballot. The guests would count the number of application forms and then put them in a transparent box. Subsequently, the guests would draw the winners and the staff of the IACM would call the winners' names and read their personal data aloud. At the same time, the information would be displayed on a screen for the audience. The process was transparent, leaving little possibility for manipulation of balloting results. Based on the balloting procedure and the operation of waiting system for market vendor booths, the CCAC found that the report was groundless. Therefore, the case was archived.

### **III. Mutual case assistance in cross-border investigations and judiciary assistance**

#### **(1) Requests for case assistance to CCAC from law enforcement agencies outside the territory**

In 2011, the CCAC was requested for assistance in 13 cases from law enforcement agencies outside the territory, including the ICAC of Hong Kong (11 cases), the People's Procuratorate of Guangdong Province (1 case) and the Anti-Corruption Bureau of Brunei (1 case). Eleven of the cases have been completed, while the remaining two are still being processed.

#### **(2) CCAC's requests for case assistance to law enforcement agencies outside the territory**

In 2011, the CCAC requested law enforcement agencies outside the territory for assistance in a total of five cases. The agencies included the Supreme People's Procuratorate of Beijing and the People's Procuratorate of Guangdong Province (5 cases) and the ICAC of Hong Kong (1 case). The assistance in investigation of all these cases was completed in 2011.

# **Part III**

## **OMBUDSMAN**





## Part III

# OMBUDSMAN

### I. Introduction

In 2011, 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 **administrative legality**.

Last year, there were over 100 administrative complaints against government departments, of which a majority was about dissatisfaction of the law-enforcement approaches or administrative decisions. Around 50 complaints were against construction projects and relevant competent departments. These data reflect where the areas that are prone to create dissatisfaction:

- (1) Acts and law-enforcement standard of administrative departments;
- (2) Management approaches of administrative departments;
- (3) Effectiveness of public works department in carrying out their duties.

It is worth noting that there was a significant increase of grievance and number of complaints against traffic offences and measures and supervision on taxis and buses, reflecting that it is necessary to pay attention to and properly solve the problems and conflicts in these aspects. How to handle the problems in these areas prone to cause dissatisfaction is the issue that the CCAC has been paying attention to and working on. To establish effective regulating systems through research and analysis on specific issues is the aim of the CCAC. By achieving this aim, solutions will be sought and the efficiency of administrative departments will increase, so that the principle of “legal administration” will be fully implemented.

The report mainly analyses and summarizes the works in the area of ombudsmanship that the CCAC conducted in 2011 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 2011, the CCAC handled:

- Enquiries: 433
- Complaints: 548<sup>5</sup>

In 2011, the CCAC received 433 requests for help and consultation, a slight decrease compared to the 438 requests in 2010. The requests mainly involved legal system governing public services, traffic offences, illegal construction, municipal affairs and labour disputes. In particular, there is a slight increase of enquiries on illegal construction.

The administrative complaints handled by the CCAC in 2011 were related to the following issues:

Issue	Caseload	
<b>Legal system governing public service</b>		
■ Discipline	52	128
■ Rights and interests of personnel	29	
■ Recruitment	20	
■ Internal management	27	
<b>Labour affairs/ Human Resources</b>		
■ Labour dispute	20	31
■ Illegal labour	9	
■ Employment of non-resident workers	2	
<b>Land and public works</b>		
■ Illegal construction	37	48
■ Supervision on usage of property	11	

<sup>5</sup> In 2011, the CCAC opened files for investigation of 463 cases. In addition to 85 cases carried over from 2010, the CCAC had to handle a total of 548 cases throughout the year.



<b>Municipal affairs</b>		
■ Environmental hygiene	3	20
■ Administrative licenses	2	
■ Occupation of public land	7	
■ Others	8	
<b>Traffic affairs</b>		
■ Transportation/vehicles/driving licenses	26	35
■ Supervision on taxis	9	
<b>Public procurement</b>		3
<b>Traffic offences</b>		31
<b>Economic housing/social housing</b>		10
<b>Tax affairs</b>		4
<b>Personal privacy</b>		2
<b>Identification</b>		7
<b>Social welfare</b>		3
<b>Sports affairs</b>		3
<b>Social Security Fund</b>		7
<b>Health care</b>		13
<b>Education</b>		8
<b>Property administration</b>		7
<b>Supervision on public utilities</b>		2
<b>Supervision on finance</b>		2
<b>Consumer rights and interests</b>		2
<b>Provision of information</b>		2
<b>Fire safety</b>		2
<b>Noise</b>		8
<b>Competence and function of the CCAC</b>		1
<b>Irregularities in other administrative procedures</b>		52
<b>Others</b>		7

<b>Beyond the competence of the CCAC</b>		
■ Criminal cases	12	25
■ Judicial affairs	6	
■ Civil law issues	5	
■ Personal dispute	2	
<b>Total</b>		463

Moreover, there were 85 cases carried over from 2010. Therefore, the Ombudsman Bureau processed a total of 548 cases last year.

In 2011, the issues which the requests for help and consultation were related to included:

Issue		Caseload
<b>Legal system governing public service</b>		81
■ Discipline	23	
■ Personnel rights and interests	22	
■ Recruitment	18	
■ Internal management	13	
■ Public servant’s obligations	5	
<b>Labour affairs/ Human resources</b>		35
■ Labour dispute	22	
■ Illegal labour	6	
■ Non-resident labour	7	
<b>Land and public works</b>		16
■ Illegal constructions	15	
■ Supervision on usage of property	1	
<b>Municipal affairs</b>		12
■ Environmental hygiene	2	
■ Administrative licenses	3	
■ Venders	1	
■ Occupation of public land	5	
■ Public facilities	1	

<b>Traffic affairs</b>		
■ Transportation/vehicles/driving licenses	18	26
■ Supervision on Taxis	8	
<b>Tax affairs</b>		11
<b>Codes of conduct</b>		27
<b>Public procurement</b>		17
<b>Traffic offences</b>		31
<b>Economic housing/social housing</b>		14
<b>Personal privacy</b>		6
<b>Identification</b>		2
<b>Social welfare</b>		6
<b>Health care</b>		7
<b>Illegal hotels</b>		7
<b>Supervision on public utilities</b>		6
<b>Subsidy of property maintenance</b>		2
<b>Education</b>		6
<b>Right of abode</b>		3
<b>Property administration</b>		2
<b>Dispute on consumption</b>		2
<b>Noise</b>		2
<b>Competence and function of the CCAC</b>		12
<b>Irregularities in other administrative procedures</b>		21
<b>Beyond the competence of the CCAC</b>		
■ Criminal cases	22	
■ Judicial affairs	21	79
■ Civil law issues	21	
■ Personal disputes	15	
<b>Total</b>		<b>433</b>

When handling the complaints, the CCAC basically adopts various prompt and effective approaches, of which the most common is to examine related documents and render improvement measures directly in order to solve the problems as soon as possible. However, some public departments do not pay enough attention to the complaints and even give ambiguous responses to the CCAC or avoid addressing the core problems. These have hindered problem solving and enhancement of efficiency. The CCAC attaches importance to these situations and conducts research to map out more specific measures in order not to worsen the problems.

The result of handling administrative complaints in 2011 is as follows:

Approach/Result	Caseload
Archived upon the CCAC's investigation and analysis	451
Archived after the relevant departments solved the problems on their own	20
Archived since the complaints were beyond the competence of the CCAC	25

### III. Investigation file, analysis and recommendations

The complaints that the CCAC has received are basically handled and analysed with simple and direct methods – 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 particularity 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 handle them. Suggestions 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; therefore the CCAC archives these complaints.

Another situation is that in the complaint handling process, the relevant departments have handled 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 ways 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 viewpoints 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, several 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 public departments thus strengthening citizens' awareness of protecting their own rights and interests.

##### **Case 1 - Special case of “comparing the prices from three suppliers”**

A complainant told the CCAC that the Cultural Affairs Bureau (ICM) had requested for his/her quotation of some musical instruments, but later it cancelled his/her quotation. Therefore, the complainant considered that the procedure and approach were suspicious and unfair and were based on incorrect legal basis. Thus, the CCAC was requested for intervention.

The complainant was a part-time teacher at a school under the ICM. The Bureau intended to purchase some musical instruments for the school. However, when choosing the potential suppliers, it did not realize that the complainant was the person-in-charge of one of the shops being requested for quotation. After it discovered that, in order to conduct the procurement in a fairer and more reasonable way, it cancelled the whole procurement procedure based on Sub-paragraph a) of

Paragraph 1 of Article 46 of the *Code of Administrative Procedure*, which provides that any officeholder or staff of the Public Administration shall not participate in relevant administrative procedure.

Since the complainant's position was not "officeholder or staff of the Public Administration", and the fact that the complainant provided quotation as a supplier was not the case of "any officeholder or staff of the Public Administration" participating in procurement procedure, the provision above was not applicable to this situation.

Obviously, the ICM adopted the stipulation about recusation incorrectly and used it as the legal basis for cancellation of the procurement procedure.

Given that the procurement of musical instruments was for the school under the Bureau, the complainant, who was a part-time teacher at the school, was in fact, a member of the school, who at the same time participated in the procurement by providing quotation as a "supplier", the cancellation of the whole procurement procedure based on the principles of justice, impartiality and equality had helped to prevent favouritism toward the complainant.

At a matter of fact, after requesting quotations from three shops, only two provided quotation. The complainant's shop was subsequently not allowed to participate in the procurement procedure as the ICM considered it inappropriate. Finally, there was only one supplier for selection. In this case, the objective to conduct a fair procurement by comparing the price quoted by three suppliers has become meaningless. Therefore, the Bureau's decision to cancel the procedure out of the principles of fairness, justice and impartiality was not illegal.

Moreover, when following up this case, the CCAC discovered that the internal guidelines of procurement adopted by the ICM did not specify that the people who have relation with the ICM (or the companies they represent) should not be requested for quotation for procurement. Therefore, the CCAC sent a letter to the Bureau to declare its stance and called for attention. Finally, the Bureau revised the guidelines according to the CCAC's suggestion.

Since no illegality was found and the Bureau has revised the guidelines according to the CCAC's suggestion, the CCAC archived the case.

## Case 2 - Notification of punishment procedure

When receiving enquiries from citizens, the CCAC found that the Transport Bureau (DSAT) sent “notification” by registered mail without return receipt to light motorcycle drivers about the lack of effective label stuck on motorcycle to show that vehicle circulation tax had been paid and counted the send-out date of the mail as the beginning of the punishment procedure. However, this practice has not clearly informed the interested parties on whether they were prosecuted or fined by the DSAT, allegedly hindering them from exercising their right of statement and hearing. Therefore, the CCAC took the initiative to intervene in the case.

After the follow-up, the DSAT realized that the relevant punishment procedures carried out before 30<sup>th</sup> June 2010 did not accord with the law. Therefore, it took remedial measures for relevant past cases and adopted a new procedure starting from 1<sup>st</sup> July 2010:

For cases that took place before 30<sup>th</sup> June 2010:

1. The commenced cases where the fines have not been paid and the periods for punishment procedure have not expired.

Since the periods for punishment procedure had not yet expired, the DSAT had the power to implement measures to pursue liability against the people who had broken the law. According to what the DSAT stated, it would give the interested parties another chance to exercise their right of hearing. These show that the DSAT has adopted remedial measures. Therefore, the CCAC did not need to follow up the cases.

2. Cases where the fines have not been paid but the period for punishment procedure has already expired.

Since the decisions of punishment were invalid and the period had already expired, the DSAT could not pursue liability against the people who had broken the law. Therefore, the DSAT archived the cases and notified the interested parties.

3. Cases where the interested parties have already paid the fines voluntarily.

The DSAT stated in a letter that the cases would be archived unless the decisions of punishment were invalidated by court rulings. This showed that the DSAT was

willing to risk being sued by interested parties for compensation and will not take the initiative to declare the invalidity of the relevant decision, giving them another chance to present statement and defense. For these cases, the DSAT's stance was not to handle them unless there were lawsuits.

Information showed that since the new procedure was adopted, the DSAT specified the information about appeal in its notifications, including available ways of appeal (declaration of objection, necessary/voluntary appeal), entities empowered to handle appeal, period for filing appeal, whether the appeal had any effect of suspension, and whether judicial appeal could be filed.

Since the DSAT has adopted follow-up measures, the CCAC archived the case.

### **Case 3 - Public servant's request for appraisal records being rejected**

A complainant, who worked for the Government Printing Bureau (IO), told the CCAC that the IO hindered him/her from exercising the right to information, as it refused to provide the copy of the submission by the Public Administration and Civil Service Bureau (SAFP) and its consultative committee of personnel appraisal did not respond to his/her application submitted in 2006.

Following investigation and analysis, the CCAC considered that the IO's refusal to provide the copy of the SAFP's submission to the complainant under Sub-paragraph b) of Paragraph 3 of Article 63 of the *Code of Administrative Procedure* was groundless. Following the CCAC's intervention, the IO finally provided the copy to the complainant.

The application to the consultative committee of personnel appraisal submitted by the complainant in 2006 was, in fact, based on Administrative Regulation no. 31/2004, for its opinions on his/her performance evaluation in 2005. According to the regulation, the committee only had to pass the submission to the chief of the department, who subsequently notified the relevant staff of the result. The regulation did not require the committee to notify the staff of the opinion on its own.

In fact, the complainant could request for a copy of the submission according to the regulation mentioned above and the *Code of Administrative Procedure*, but the information provided by both the complainant and the authority did not show that the he/she had actually made such request. Therefore, this point in the complaint is groundless.



Moreover, the CCAC found that in the process of handling the complainant's request for alternation of judge, the IO did not verify whether the reason for the request was true or not under the *Code of Administrative Procedure* (such as requesting the complainant to provide evidence to support his/her statement). Moreover, the decision to reject the request was defective as it was not backed by any reason. After receiving the CCAC's notification, the IO has already requested the complainant to provide concrete proof to support his/her statement.

Therefore, the CCAC archived the case and responded to the complainant.

#### **Case 4 - Incomplete record of vehicle examination**

A complainant reported to the CCAC that his/her car, which was purchased in January 2000, underwent the "annual compulsory vehicle examination" by the Transport Bureau (DSAT) in January 2011. The inspector said that the complainant had re-equipped the car and thus required him/her to pay MOP500 as the fee for application for re-equipment, but the complainant denied the said re-equipment. Therefore, he/she requested the DSAT to review the photographic record of the examination. However, the DSAT replied that "there is no photographic record but written record only". The complainant thought that the DSAT's approach to handle the matter was administratively illegal or irregular, thus requesting the CCAC to intervene in the case.

The CCAC subsequently requested the DSAT for relevant information, while the DSAT replied that the accessories the car currently contained were not consistent with the approved list of accessories of the same model of car as well as the result of the initial examination. Since there was no photographic record of the examinations for new vehicle registration and license in 2000, there was no photographic proof for the initial examination of the complainant's car. The DSAT also pointed out there were a number of similar cases previously.

The DSAT considered that the model has already been recognized and that when the complainant's car underwent initial examination, fenders and side aprons had already been installed. However, these were not considered extra accessories by DSAT at that time and thus this condition was not recorded. Therefore, the DSAT decided to handle the cases of this model of cars as exceptional cases by listing the extra accessories of this model as original accessories.

The complainant told the CCAC that the DSAT told him/her to collect the new vehicle registration booklet in late April 2011 for free.

Therefore, the CCAC archived the case and responded to the complainant.

### **Case 5 - Method and procedure of body search by law-enforcement officers**

A complainant said that two female customs officers conducted a body search and inspection on him/her in 2011, but their manner was bad and they neither showed the document that empowered them to conduct the search nor notified the complainant of his/her rights, such as requesting for presence of a certain person he/she trusts, before requested him/her to take off his/her underpants. The complainant thought that the method had hurt his/her dignity and the search was unnecessary.

Based on the audio record, the CCAC did not discover any signs showing the officers' bad manner. Moreover, the body search was conducted with the complainant's consent, which was subsequently recorded in written form. Meanwhile, the law did not require that the criminal police should enable the interested party to designate a certain trusted person to be present at the site when the interested party agreed to conduct the body search.

Since the complainant refused to be inspected by a drug detector dog in the first place and given that drug trafficking by hiding drugs in underpants was common, the CCAC considered that the way of inspection adopted by the customs officers was not unnecessary. The complainant insisted not to take off his/her underpants but accepted to be inspected by drug detection dog, while the officers accepted his/her request, showing that they already respected his/her dignity. Therefore, the CCAC considered that the complaint was groundless and subsequently notified the complainant of the results.

On the other hand, the CCAC found that the English translation of record about the complainant's consent on body search on the "Inspection Room Record" was not consistent with the Chinese version. Especially, it did not mention that the interested party accepted relevant body search. Moreover, the CCAC also found that the Macao Customs Service did not have a set of written guidelines on the way of body search and inspection on people entering Macao conducted by frontline customs officers.

Therefore, the CCAC sent a letter to the Macao Customs Service to request for attention to the above problems and improvement. Subsequently, the Macao Customs Service improved the relevant guidelines based on the CCAC's suggestion.

Therefore, the CCAC archived the case.

### **Case 6 - Problems brought by public department's extension of deadline for submission of competition entries**

A complainant told the CCAC that the deadline for submission of entries for the Book Review Writing Contest for Public Servants 2011 organized by the Public Administration and Civil Service Bureau (SAFP) was 5<sup>th</sup> August 2011 according to the rules, but the SAFP announced new rules on 15<sup>th</sup> August 2011, postponing the deadline to 16<sup>th</sup> September 2011. The complainant considered that the extension was unfair to the participants who already submitted their entries by 5<sup>th</sup> August 2011 and suspected that the purpose was to have certain people win the contest.

Following analysis, the CCAC considered that the extension of the deadline after the original deadline expired, in an objective sense, would lead to suspicion of favouritism, as the terms and rules of the competition was modified after it is completed, violating the principle of impartiality. Moreover, this act has also violated the principle of good will as the organizer betrayed contestants' trust in the original rules.

The CCAC declared its stance to the SAFP and requested the latter to adopt proper measures to follow up the case.

The SAFP accepted the CCAC's opinion and decided to cancel the extension of deadline and only accept the entries submitted by the original deadline. As to the people who submitted their entries afterwards, the SAFP would send them a letter about relevant arrangement.

Since the SAFP has accepted the CCAC's suggestion and adopted appropriate measures to handle the case, the CCAC archived the case.

### **Case 7 – Illegal establishment of the position of “functionary supervisor”**

The CCAC received a complaint over the re-establishment of the Welfare and Recreation Department of the Macao Polytechnic Institute (MPI), because:

1. The MPI did not assign staff members based on their skills, specialties and education background but only randomly gathered staff members from different departments. Therefore, the complainant suspected whether the department could exert its function.

2. Staff member A of the Welfare and Recreation Department which was responsible for the works related to MPI staff’s welfare and recreation, did not have any subordinates. In addition, his/her duties were simple with light workload. The complainant considered the appointment of A as a functionary supervisor was illegal.

As to the first point, the staff members who were assigned to the Welfare and Recreation Department were office staffs of different ranks with different years of work experience. No inappropriate issue was found.

As to the second point, it was discovered that the appointment of “functionary supervisor” by the Board of Management had revocable defect (lack of statutory prerequisite). Therefore, the CCAC requested the MPI for explanation.

Apart from pointing out the staff members’ duties, the MPI claimed that, about the appointment of functionary supervisor of the Welfare and Recreation Department, the Board of Management was very clear about relevant staff members’ jobs and that the decision was not merely based on the reports by the supervisor of the relevant department. Nevertheless, the CCAC considered that the Board of Management should have clearly, accurately and completely stated the important facts related to the decision-making in the relevant commentary reports when facing such “an excessively simple report which did not thoroughly indicate the workload of the department and its complexity”, in order to meet legal requirement and ensure that the relevant resolutions would have expected legal effects, rather than stating the reason only when it came to suspicion of illegality afterwards.

In order to guarantee relevant staff’s rights and interest, the Board of Management may consider giving retroactive effect to the administrative acts of establishment of the post of functionary supervisor and appointment of relevant staff under Sub-paragraph a) of Paragraph 2 of Article 118 of the *Code of Administrative Procedure*

when deliberating the “report to the Board of Management concerning establishment of the post of functionary supervisor of the department”.

As the MPI has accepted the CCAC’s opinions, adopted measures for remedy and stated that this case would be taken as an important reference for relevant administrative procedures, the CCAC archived the case.

### **Case 8 – Arrangements for the case that too many public servants intend to take annual leave during the same period**

A complainant, who worked for the Maritime Administration, told the CCAC that in his/her department, the staff members who have served the Administration for longer time were given the priority to take annual leave during the working days adjoining public holidays (such as Christmas and New Year) and suspected that this practice was administratively illegal. According to the Maritime Administration, the relevant rule stipulated that “In case more than one staff requests for annual leave during the same period, the one of higher rank or the one who has served the Administration for longer time has the priority.”

Following comprehensive analysis of relevant laws, it is discovered that the said practice deprived the staffs of lower rank/who have worked there for shorter time of the chance to take annual leave on the working days prior or following important holidays. In particular, for the staffs that had to work on shift, the result of the practice was that they had to work during important holidays every year, infringing upon their basic right to enjoy important holidays and violating Article 5 of the *Code of Administrative Procedure* regarding the principle of moderation. Therefore, the CCAC declared its stance to the Maritime Administration.

The Maritime Administration accepted the CCAC’s opinion and subsequently revised the relevant internal guideline by adopting the method of “balloting” and the statute method implemented in Portugal suggested by the CCAC, which was that “if needed, when confirming the schedule of annual leave, for the months in which more staff intend to take annual leave, the rights shall be distributed proportionally according to the status of the same month in the previous two years, so that every interested party can be benefited on rotation.” The Administration implemented the measures immediately.

Since the internal rules that violated the principle of moderation have been redressed, the CCAC archived the case.

### **Case 9 – Notification method in punishment process affected efficiency and outcome**

The person-in-charge of a company complained to the CCAC that in January 2009, one of its staff reported to the Labour Affairs Bureau (DSAL) that the company had deducted his/her attendance bonus unreasonably, while in July 2009, the complainant called the DSAL to explain the reason, that the staff was not given the attendance bonus because of his/her absence from work. Since then the complainant has never received any feedback from the DSAL. In mid-October 2010, he/she contacted the DSAL again after receiving a notification from the court and realized that the DSAL confirmed that he/she did not have to give the attendance bonus to the staff but had to pay the salary amounting to around MOP8,000, and that the DSAL had informed his company through public announcement. Later in November, the court ruled that the company “violated labour law” and fined it MOP30,000. The complainant stated that although the company had moved, its telephone number did not change and therefore complained that the DSAL only released the information through public announcement but not by telephone. If he/she had known its decision in time, his/her company would have followed the instruction and thus it would not have been fined.

The CCAC found that the DSAL’s investigation proved that there were illegal situations involving the company, such as back pay, which was punishable by fine. In late January 2010, the inspector in charge of the case made a notification of “payment of fine and arrears to employees”, which indicated that the company should deposit the fine and arrears in designated bank accounts and submit the proof of payment to the DSAL within the following five days, and that if the overdue salary was paid before the “labour dispute record” was passed to the court, the company could be exempted from fine according to law.

On the following day, the DSAL sent the said notification by registered mail to the former address of the company. Later, the Macao Post returned the mail to the DSAL as there was no receiver at the address. After the period for payment expired, the inspector suggested informing the company through notification on local newspapers and the suggestion was accepted by the superior.

After another period for payment, the DSAL transferred the case to the court. Meanwhile, the DSAL told the CCAC that the person-in-charge of the company should have paid attention to the mailing and had never updated the DSAL about the new address although he/she knew that the case had not yet been solved, and that the DSAL had not violated the law when handling the case.

The law stipulates that the DSAL shall send notification to offenders by “registered mail”. Where appropriate, it can notify offenders directly. In case of failure, the notification shall be made through public announcement under the *Code of Administrative Procedure*. In the case, the inspector should have realized that the company would not receive the mail when the mail was returned and thus it was impossible for the company to pay the fine and arrears within the statutory period. However, it was not until the period for submission of payment proof expired that the DSAL “commenced” the notification procedure. More than two months later, the notification was published on newspapers. As a result, the procedure was unnecessarily delayed, reducing the efficiency.

Moreover, notification through public announcement is, in fact, a compromising approach. Although it can ensure the continuation of the procedure, the interested party may not be informed. Moreover, public announcement increases administrative workload as well as cost, because publishing announcement on newspapers is very expensive.

In fact, the inspector had the telephone number, fax number and e-mail address of the company and both sides did contact each other through these channels. Therefore, after knowing that the registered mail to the company was returned, the inspector could contact the company in a more speedy way and thus got the new address and sent the notification once again. Even he/she could have requested the legal representative for the company to visit the DSAL for direct notification. However, the inspector did not do so but adopted the complicated and costly method of public announcement after unnecessary wait (First, the inspector made a report, to which later his/her supervisor and the Chief of the Labour Rights Division attached their opinions. Later, the report was approved by the Chief of the Labour Inspection Department and the DSAL sent letters to the presses to request for publishing the announcement.), probably infringing upon the principle of efficiency that administrative authorities shall abide by when carrying out activities.

In fact, the inspector had been using fax to contact the person-in-charge of the company, which therefore expected that the DSAL would continue to contact them in the same way due to the principle of good will. Such expectation is reasonable. However, the DSAL’s statement that the company did not actively fulfil the obligation of “immediate informing” the change of address was groundless.

Finally, the CCAC also found that although the case file included the draft of the

announcement, there were no records about DSAL's staff posting the announcement on the notice board in accordance with the law. Therefore, this might cause suspicion about whether the DSAL had carried out its duties under the law. Meanwhile, the company and the said employee did make statement/explanation to the DSAL respectively in person or by e-mail. In this sense, the DSAL staff should have made request for statement/explanation by telephone beforehand, but the case file did not include such record.

Therefore, the CCAC declared its stance to the DSAL through a letter and urged it to adopt measures in order to improve the procedure of handling labour disputes. The DSAL gave a positive response, stating that it accepted the suggestion and promised to adopt measures for improvement (to indicate the period for having the notification on the notice board). Moreover, the DSAL issued working guidelines to its labour inspection staff in order to remind them that notification could only be made through public announcement only if the said contact methods were exhausted, and the record of telephone conversations had to be attached to case files. Therefore, the CCAC archived the case.

### **Case 10 – Is Administrative Authority liable for extinction of prescription for prosecution about labour right?**

In January 2011, four complainants told the CCAC that they resigned from a bus company limited in June 2006 and January 2007. In October 2007 they complained to the Labour Affairs Bureau (DSAL) that their former employer did not pay them for overtime work due to delivery of bus.

Following investigation, the DSAL referred the case to the Court of First Instance on 27<sup>th</sup> October 2010. However, on 16<sup>th</sup> December 2010, they received a notification from the judicial agency, which indicated that the prescription for prosecution in the case of slight offence was extinct due to expiry. The complainants were dissatisfied with this and wanted to know the reason why the case was not referred to the court until the prescription was extinct.

The law stipulates that the DSAL's duty of handling labour dispute cases is to investigate and prove whether there is violation of labour regulations and commence relevant punishment procedure for slight offence for the illegalities it has discovered. The two-year prescription provided by the law is only to limit the time for the DSAL to complete investigation and punish offenders. Its expiry only leads to the



authority's inability to sue the offender for liability for slight offence, but it does not hinder employees from recovering arrears from their employers by civil means. As analysed, the fact that DSAL failed to refer the case to the court by the expiry date of the two-year prescription was related to the DSAL's inadequate operation mechanism in the past. Therefore, the CCAC rendered suggestions for improvement when conducting examination on operation with the DSAL in 2008.

Information shows that the main reason why the court rejected to handle the request for civil compensation for overtime raised by the four complainants was not the DSAL's failure to pass the case by the expiry day, but it was that the Public Prosecutions Office considered that the request was groundless in an objective sense and thus it refused to recover the compensation at the court on their behalf.

Meanwhile, the CCAC discovered that the reason for DSAL's failure to refer the case to the court by the expiry day of the two-year prescription might be caused by its handling of the appeal filed by one of the complainants. Moreover, the DSAL neither clearly explained to them the reason for the failure nor provided them the information about other possible channels to recover the arrears based on the consensus reached between the CCAC and the DSAL according to the examination on operation. After the CCAC declared its stance, the DSAL formulated internal guidelines for its staff, which indicated that the priority to handle cases of labour dispute should be classified into four grades based on the expiry date of prescription, and that the procedures of case investigation and appeal handling should go at the same time so that the rights and interests of the interested parties will not be infringed upon due to either one of the procedures and the cases will be surely passed to the court on time.

As to providing information for complainants, the DSAL stipulates in its guidelines that employees shall be told the channels for better protecting their rights and interests and solve the problems they are facing, so that they can choose a better way to solve their cases and be clear about the related issues.

Since the DSAL has adopted appropriate measures to follow up and solve the problems discovered by the CCAC in the case, the CCAC archived the case.

### **Case 11 – Vehicle license “locked” due to arrears in fine**

A complainant did not accept the decision made by the Public Security Police Force (PSP) to levy administrative fine for traffic and subsequently filed a judicial

appeal to the court within the statutory period. A few months later, the complainant, when going to pay the vehicle license tax, was notified that his/her vehicle license was “locked” by the PSP due to arrears in fine. After the complainant provided the number of his/her judicial appeal, his/her vehicle license was “unlocked” and he/she managed to pay the vehicle license tax before the deadline.

A few months later, when the complainant went to apply for driving license of heavy passenger vehicles, he/she was told that his/her vehicle license was “locked” again and therefore his/her application might be problematic. The complainant was dissatisfied with the fact that the PSP “locked” his vehicle license before the court made any judgment.

Following investigation, the CCAC realized that when the 30-day prescription for appeal expires, the PSP’s computer system automatically labeled the vehicles as two types: 1) vehicle license tax cannot be paid; 2) the car owner fails to renew driving license. In the case, the day the complainant went to pay vehicle license tax was already over 30 days after he/she received the notification of punishment. Also, when the PSP proved that the relevant administrative punishment had not yet been confirmed, it already “unlocked” the vehicle license in manual way and the complainant paid the vehicle license tax before the deadline. Therefore, the problem has been solved.

As for the second “locking”, the PSP did not realize the loophole of the programme and hence needed to completely cancel the “locking” by hand twice. The PSP stated that this problem has already been solved and mechanisms of appeal follow-up and mutual notification have been established through procedure improvement in order to prevent the same cases from occurring again. Therefore, the CCAC archived the case.

### **Case 12 – Companies invited to provide written quotation**

A complainant suspected that company B, which won the Health Bureau’s tender for developing “Chinese medicine software” through written quotation, had never been invited to participate in the said procurement procedure and to provide any quotation. The complainant also stated that the company was lack of experience in developing medical software and therefore suspected the ground for its acquisition of this contract.

Following analysis on the case and relevant information from the Health Bureau, the CCAC found that B was invited to bid for the project and it partnered with a company which had experience in developing medical software to participate in the bidding. Therefore, the CCAC considered that the complaint was groundless.

However, the CCAC also discovered that the Health Bureau sent the notification about the final decision through the system of “result of selection of written quotation (trial version)” in the procedure of procurement through written quotation, but the notification did not indicate the information required by Article 70 of the *Code of Administrative Procedure*, including the entity that made the decision, the date the decision was made, and the channels and period for the losing bidders to file appeal. Therefore, the CCAC notified the Health Bureau the said problems.

Later, the Health Bureau replied that it had revised the content of the system of “result of selection of written quotation (trial version)” and given the losing bidders a supplementary notification which indicated the information required by Article 70 of the *Code of Administrative Procedure*.

Moreover, the CCAC found that before the procedure of procurement of “Chinese medicine software” started, the Health Bureau “borrowed” software from A, one of the bidders, for testing. Since this practice might advantage A to obtain information, the CCAC took the initiative to follow up the case. After acquiring relevant information from the Health Bureau, the CCAC did not discover adequate information proving the said issue.

Therefore, the CCAC archived the case.

### **Case 13 – Traffic offence/ delay of notification**

A complainant told the CCAC that he/she did not receive the notification of traffic offence concerning illegal parking on a pavement by registered mail from the police until over four months later. Since the incident occurred a few months ago, it was difficult for the complainant to provide evidence. This has infringed upon his/her right of defense and therefore requested the CCAC to intervene in the case.

The CCAC realized that the PSP has to sent a large number of registered mails everyday within a time limit, therefore, it reached an agreement with the Macao Post to “control the amount” of the notifications of charge being sent everyday, leading to delay of receipt of the notification of traffic offence by the complainant.

The law stipulates that the prescription for punishment procedure for administrative illegality concerning traffic offence is two years, so it was not illegal of the PSP to send the notification to the complainant over four months after the incident. The most important thing was that the period for appeal began on the day the notification was received.

However, the delay of sending the notification about charge of traffic offence due to “daily control of capacity” might infringe upon the interested party’s exercise of right of defense. Therefore, after the CCAC declared its stance, the PSP stated that when there was an urgent need, it would revise the policy by shortening the prescription for conducting the special procedure for handling administrative illegality.

In fact, the CCAC realized that the PSP had already adopted measures for the issue about delay of sending the notifications – increasing the daily “capacity” of sending registered mails and launching the service of SMS notification based on the illegal parking detection system.

Therefore, the CCAC archived the case and replied to the complainant.

#### **Case 14 – Notification and other arrangements in procedure of recruitment of public services post**

A complainant was dissatisfied of the following issues about the recruitment of the post of administrative assistant officer of 2<sup>nd</sup> class on temporary contractual basis by the Education and Youth Affairs Bureau (DSEJ):

1. The DSEJ did not inform him/her of the date of the second examination by appropriate means;
2. The second examination was held before the “announcement period” ended;
3. The list of results of the second examination did not indicate the channels and period for appeal.

For 1 and 2, the DSEJ considered that since the then effective applicable

regulations did not stipulate the ways of notification of date of examination of recruitment of non-permanent posts, it had the power to decide how to make the notification. According to the DSEJ's response and the information it provided, on the day the first round of examination was held, the DSEJ informed the candidates of the date of the second round and the channels for viewing the candidate list and the date the list would be publicized through broadcasting and a notice posted at the venue of the first round of exam, while the list was publicized as scheduled with the time and venue of the second round. Since the DSEJ already announced the date through various channels, the candidates could prepare for and attend the exam on time. Therefore, there was no sign showing administrative illegality or irregularity in the aspect of notifying candidates of examination date and details.

As to 3, the CCAC realized that the list, in fact, did not indicate the channels and period for filing appeal, although there are some theories that notification without some necessary content required by the law is not sufficient to affect the validity of the act of being notified. According to the DSEJ's response, the DSEJ had already informed the complainant that s/he had the right to file an appeal. Therefore, the defect in the result list – lack of relevant information – has already redressed properly. However, the DSEJ should not violate the *Code of Administrative Procedure* for the reason that the law stipulates that candidates have the right to file an appeal against the results. In order to prevent other suspicions of legality of relevant procedures, the CCAC wrote to the DSEJ to suggest stating the relevant information in the result list of future recruitments. Subsequently, the DSEJ stated in the reply that it accepted the suggestion.

Therefore, the CCAC archived the case.

### **Case 15 – Written evidence in punishment procedure**

A complainant told the CCAC that he/she was charged and fined for spitting on a drain by an inspector of the Civic and Municipal Affairs Bureau (IACM). He/She suspected that the inspector filed the charge without any evidence and hence power abuse might be constituted. Also, the complainant stated that the reason for being charged was that the IACM required its inspectors to file a sufficient number of charges every month.

Following investigation, the CCAC found that the inspector insisted in the “supplementary report by inspectors” that he/she really saw the complainant spitting

in a public place (drain is considered a public place), while the IACM adopted this statement and determined that the complainant had violated the *General Regulations Governing Public Places* and thus was liable for a fine.

As to whether the complainant has spitted in public place or not, both the complainant and the inspector insisted in their own statements. Without any other evidence, the CCAC was not able to judge who was right or wrong and agree on the accusation that the IACM staff filed the charge without any evidence. Moreover, according to the information obtained by the CCAC, the IACM already clearly denied that they required its inspectors to file a sufficient number of charges every month. Therefore, the complaint was groundless.

Meanwhile, when handling the case, the CCAC also found that the basis for the IACM to determine that the complainant had violated the *General Regulations Governing Public Places* - “supplementary report by inspectors”- indicated neither the identity of the staff who made the report nor any signature for authentication. In order to ensure the authenticity of the IACM’s measures of evidence collection, the report should indicate the identities of the people who made the report and their signatures to authenticate the respective records. Therefore, the CCAC wrote to the IACM to report the said problems and the latter accepted the CCAC’s suggestion and adopted appropriate measures to follow up the case.

Finally, the CCAC archived the case.

### **Case 16 – Outcome of lack of traffic signs in Coloane**

A citizen living in Coloane complained to the CCAC that in November 2009, the IACM laid red tiles and parterres at Rua de Estaleiro, the street where citizens used for parking next to the Coloane Municipal Court. When the construction was ongoing, an engineer of the IACM who supervised the construction told the complainant that the side of the street with parterres would serve as a pavement, while the other side would not be a pavement and could be used for parking. After the construction, some traffic police officers ticketed the cars (including the complainant’s one) parked on the side of non-pavement for the reason “parking on pedestrian area” based on complaints. The complainant thought that whether the said location was “pedestrian area” or not should be determined by the IACM or the Transport Bureau (DSAT), while the police did not have this power.

Moreover, since there were no road sign that prohibited parking or solid yellow line on the road and the engineer said that parking was allowed there, the complainant considered that the ticketing was improper and thus raised an objection to the Traffic Department of the Public Security Police Service (PSP). However, the objection was rejected. Therefore, the citizen voiced the grievance to the CCAC.

According to the law, the police officers of the Traffic Department of the PSP have the duty to supervise the compliance with road and traffic regulations. In the course of law enforcement, it was inevitable that they would encounter the cases whether certain laws are applicable – including judgment on some facts. In the case, the police officer judged that the street was a pedestrian area. If the police did not have the authority to judge, they could not enforce the law and perform their duty to control and supervise the traffic. Therefore, the statement that “the police did not have the power to determine whether the location was pedestrian area” was groundless. Nevertheless, if citizens think that the police’s judgment is wrong, they can file complaint according to law in order to protect their own rights and interests.

According to the IACM’s response, the street would be re-constructed as a pavement based on the traffic plan made by traffic authorities. The IACM also stated that some citizens living in Coloane suggested setting parking spaces at the street and it has already referred the request to the DSAT. In other words, although there were changes in the facilities at the street, the nature of the street – pavement – remained unchanged. However, the IACM has never declared its stance by notifying the public whether parking was allowed. The CCAC’s officers found at the site that the IACM still has not set up any road signs of “no parking” and that there were many cars parked there, showing that the authorities have not adopted any measures in response to citizens’ request of “setting parking spaces at the street”.

According to the information revealed by the police some years ago, the main measure to handling illegal parking was admonition. For the illegally parked cars that severely obstructed pedestrian facilities, affected security, obstructed the movement of other cars or caused traffic accident, the police would handle the cases strictly. If such complaint was received, the police would strictly enforce the law. Therefore, in principle, the police did not immediately ticket the cars parked at the said location, unless it was repeated offence despite repeated admonition or the police had received citizens’ complaints. Nevertheless, the DSAT staff told citizens that whether parking was allowed depend on the factors such as the road signs at the location, whether there was yellow solid line and whether parking would cause obstruction. In other words, parking cars at the said street should not subject to ticketing. In this sense, the

police's law enforcement criteria differed from the DSAT's statement. Therefore, the CCAC urged the IACM, the DSAT and the PSP to reach an agreement on the nature of the street and whether parking was allowed, declare their stance and provide the public with consistent information.

The said authorities responded actively. Following meeting and gathering of citizens' opinions, a number of metered parking spaces have been set at the street for the public. Also, the road sign of "no parking" and others has been set at the relevant areas.

Therefore, the CCAC archived the case.

### **Case 17 – Criteria for rehousing residents of wooden huts and other problems**

On 5<sup>th</sup> August 2010, a complainant requested the Housing Bureau (IH) to arrange his/her mother and his/her family to purchase economic housing by the reason that his/her mother had the right to inherit a wooden hut at Ilha Verde. However, the IH rejected the application for the reason that there was no relevant record in the wooden hut registration for 1991 and 1993. However, the complainant pointed out that the wooden hut was still occupied at the moment as there were his/her own stuffs inside and he/she had been paying water and electricity charges. The complainant thought that the IH's decision was not backed by any legal basis and that the notification of rejection did not indicate the date and channels for appeal and thus suspected that there was administrative illegality.

According to the CCAC's analysis, only the people considered by the IH to be living in the wooden huts could be registered. Otherwise, even relatives of the registered people should not be registered if they were not considered living in the wooden huts. According to the contract, the developer was responsible for rehousing only the families who were really living in the wooden huts located at the areas to be developed, while the people who no longer lived in the wooden huts were not entitled to receive any compensation. For the fact the IH considered the complainant to be not living in the wooden hut, the latter did not present any counter-evidence. Since there was no record showing that the complainant was living in the wooden hut in the registrations for 1991 and 1993, they did not meet the statutory requirement of rehousing under the land grant contract. In this sense, it was legal for the IH to reject the said application for rehousing. At the same time, the law stipulates that people



who are still living in wooden huts as registered shall not transfer the “right” related to the wooden huts to someone else by any means (such as inheriting). Moreover, the registration did not mean that the people being registered had ownership over the wooden huts they were living in. Based on the legal principle that “one shall not transfer his/her right to another person”, it was impossible for the complainant and his/her mother to claim any right over the wooden hut. Also, it was impossible for the complainant to request the IH or the developer for compensation or rehousing based on the fact that he/she occupied the wooden hut to be removed.

As to the fact that the IH did not indicate the information required by Article 70 of the *Code of Administrative Procedure* (such as the date the order was issued, the channels and period for filing appeal, etc.), after the CCAC notified the IH, on 17<sup>th</sup> December 2010, the latter sent another notification to the complainant, which indicated the legal basis for not accepting his/her application and the channels and period for filing appeal.

When handling the case, the CCAC discovered that there were discrepancies between the criteria adopted by the IH for approving the rehousing application by wooden hut residents at Ilha Verde and the law, which were reflected in the following aspects:

### **1. Registration of residence in wooden huts**

The internal criteria for rehousing set up by the IH in May 2010 stipulate that priority will be given to the families living in wooden huts registered in 1993. Otherwise, applications by those registered in 1991 will be considered. However, in the reply to a legislator’s written query in October 2010, the IH stated that records in the registrations for 1991 and 1993 are required. The CCAC thought that although the IH might set this requirement for adequate reasons, according to the law, registration in 1993 is one of the prerequisites, while the registration in 1991 is not the “replacement” or “substitution” of it. It refers not the case of fulfilling one of the two conditions, nor, as the IH’s reply to the legislator, that registrations had to be done in both 1991 and 1993 in order to be re-housed. In fact, since registration in 1991 was the authority’s exceptional handling method, the IH should request the administrative authorities to handle the issues about the legal basis and competence of the exceptional method and whether the registration should be publicized in order to avoid suspicion. The IH has promised to adopt or suggest adopting appropriate measures in order to distinguish between the registrations in 1991 and 1993.

## **2. Change of family members**

According to the law, if there are changes in the members of a registered family, the family has to go through a noting procedure. The IH allows application for changing in spouse and children, but the children should be under the age of 18. Since the currently effective law does not exclude adult children from the concept of family, the IH might have narrowed down the legal definition.

The IH's perception is that adults can live independently, but minors need to rely on their parents. Therefore, it allows including the latter into a registered family. Moreover, as it has been more than a dozen years since 1993, the children of the wooden hut owners registered in 1993 have already grown up and some even have their own children. Due to the change in structure of the families, the IH allowed separated applications for rehousing.

The CCAC considers that qualified family members can be rehoused. In the cases where separate rehousing is applicable, all of the family members shall be qualified. As the law allows including adult children as new family members, the IH shall recognize their eligibility to be rehoused. Whether they will be rehoused separately is another issue. This cannot be mixed up with the eligibility to be rehoused. The CCAC points out that whether an applicant is eligible has to be judged by the administrative authority, while the IH shall specify the legal basis and the channels for filing appeal when notifying the applicant of the result.

## **3. Meaning of “core family” and “forming another family”**

The IH's internal criteria require that the families applying for the rehousing scheme shall be “core families” and the concept is described with examples of relationships between the members and the applicant, such as legal spouse, parents and children, etc. However, the law only provides the concept of “family” but not “core family”. The stipulations about “core family” in the internal criteria have narrowed down the statutory definition of “family”.

The IH stated that in fact, a majority of the family members intended to apply for rehousing separately. Taking into account public resources, it required that those who were single should apply together with their parents because it did not intend to re-house them separately.

The CCAC pointed out that the issues about eligibility and allocation should

not be mixed up. Eligibility should be considered first and how to re-house the families should come second. The criteria should be specified clearly and publicized in order to avoid unnecessary dispute. Moreover, as to “forming another family”, the criteria only specified sibling but parents were not mentioned. In fact, if a divorced or widowed parent marries again, he/she may have the need to form another family. The CCAC considered that the IH should not narrow down the meaning of law through internal criteria. The IH agreed with this stance and promised to revise relevant criteria.

#### **4. Whether ownership of private property constitutes disqualification for purchasing economic housing/ renting social housing**

For economic housing, Decree Law no. 13/93/M only stipulates that those who own a residence, a piece of land or are granted a piece of local private land are not qualified for purchase of economic housing. In other words, people who only own a shop or a parking space will not be disqualified.

For social housing, Administrative Regulation no. 25/2009 states that those who own any residential apartment or separate property (including shop and parking space) in Macao, or have made an appointment to purchase any of them, or those who are granted a piece of local private land will be disqualified for renting social housing.

Therefore, the stipulation that “ownership of private property leads to disqualification for purchasing economic housing or renting social housing” in IH’s internal criteria needs to be revised. The IH accepted this suggestion and promised to make a revision.

The CCAC reiterated that if the IH only revised the internal criteria due to enforcement of relevant laws, the CCAC would not have any dissenting views on it. However, if the contents “overstate” or “narrow down” what stipulated by the law, there will be problems about “competence”, “form” (whether the revision can be issued through the Director’s order) and “announcement”. Therefore, the IH has to review the content of relevant criteria in order to handle it properly or request the authorities to handle it properly.

Since the IH has accepted the CCAC’s suggestions and adopted proper measures to follow up the case and redress the defects, the CCAC archived the case.

### **Case 18 – Improper handling of complaint**

A complainant told the CCAC that a division head of the Macao Polytechnic Institute (MPI) exploited his/her subordinates' benefits by replacing their overtime pay with equal day-off and banning them from carrying annual leave over to the following year.

No information proving the said report was found in the investigation, but it was discovered that the method adopted by the MPI to handle the reports about staff's alleged violation of discipline was not appropriate:

(1) The Acting President executed the suggestions indicated in the investigation report made by the Acting Secretary-General before the Board of Management assessed the report.

(2) The Acting Secretary-General gave the documents of orders/their copies, issued by himself/herself or the President, which has sealed "confidential", to the person who was being complained.

After the CCAC notified the MPI of these problems, for (1), the MPI provided meeting minutes which proved that on 4<sup>th</sup> July, the Board of Management already "discussed and made decision on" the investigation report made by the Acting Secretary-General. Moreover, the minutes indicated that the report was a compilation of relevant resolutions. In other words, before the Acting President responded to the CCAC about the case of alleged violation of discipline, the Board of Management had already passed the resolution about it. Therefore, it was not necessary for the CCAC to follow up this issue.

For (2), the MPI required the relevant staff to pay attention to the proper procedure of handling complaint/report on violation of discipline when handling the same kind of cases and promised to take this case as a reference for improvement of relevant works. Therefore, the CCAC did not need to follow up this issue.

Finally, the CCAC archived the case.

### **Case 19 – Notification in procedure of recruitment of public services post**

In March 2011, a complainant told the CCAC that there were illegalities in the

procedure of recruitment of administrative assistant officer of 2<sup>nd</sup> class of 1<sup>st</sup> grade on non-permanent basis by the Maritime Administration:

- (1) The information about the exam was released through SMS;
- (2) Candidates were requested to write down their names on every page of the exam papers;
- (3) The finishing time of the exam was not announced in advance.

Following analysis, for (1), the law does not require that recruitment on non-permanent contractual basis shall be conducted openly; therefore, the method adopted by the Maritime Administration was not illegal. For (2), the Maritime Administration admitted that it always required candidates to write down their names on the first page of their exam papers and initial every page for identification. However, since this would directly unveil the identity of the candidates and lead to unnecessary dispute about unfairness, the CCAC suggested the Maritime Administration to pay attention to and make improvement on it and the latter accepted the suggestions. For (3), the Maritime Administration replied that the starting time and “approximate” duration of the exam had been announced in advance, but it promised to draw on the experience of this time in order to improve relevant recruitment procedure.

Therefore, the CCAC archived the case.

### **Case 20 – Reason for punishment should be adequate**

A taxi driver complained to the CCAC that an inspector of the Transport Bureau (DSAT) did not arrange confrontation between him/her and the passenger when filing a charge against him/her and that the inspector forged the evidence.

After requesting for information from the DSAT and conducting an analysis, the CCAC considered that the complaint was groundless.

Nevertheless, the CCAC discovered that the evidence that the charge of “refusal to take passenger” against the complainant was based on, especially the records of the statements of the complainant, the inspector and the passenger, were not sufficient to support the DSAT’s presumption. Therefore, the CCAC sent a letter to the DSAT to request it to handle the said problem properly. Finally, the DSAT accepted the

CCAC's opinion and stated that without sufficient evidence, nobody would be subject to punishment.

Therefore, the CCAC archived the case.

### **Case 21 – Imprudent law enforcement**

A complainant told the CCAC that the taxi he/she was driving crashed with a light vehicle and suspected that the police officer who went to handle the accident had wrongly charged him/her with violation of Paragraphs 1 and 3 of Article 34 of the *Road Traffic Code*.

Based on the information collected from the Public Security Police Force (PSP), there was a road sign of give way set on the transaction where the two cars crashed. The complainant did not follow the road sign and thus obstructed the traffic, causing the accident. The police officer charged the complainant with violation of the *Road Traffic Code*. As the complainant did not provide any counter-evidence, there was no apparent illegality or misconduct. Therefore, the complaint was archived.

Later, the complainant told the CCAC that when viewing the PSP's written plea and relevant information, he/she found a discrepancy between the site illustration made by the police officer who went to the site to handle the case and the photo: there was a difference of 5 to 6 metres recorded in the two documents which showed the location of the two cars after the crash. The CCAC confirmed that what the complainant said was true after comparing the said information provided by the PSP and then notified the PSP of the situation.

Since the illustration describing the traffic accident made by the police officer was not the only basis for the charge against the complainant, the said "discrepancy" pointed out by the complainant was not sufficient to prove that the charge was wrong. At the same time, the PSP replied to the CCAC that it had adopted measures to follow up the issue about the discrepancy pointed out by the CCAC. The CCAC has no need to follow up the case and thus archived the case.

Later, the complainant went to the CCAC to request for a written apology by the police officer who made the illustration. Since the CCAC did not have the power to make this order, the complainant had to make the request to the PSP or the Security Forces Discipline Committee. Therefore, the CCAC kept the case archived.

### **Case 22 - Problem on calculating household income for purposes of access to social housing**

A complaint was lodged to the CCAC concerning a man who had made two fake marriages with residents of Mainland China, in order to assist the latter to acquire the Macao identity card. The case was referred to the Judiciary Police for follow-up since it falls in the scope of competence of the entity.

Besides, the complainant claimed that a woman has given false declarations of her husband being unemployed so that she can obtain the approval of renting the social housing. In fact, her husband does business in Hainan Province with a monthly income of some RMB100,000. This case was referred to the Housing Bureau for handling. After follow-up, the Housing Bureau stated in the reply that it was found that the husband of the woman was recruited by an employer in Mainland China to work in the area of aquaculture in Hainan Province since January 2010, with a monthly salary of RMB4,500. The Housing Bureau has already adjusted the rent of the social housing concerned in accordance with the law. However, there is no evidence with regards to the woman falsely declared that her husband is unemployed.

During the follow-up of the case above, the CCAC learned that the Housing Bureau has included certain government grants in the calculation of the monthly income of the families of social housing. Moreover, given the lack of legal knowledge and the lack of an active role on the part of tenants of social housing, the Housing Bureau has adopted a less strict policy against those who failed to report their incomes or the change of number of members of the family within the deadline. However, in the promotion materials of the Housing Bureau, it is not pointed out that what sorts of government grants will be included in the calculation of the income of the families nor the possible negative consequences such as the imposition of fines as a result of failure of reporting the relevant changes within the deadline in accordance with the law.

Given that if the Housing Bureau includes the related subsidies in the income of the families may result in an adjustment of rent, or even a termination of the lease of social housing if the income of the family exceeds the income limits set by law. For new applications or those who are on the waiting list for the allocation of social housing, they may eventually be excluded from the list due to the income exceeds the income limits set as a requirement for the social housing. On the other hand, it was not found in any document published by the Housing Bureau that indicates explicitly the legal consequences caused by the failure of declaration within the deadline, in

other words, the tenants are not adequately informed about the importance of fulfilling this statutory duty. Thus, the CCAC suggested in writing that the Housing Bureau to integrate this information in their promotional materials to better facilitate the implementation of the new legislation as well as to avoid unnecessary problems. The Housing Bureau replied by letter that it accepted the suggestions given by the CCAC.

For these reasons, the CCAC archived the case.

### **Case 23 – Form of notification for retired public servants**

A retired fireman lodged a complaint to the CCAC, claiming that he/she intended to sign up for the dinner activity organized by the Fire Services Bureau Welfare Association that would run for three consecutive days. The complainant was unable to sign up since the quota was filled and the staff member of the Association stated that there would be further notification in case there was additional session. Later on, the complainant made phone inquiries since he/she failed to receive more information about the activity and was informed that the quota for additional sessions were also filled, therefore no further notification was made. The complainant immediately queried that the activity was a backroom deal and claimed that he/she would file a complaint to the CCAC. After requesting instructions from the superior, the staff expressed that the complainant could select the preferred date and indicate the number of participants. The complainant questioned about the existence of “internal reservation” in this event and the absence of established rules by the Association.

After referral of the case, the organizer stated in the reply that all entries needed to be made in person or through other members and stressed that there was no “internal reservation”. Since there were cancellation of tickets, the organizer was able to arrange substitutions by those who failed to sign up earlier, in addition to the decision of having extra sessions, therefore, the complainant was allowed to choose the day of the dinner and indicate the number of participants. On the issue of the complainant has been informed that the additional sessions were also filled up, the organizer clarified that the staff who answered the call was not the one in charge of the “reservation” of the activity, as a result, the staff did not have a clear understanding of the actual situation. The issue was merely due to a misunderstanding among staff members, for these reasons, the organizer already instructed the related staff to handle similar situations with care in the future.



Moreover, according to the information provided by the organizer, besides posting notices to disseminate the information of the activity involved, “internal notification” of the Fire Services Bureau was sent to existing firemen and phone calls were made to retired firemen to inform them about the news. However, the organizer did not make any notification to the retired firemen with regards to the additional sessions of the said activity. The information also showed that the records of phone calls notifying the retired firemen made by the staff of the organizer were made in a relatively “rough and crude” way by pencil, which could hardly serve as evidence and easily lead to disputes in the future. Based on the above, the CCAC sent a letter to the organizer of the activity requesting the organizer to pay attention to the situation and the case was archived.

#### **Case 24 – Can frontline public servants refuse to accept documents?**

A public servant of the Cultural Affairs Bureau lodged a complaint to the CCAC on 6<sup>th</sup> and 7<sup>th</sup> September 2011, claiming that the Department where he/she serves, especially the Chief of the General Collections and Macao Sector, refused to accept a number of documents he/she intended to submit, including the application form for absence and holidays, explanation of tardiness / absenteeism, medical certificates and statements of medical consultation.

After analysing the facts, the CCAC has reached the following conclusions: it was found that certain staff members of the Cultural Affairs Bureau, particularly the respective Chief of Sector, did refuse to accept the above mentioned applications, and such refusal violates the stipulations of Article 57 of the *Code of Administrative Procedure* concerning the initiation of administrative procedures and Decree Law no. 5/98/M of 2<sup>nd</sup> February (Not allowing to use inappropriate carrier for carrying documents of any nature as basis to refuse the acceptance or processing of such documents).

Besides, the CCAC found that the said Chief not only refused to accept these documents, resulting in the complainant’s failure to abide by the period stipulated by the *Statute of Personnel of the Public Administration of Macao*, but also took advantage of the situation that the complainant did not comply with the preceding paragraph and reported to the Department with the intent to impair the rights of the complainant. Thus, the behaviour of the Chief was suspected of constituting acts of disciplinary offence for breaching the general obligation and special obligation he/she should abide by, especially the obligation of zeal, the obligation of impartiality

and the obligation to treat the subordinates in accordance with legality and in a just manner as stipulated in the *Statute of Personnel of the Public Administration of Macao*.

Through looking into the case, it was also found that there were certain inadequacies in the notifications submitted by the complainant, because the complainant did not make any indications in regards to the reason of absence or the way of compensation for the absence. In this regard, the Department concerned showed certain passivity and did not inform the complainant about the existence of inadequacy in the contents of the application to allow timely rectification to be made. As a result, the complainant needed to bear the responsibility caused by unjustified absence.

Given the above, the CCAC made the following suggestions to the Cultural Affairs Bureau:

- 1) According to the stipulations of Article 57 of the *Code of Administrative Procedure* and Paragraph 3 of Article 24 of Decree Law no. 5/98/M of 2<sup>nd</sup> February, the Cultural Affairs Bureau cannot refuse to accept or handle documents that are submitted by individuals, including its own staff members.
- 2) Further investigation on the Chief of Sector who refused to accept documents should be commenced to examine whether he/she has violated the general obligations or special obligations. If it is true, the Cultural Affairs Bureau should take the necessary measures to pursue his/her disciplinary responsibility.
- 3) In the future, the Cultural Affairs Bureau should adopt a more proactive attitude and alert the applicants immediately if deficiencies are found in the notification or application received, so that the applicants can make timely rectifications to avoid any possible damage that may arise.

The Cultural Affairs Bureau has accepted suggestions 1) and 3).

As for suggestion 2), the Cultural Affairs Bureau responded that:

- 1) The documents submitted by the complainant on 9<sup>th</sup> and 10<sup>th</sup> September 2010 were handled in accordance with the law and the rights of the

complainant were not impaired, thus the alleged overdue situation is not valid;

- 2) The opinions made by the Chief of Sector on various applications of the complainant had no binding effect since the competence to accept explanation of absence belongs to the Head of Administrative and Financial Division;
- 3) The Chief of Sector has made notifications in accordance with the order of the superior due to the fact that the two notifications made earlier were not successful (29<sup>th</sup> June 2010 and 6<sup>th</sup> July 2010).

Lastly, the Cultural Affairs Bureau asserted that explicit instructions were given to the Chief of Sector and other related staff members. In any case in the future, they should immediately accept the applications submitted by staff members. The same instruction was also sent to other subsidiary units of the Cultural Affairs Bureau.

Since no other matters needed follow-up, the CCAC archived the case.

### **Case 25 – How should public entities address the rights and obligations of contracts?**

A “guest musician” who participated in the rehearsals and performances for the Macao Orchestra of the Cultural Affairs Bureau for three weeks lodged a complaint concerning the remuneration for the third week to the CCAC. The complainant claimed that the Cultural Affairs Bureau has deducted XXX Euros for having the complainant to practice one time less than originally scheduled. According to the complainant, the weekly remuneration XXX Euros is stated in the contract and is calculated by day. Moreover, the shortage of one practice by the complainant was only in accordance with the instruction of the Cultural Affairs Bureau. Thus, the complainant considered that the his/her remuneration should not be deducted, even if the remuneration was calculated by the number of practices performed, the deduction should only be XXX Euros according to the market price currently offered in Macao.

After analysing the information provided by the Cultural Affairs Bureau and the statement given by staff A who handled the matter, it indicated that the Cultural Affairs Bureau and the complainant had reached an agreement regarding the total amount of remuneration for the rehearsals and performances (However, no agreement

was set that the remuneration is calculated by day. Besides, staff A claimed that during the time that he/she representing the Department to finalize the terms with the complainant, the two parties have reached a verbal agreement of calculating the payment of rehearsals by MOPXXX per section). With regards to the adjustment of rehearsal arrangement afterwards that could possibly increase or decrease the number of sections of rehearsals originally scheduled, no prior agreement was made between the two parties on the method of calculation of the respective remuneration. (Is it necessary to make certain adjustment? Or the complainant should receive the original remuneration?) However, according to staff A, when the Cultural Affairs Bureau decided to cancel two sections of rehearsals on the third week (the rehearsal of that week have not yet started at that time), he/she has already explained to the complainant that the Cultural Affairs Bureau would deduct the amount of two sections of rehearsals and one day transportation allowance from the overall remuneration, meanwhile, the complainant would be compensated with one daily allowance for non-rehearsal day. The complainant agreed with the arrangement of the Cultural Affairs Bureau at that time and signed a declaration.

Based on the content of the above described declaration alone, it is not sufficient enough to conclude that the complainant was fully acknowledged the reasons for deducting his/her remuneration by the Cultural Affairs Bureau at the time of signing. Besides, according to the account of the complainant, he/she has not admitted that he/she knew in advance the reasons for deducting the remuneration and the respective arrangements made by the Cultural Affairs Bureau. Nevertheless, taking into account that the case involved a verbal dialogue between the staff of the Bureau and the complainant, under the situation that there is no way to determine who was right and who was wrong, the CCAC has no ground to deem that the decision of the Bureau is in breach of the contract. If the complainant considered that the Cultural Affairs Bureau did not make clear explanation beforehand, or did not agree with the Bureau in deducting his/her remuneration, he/she has the rights to safeguard his/her legitimate rights and interests through legal proceedings.

The key that trigger the dispute in this case is mainly due to the lack of prior written agreement between the Cultural Affairs Bureau and the visiting musician in respect of certain matters concerning the rights and obligations of both sides. In order to prevent similar complaints from happening in the future that might even recourse to litigation, the CCAC has sent a letter to the department to carry out improvements in this area.

Since no evidence of administrative illegality or irregularity is found against the Cultural Affairs Bureau, the CCAC archived the case.

PART IV

OTHERS





## PART IV

### OTHERS

#### I. Declaration of incomes and properties

In accordance with the stipulation of Law no. 11/2003 of 28<sup>th</sup> July, the CCAC is responsible for the handling of most of the public servants' declaration of incomes and properties.

Since 1998, the *Law of Declaration of Incomes and Properties* has already entered into force for 13 years. Since both the declarants and those who are only obliged to fulfil the obligation of providing information have strictly observed the law, so far no case was found for any legal responsibilities due to arrears of declaration form or improper submission of declaration. In fact, the active communication and coordination between government departments, the in-depth promotion and explanation to the personnel who bears the obligation to declare their incomes and properties, the establishment of various enquiry channels, etc., have brought great benefits to both the implementation as well as the observance of the law.

In 2011, the CCAC collected declaration forms from a total of 11,800 public servants. Details are listed below:

#### STATISTICS OF DECLARATION OF INCOMES AND PROPERTIES IN 2011

Appointment	2,822
Renewal	4,444
Termination of position	1,914
5-year renewal	978
Voluntary renewal with that of spouse	594
Pursuit of data-provision duty	977
Voluntary renewal	71
<b>Total</b>	<b>11,800</b>

Meanwhile, the CCAC continued to hold “briefing sessions on declaration of incomes and properties” for a number of public departments, so that the new recruits can understand the significance and importance of the obligation to declare their incomes and properties and the relevant legislation.

## **II. Training and exchange programmes**

### **(1) Professional training for personnel**

In order to enhance the staffs’ ability to coordinate media and public relations, the CCAC co-organized a course on Media Coordination and Public Relations with the Communication University of China (CUC) in late February. A number of experienced professors, including Professor Duan Peng (Vice Dean of the Graduate School), Professor Chen Zuo-ping (Vice Dean of School of Television and Journalism), Professor Liu Xiao-ying (Doctoral Supervisor of the Institute of Communication Studies), Professor Zhang Shu-ting (Vice Dean of School of Advertising) and Professor Wang Qing, came to give lectures.

The Commissioner, Fong Man Chong, addressed to the staffs that due to social development, it is necessary for the CCAC to broaden its knowledge and strengthen its capacity and skills of information dissemination and communication with the media so as to carry out its duties more effectively. He hoped that the staffs could benefit from and be inspired by the course as well as apply what they have learnt to their work.

The lectures given by the professors were comprehensive and substantial that staff members who had attended the lectures believed that the course had facilitated and inspired their work.



Staff members of CCAC attending the lectures given by the professors of the Communication University of China



The Commissioner with the professors of the Communication University of China



## (2) Recruitment of investigators for Anti-Corruption Bureau

Since the law *Prevention and Suppression of Bribery in the Private Sector* entered into force, the CCAC's jurisdiction has extended to the private sector. In order to ensure adequate human resources and further enhance investigative power, the CCAC launched an open recruitment of investigators in the area of anti-corruption in March, attracting over 2,000 applicants.



New recruited investigators going through professional training in Mainland China



Investigators attending the completion ceremony of the training course

The candidates went through a strict assessment process comprising written exam, fitness test, teamwork test, home visit and interview. After the strict screening process, 17 candidates were selected to enter the 8<sup>th</sup> training session for investigators held by the CCAC. The arduous training programme covered knowledge of legislation and administrative procedure, investigation techniques, complaint handling skills, firearms training and team work. During this period the investigator trainees also went through professional training overseas.

After six months' learning and training, the trainees passed all the examinations and successfully completed the programme. The completion ceremony held on 23<sup>rd</sup> December 2011 signified that they officially became investigators of the Anti-Corruption Bureau and members of the CCAC.

The Commissioner, Fong Man Chong, who officiated at the completion ceremony, encouraged the new investigators to devote themselves to corruption-fighting with a great sense of responsibility and never stop upgrading their knowledge and skills related to their work to push forward integrity building and uphold justice in Macao.

### **(3) The Regional Conference on Civil Service Integrity**

The Commission Against Corruption of Macao, the Ministry of Supervision (MOS) of China and the Independent Commission Against Corruption of Hong Kong (ICAC) co-hosted the Regional Conference on Civil Service Integrity between 10<sup>th</sup> and 11<sup>th</sup> November 2011 at the Theatre of the ICAC Building, Hong Kong. The Commissioner, Fong Man Chong, led a delegation and attended the Conference.

Wang Wei, Vice Minister of Supervision of China, Fong Man Chong, the Commissioner Against Corruption of Macao, Timothy Tong Hin-ming, the Commissioner of Hong Kong ICAC and Denise Yu Chung-ye, Secretary for Civil Service of Hong Kong addressed at the opening ceremony of the Conference.

The Vice Minister of Supervision, Wang Wei expressed that honesty and trustworthiness are the fundamental requirements in constructing a society of social services and establishing a society of accountability and the rule of law. The integrity of the government will play a guiding role in the building of business integrity and social integrity. In recent years, a number of provinces and cities in Mainland China uphold the concept of “honesty is credibility” and adopt the principle of “law abidingness and honesty, openness and transparency” in initiating works such as government procurement. He stressed that honesty and trustworthiness are most crucial to the overall ethical management in the civil service, and that it is paramount for public servants to uphold these core values.

The Commissioner, Fong Man Chong, pointed out in his speech that the establishment of integrity management system and culture is the common objective of the three governments and the wishes of the people. He noted that government officials should not abuse their power for personal gain. Instead, they ought to improve the management system and culture of civil servants, instilling the integrity culture in public administration so as to promote the probity atmosphere of society. Regarding the management system of public servants, responsibility, duty and discipline should be of prior importance, their attitude towards power and professional ethics are also critical.

The Commissioner of Hong Kong ICAC, Timothy Tong Hin-ming, stated that it has been a worldwide recognition that a clean and efficient civil service is of the utmost importance to government administration, policy implementation and social harmony and stability, adding that civil servants should always keep pace with the rapid development of society. The social and economic development leads

to changes and gives rise to new risks and challenges. Therefore, integrity building still has a long way to go.



The Commissioner, Fong Man Chong, addressing the Conference



Leadership of the three anti-corruption institutions attending the Conference

At the Conference, representatives from the three places delivered speeches during the two plenary sessions entitled “Strategies for Strengthening Corruption Prevention Mechanisms” and “Challenges and Developments in Building a Probity Culture”. Guest speakers from Macao included Professor Xu Chang of the One Country Two Systems Research Center of the Macao Polytechnic Institute and Chow Seak Keong, Senior Investigation Officer of the Ombudsman Bureau of the CCAC. Representing the CCAC, the Deputy Commissioner, Kuan Kun Hong, delivered a keynote address entitled “System Building and Corruption Fighting” during the conference.

Kuan Kun Hong pointed out in his speech that the system of checks and balances, sound system building, high administrative efficiency and good governance are all key elements in corruption prevention. Acts of bribery will become more and more concealed in the future. As corruption practices are complex and variable, a sound and innovated system is of utmost importance.

The speech of Professor Xu Chang was entitled “Steady Development of Macao’s Public Administration in the Process of Integrity Building”. He believed that Macao has made considerable progress in integrity building after the handover. He also pointed out that the integrity building in Macao is facing two main challenges, including the elimination of negative, long-rooted practices and habits as well as the enhancement of the authoritativeness and the binding power of the correction mechanism of administrative illegalities of the CCAC.

Chow Seak Keong introduced to the participants the “System of Prevention of Conflict of Interests” within the Macao civil services system, including the principle of exclusiveness, recusal system, mechanism for handling advantages received, system of incomes and properties declaration, as well as monitoring mechanism of the engagement in private business or practices after leaving the civil service, etc.

Over 200 guests, including staff of anti-corruption agencies, government department officials, experts and scholars from the Mainland, Hong Kong and Macao attended the conference.

#### **(4) “Integrity and Professionalism – Key to Business Success” Conference for Small and Medium Enterprises in Guangdong, Hong Kong and Macao**

In order to equip cross-border small and medium enterprises (SMEs) with latest information about the business environment in the Pearl River Delta and the anti-corruption policies in Guangdong, Hong Kong and Macao, the CCAC of Macao, the Guangdong Provincial People’s Procuratorate and the Independent Commission Against Corruption of Hong Kong had jointly organized the “Integrity and Professionalism – Key to Business Success” Conference for Small and Medium Enterprises in Guangdong, Hong Kong and Macao on 22<sup>nd</sup> September 2011 at the Theatre of the ICAC Building. The Commissioner, Fong Man Chong, led a delegation to attend the conference and delivered a speech. Mak Soi Kun, legislator and President of the Macau Construction Association and some members of the association, Bi Chi Kin, President of the Youth Committee of the Macao Chamber of Commerce, also attended the conference as members of the Macao delegation. Besides, the legislator Mak Soi Kun delivered a speech at the conference.



The Commissioner, Fong Man Chong, and representatives from business sector attending the Conference



The Commissioner presenting a souvenir to the guest speaker, Legislator Mak Soi Kun

Deputy Director General of the Department of Taiwan, Hong Kong and Macao Affairs of the Ministry of Commerce, Sun Tong, delivered a speech entitled “The 12<sup>th</sup> Five-Year Plan for the National Economic and Social Development of China and the New Chapter, Opportunities and Challenges of the Development of SMEs in Pearl River Delta”.

The Commissioner, Fong Man Chong, briefly introduced in his speech the legislative background and the implementation of the law *Prevention and Suppression of Bribery in the Private Sector*, which entered into force on 1<sup>st</sup> March 2010, and summarized the efforts on investigation of corruption cases and promotion of corruption prevention in the private sector. He pointed out that the cases of bribery in the private sector were different from that in the public sector. Therefore, special measures had to be taken to ensure effective performance of duties as well as prevent other kinds of damage led by investigation to enterprises. He added that with the frequent exchanges of business activities among the three places, the cooperation and the exchange of intelligence among the anti-corruption agencies appeared to be more and more important. In the future, the CCAC would continue to focus on combating corruption as well as promotion and education, to waken the senses of honesty, law-abidingness and fair competition of the industries.

The speech of Mak Soi Kun was entitled “Integrity Management and Business: some opinions on enhancement of business management standard in Macao to face opportunities”. He pointed out that the strength of the enterprise lied on its own culture of corporate governance. The true principle of business running was for the industry to place integrity management as priority in both doing business and internal management.

The conference has gathered around 200 representatives of SMEs from Guangdong, Hong Kong and Macao, who exchanged their experience in and opinions on how to develop business and make wealth by upholding integrity, professionalism and a sense of law-observance.

### III. Legislative Assembly gives general approval for the bills to revise Law *The Commission Against Corruption of Macao SAR* and Law *Declaration of Incomes and Properties*

#### (1) Legislation Assembly gives general approval for the bill to revise the Law *The Commission Against Corruption of Macao SAR*

In order to enhance the CCAC's capacity to respond to social demands and strengthen its competence, especially the supervisory power in the area of ombudsman, and in view of the entry into force of Law no. 19/2009, *Prevention and Suppression of Bribery in the Private Sector*, the Macao SAR Government has proposed revision of the Law no. 10/2000, *The Commission Against Corruption of Macao SAR*, to clearly define the CCAC's scope of duties in the aspects of corruption-fighting and ombudsman, strengthen its initiative in law-enforcement and legislation as well as clearly stipulate the time limit for case investigation, etc. The bill was generally passed by the Legislative Assembly on 19<sup>th</sup> July 2011.

The revision includes the following eight points:

1. **Revision of the name of the law.** The bill suggests renaming the Law no. 10/2000, *The Commission Against Corruption of Macao SAR*, as the *Organic Law of the Commission Against Corruption of Macao SAR*.
2. **To tie in with the law *Prevention and Suppression of Bribery in the Private Sector*.** Since the CCAC's jurisdiction has been extended to the private sector, the bill indicates clearer stipulations about the CCAC's missions and duties as well as scope of functions in the aspects of corruption fighting and ombudsman.
3. **To match up other legal regimes.** The bill suggests revising the term "according to penal litigation law" as "according to penal and penal litigation laws."
4. **To strengthen the CCAC's function of ombudsman.** The bill suggests clearly defining the CCAC's function of ombudsman and empowering the CCAC to render recommendation against "omissions" by administrative authorities. When they do not accept or accept only a part of the recommendation, they shall state the reason. The bill also suggests shortening the time limit for making response to recommendation from 90

days to 15 working days. In case the problems targeted by recommendation may be more complex, the time limit is suggested to be extended by 15 working days.

5. **To clearly stipulate the time limit for case investigation.** Based on thorough consideration of the current penal litigation system and the basic principles, as well as advanced penal investigation systems and principles in the world, the bill clearly stipulates that the time limit for investigation under Article 258 of the *Code of Penal Litigation* is applicable to the investigation commenced by the CCAC with appropriate measures.
6. **To perfect the ways to publicize the Annual Report of the CCAC.** In view of procedural efficiency and financial factors, the bill suggests publicizing the Annual Report via electronic media when technical requirements are met, but a notice indicating the ways of access shall be published in the *Official Gazette*.
7. **To strictly regulate the CCAC staff's powers and responsibilities.** The bill suggests clearly regulating the special obligations that the Commissioner's auxiliary staffs shall fulfil. In execution of duties, the relevant staffs shall absolutely respect other people's reputation and dignity, observe the principle of non-discrimination as well as clearly state their identities as CCAC personnel. Moreover, the bill also suggests that "in execution of duties", only staffs carrying the special working I.D. card issued by the Chief Executive or the Commissioner are allowed to freely pass through or enter the offices of all administrative authorities of Macao SAR.
8. **To expand the scope of supervision carried out by the Monitoring Committee on Discipline of the CCAC Personnel.** The bill suggests expanding the scope from "complaints over discipline" to "problems involving non-criminal complaints".

Executive Council spokesman Leong Heng Teng expressed that the bill to revise the Law *The Commission Against Corruption of Macao SAR* has already enhanced the processing of administrative complaints and anti-corruption. It is hoped that through actual working practices in the future, the CCAC's organizational establishment can better match up with the development of society.



**(2) Legislative Assembly gives general approval for the bill to revise Law  
*Declaration of Incomes and Properties***

To act in accordance with the directive of the Chief Executive Dr. Chui Sai On, the Commissioner Against Corruption Fong Man Chong attended the plenary meeting of the Legislative Assembly on behalf of the Macao SAR Government in the afternoon on 16<sup>th</sup> December 2011, where Fong introduced the bill to revise Law no. 11/2003 *Declaration of Incomes and Properties*. Upon voting, the bill received general approval of all legislative members.

Major revisions put forward in the bill are listed below:

**1. Disclosure of assets and outside positions of some officials:**

To enhance supervision and avoid conflicts of interest, part of the assets of public office holders and their outside positions held concurrently should be disclosed.

**2. Improving the declaration procedure:**

The asset declaration procedure can be improved when various difficulties in practice are solved and problems that have caused confusion and ambiguity are eliminated.

**3. Cutting back administrative costs:**

Designated forms for asset declaration have been in use. To save the time of the declarants and cut back administrative costs, these forms should be downloadable from relevant website(s).

**4. Eliminating ambiguous concepts:**

In the existing law there are some legal terms and concepts that may lead to misunderstanding and confusion, hence they should be simplified, clarified and consistent.

**5. Introducing computer technologies in the declaration procedure:**

For saving paper and printing costs and simplifying the procedure, electronic methods should be adopted in the declaration procedure, especially for the part to be disclosed to the public.

**6. Stipulating the document destruction policy:**

Since the property declaration law took effect, relevant documents have



never been destroyed, including those of declarants who have deceased for many years. This has caused various problems to the administrative entity, such as inadequate storage capacity and growing burdens on archive management, hence the relevant policy for document destruction should be clarified and perfected.

While introducing the bill, the Commissioner Fong Man Chong said that the amendments were intended to increase transparency and probity in public administration, which would facilitate the implementation of the government's "Sunshine Policy" and enhance relevant regulation mechanisms. The Commissioner pointed out that with the tremendous economic development taking place in Macao and its obligation to comply with the *United Nations Convention against Corruption*, the society was calling for more openness and probity in public administration. To be more specific, more transparency was needed in the operation and decision making process and social monitoring over the decision makers also had to be enhanced. Given that the property declaration law for public servants had been put into practice for more than eight years, some of its provisions necessitated changes. After all, disclosure of property of public office holders played an important role in increasing public servants' devotion to their duty and building the principal officials' accountability system. It served not only to promote the efficiency, level of integrity and transparency of the administration, but also to prevent corruption and increase the public's confidence in the government.



**PART V**

**INTEGRITY PROMOTIONS &  
COMMUNITY RELATIONS**





## PART V

### INTEGRITY PROMOTIONS & COMMUNITY RELATIONS

#### I. Integrity education

In 2011, the CCAC has actively carried out its promotion and publicity works. A wide range of anti-corruption activities aiming at different targets were organized to promote honesty and integrity and to gain citizens' support and participation in the building of a clean society.

A total of 391 seminars and symposia were carried out throughout the year, with 25,487 participants. The main targets included public servants, teenaged students, employees of business organizations and general citizens.

#### STATISTICS OF SEMINARS AND SYMPOSIA IN 2011

Topic	Target	No. of Sessions	No. of Participants
"Noble Character, Righteous Conduct", Declaration of Incomes and Properties, Integrity and Observance, Public Procurement	Public servants	75	3,408
Integrity Awareness	Civil associations, training entities	22	727
<b>Seminars on the law Prevention and Suppression of Bribery in the Private Sector</b>	Industry bodies, private entities, public sector	73	3,040
Integrity Education	Primary and secondary students	221	18,312
<b>Total</b>		<b>391</b>	<b>25,487</b>

## NUMBER OF PARTICIPANTS OF SEMINARS FROM 2001 TO 2011



### (1) Seminar for public servants

The CCAC has always attached much importance to the enhancement of public servants' integrity and ethics. In 2011, the CCAC has organized various themed seminars for the public departments, including seminars on "Integrity and Observance" for new recruits to explain the basic code of conduct and professional ethics for public servants,



Seminar on "Integrity and Observance" for public servants

advanced course on integrity entitled "Noble Character, Righteous Conduct" for senior public servants to analyse issues such as how to handle conflicts of interest, outside employment as well as recusal system in the execution of functions, and other themed seminars concerning public procurement and the declaration of incomes and properties. A total of 75 seminars with various themes for public servants were carried out throughout the year, with 3,408 participants.

### (2) Integrity education for teenaged students

The CCAC has always put great emphasis on the promotion of integrity education for teenagers to enhance the awareness of honesty and law-abidingness

of the young generation, and to instil positive values in them. In 2011, the CCAC has organized a wide range of integrity education activities with various themes for teenagers, including seminars, competitions, drama performances, etc., with a total of 219 sessions and 18,280 counts of students participated.

## **1. Integrity education for secondary schools**

### **1) Education programme on honesty for teenagers**

The CCAC continued the work of Education Programme on Honesty for Teenagers targeting secondary school students. The programme is conducted mainly by holding seminars to stimulate discussions with secondary students on themes such as law-abidingness and honesty, so as to guide them to a rational view of money and consciously resist desire and greed, as well as encourage them to take personal and social responsibilities. There were a total of 18 schools participated in this programme, with 8,866 participants in 50 sessions of seminars.

### **2) “Integrity Week”**

In order to further promote integrity awareness among secondary students and foster teenagers’ honesty and righteousness, the CCAC has co-organized the “Integrity Week” with three secondary schools. The activities of the “Integrity Week” included themed seminars on honesty and integrity, special exhibition with display boards inside the schools to introduce the duties and functions of the CCAC, as well as creative activities such as artworks, writing, slogans, display boards and drama creation competition and performances. With the participation of students, the CCAC aims to arouse their attention of the building of personal integrity as well as awareness of the importance of constructing a clean society.



CCAC's staff member discussing value on money with secondary students

### **3) “A Talk on Integrity for Secondary School Graduates”**

As for the secondary school graduates, no matter they choose to further their studies or take up an occupation, they will encounter challenges concerning their personal integrity and protection of their own rights and interests. In view of this, the CCAC has organized seminar entitled “A Talk on Integrity for Secondary School Graduates”. It enabled students to clearly understand the current anti-corruption law, including the legal regimes of preventing corruption



Representative of the CCAC explaining practical integrity guidelines during “A Talk on Integrity for Secondary School Graduates”

in both public and private sectors, before they graduate and take their first step into society, so that they will understand and observe the law, keep their self-esteem, be strong enough to resist illicit temptations and prevent themselves from falling into legal pitfalls and ruining their future. The CCAC has organized 11 sessions for the graduates of eight secondary schools with a total participant of 1,271 students.

### **4) “Act on Integrity” drama performance**

The CCAC conducted a drama touring programme entitled “Act on Integrity” at secondary schools to promote integrity education to secondary students through drama performance. 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 was to increase teenagers’ alertness against the trap of committing unlawful acts. There were a total of 1,528 students from seven secondary schools took part in the activity. They have actively participated in the discussion and shared their ideas.

## **2. Integrity education for primary schools**

The CCAC continued with the “New Generation of Integrity – Education Programme on Honesty for Primary Students” series by inviting Primary 4 to Primary 6 students to participate in the activities at the “Paradise of Integrity”, a base



of primary integrity education set up in the Branch Office in Areia Preta. Integrity education for primary students was conducted through means of puppet shows, computer animation or videos so as to inculcate values such as honesty, integrity, law-abidingness and fairness, as well as to cultivate the ability to discern between right and wrong among the youngsters. There were a total of 26 primary schools participating in this programme, with 4,110 participants.



To instil the awareness of honesty and law-abidingness to primary school students through interactive activities at the "Paradise of Integrity"

The CCAC continued to organize a special activity entitled "Celebrate Children's Day with William the Integrity Bear" during the period of Children's Day on 1<sup>st</sup> June, which was joined by 343 primary students from five schools. During the activity, the staff of the CCAC made use of examples in daily life to guide the students to think about the intention of giving gifts and remind them not to fawn on or bribe anyone by giving gifts. Being honest and observing the law is the only way to gain people's love and respect.

### 3. Competitions for teenagers

#### 1) "Support a Clean Society" Computer Animation and Comics Creation Competition for Guangdong, Hong Kong and Macao Youth

In end of 2011, the CCAC, the Guangdong Provincial People's Procuratorate and the Hong Kong ICAC has jointly organized "Support a Clean Society" — Computer Animation and Comics Creation Competition for Guangdong, Hong Kong and Macao Youth, with the aim to enhance the awareness of corruption prevention through the participation of the competition and the process of creation.

The competition consisted of two categories, namely the creation of comics and computer animation, each of them was divided into secondary, tertiary and public groups. Youth in Guangdong, Hong Kong and Macao with age 30 or under might take part in

the competition to use their creativity to express the message of anti-corruption and law-abidingness, including: honesty and integrity is a socially-recognized value, the evils of corruption on society and the public, the pursuit of an abundant life and virtue of goodness, etc. The accreditation and awards ceremony of the competition will be carried out in 2012.

## 2) Award ceremony for the Radio Broadcasting Drama Contest

In early 2011, the CCAC co-organized the award ceremony for the Radio Broadcasting Drama Contest with the General Association of Chinese Students of Macau. The contest took place in late 2010 with the objective to enable the participants to understand the importance of integrity and honesty to society in the process of creating and producing the radio drama, so as to entrench the value of honesty and law observance among the teenagers. The contest received favourable response from the education sector, a total of 60 teams from 20 schools participated. The entries were of high standard and with great creativity, among which 16 entries were awarded prizes.



Award winners and guests



The Chief of the Cabinet of the Commissioner, Sam Vai Keong, awarded the prize to the winner

## (3) Promotion of the law *Prevention and Suppression of Bribery in the Private Sector*

The CCAC continued to organize seminars on the law *Prevention and Suppression of Bribery in the Private Sector* with civil associations of various industries and private companies to promote the relevant provisions of the law. The contents of seminars were designed to accommodate the needs of different industries and institutions to enhance interaction and exchanges with participants.

In order to enhance the effect of the promotion, the CCAC set up a specific “Promotion Unit” responsible for the implementation of the plan of “visit local associations and organize seminars”, so as to introduce the contents of the new law to different sectors of society. The representatives of the civil associations and institutions believed that the promotion method of “walking out of the office and visit local associations and institutions” of the CCAC could deepen the understanding and trust of the citizens towards the work of the CCAC, so that the citizens are willing to work with the CCAC and to strengthen the cooperation between the two sides. Particularly, they hoped that the CCAC could organize integrity awareness seminars for their members and staff and jointly work together to enhance the overall integrity awareness of society.

Besides, the CCAC also co-organized “Seminar on Corruption Prevention in the Private Sector” with public departments. The objects of the seminar were the staff of the public department as well as the personnel of organizations or private institutions related to the functions of the respective departments. A total of 73 seminars were held in 2011, with 3,040 participants.



Seminars to promote the new law

## SEMINARS ON THE LAW PREVENTION AND SUPPRESSION OF BRIBERY IN THE PRIVATE SECTOR IN 2011

Name of Organization/Institution	Target	No. of Sessions	No. of Participants
Union of Catholic Schools of Macau	Members	1	50
Macao Clerical Staff Association	Members	1	30
The Industry and Commerce Association of Macau Northern District	Members	1	20
The Macao Institution of Electrical and Mechanical Engineers / The Society of Operations Engineers	Members	1	40
University of Macau	Staff	1	78
CEM	Staff/Leadership	3	105
ADA Administration of Airports Ltd. (English Seminar)	Management/Staff	8	240
Weng Hang Bank	Management/Staff	8	440
L'Arc Hotel Macau	Management/Staff	3	100
Metropark Hotel Macau	Staff	1	30
Luen Fung Hang Insurance Company Limited	Staff	2	60
CLP Engineering (Macao) Limited	Staff	1	20
Otis Elevator Company (HK) Limited	Staff	1	30
Supreme Property Management	Staff	1	35
Nam Kwong Petroleum & Chemicals Co., Ltd.	Staff	2	100
Galaxy Entertainment Group	Purchasing Department/ Finance Department	2	40
San Fong Seng (Construction) Group	Management	1	30
Tai Fung Bank Limited	New Recruits	2	140
MSIG Insurance (Hong Kong) Limited	Staff	1	15

Name of Organization/Institution	Target	No. of Sessions	No. of Participants
Macau University of Science and Technology	Staff of the hospital/ academic personnel	3	65
Institute for Tourism Studies	Refresher Seminar for Tour Guides and Ground Transfer Agents	22	637
Housing Bureau	Members of owners' committee of residential building/Members of management committee	2	400
Social Welfare Bureau	Staff of subsidized institutions	2	200
Education and Youth Affairs Bureau	Staff	1	45
Transportation Infrastructure Office	New Recruits/ Contractors	2	90
<b>Total</b>		<b>73</b>	<b>3,040</b>

Besides organizing seminars to promote the new law, the CCAC has actively strengthened the connection with various sectors as well. Throughout the year, the CCAC has liaised with 17 associations in order to collect their opinions, explore areas of cooperation and encourage different professional sectors to compile their own guidelines of corruption prevention. The CCAC hopes to join hands with different industries to build a clean and fair business environment.

In order to facilitate more citizens to know about the law *Prevention and Suppression of Bribery in the Private Sector*, the CCAC has teamed up with a number of associations in Macao to organize a touring exhibition to promote the new law and featured with quiz sessions to enhance the interaction with citizens.



Visiting various industries and civil associations to broadly collect opinions



Touring exhibition to promote the new law

## II. 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 2011, the branch offices received a total of 639 complaints, reports and requests for help and consultation, an increase of about 10% compared to 582 counts in 2010. Details are listed below:

#### NUMBERS OF COMPLAINTS, REPORTS AND REQUESTS FOR HELP AND CONSULTATION RECEIVED BY THE BRANCH OFFICES IN 2011

Complaints/Reports		Requests for Help/ Consultation	Simple Enquiries	
In person	Written complaints		In person	By telephone
74	27	103	300	135
Subtotal: 101		Subtotal: 538		
Total: 639				

### (2) Expanding community relations

The support and cooperation of the general public is one of the important factors for the success of the work of integrity building. Hence, the CCAC has actively expanded the network of community relations, strengthened the exchange and liaison with civil associations, and approached the community to promote the message of integrity and law-abidingness as well as to enlist the community's support and participation in building a clean society. In 2011, the CCAC has carried out exchanges with seven local associations including visiting them and co-organizing programmes with them so as to disseminate the message of integrity and law-abidingness to the general public and to collect public opinions and suggestions of the work of integrity building.



### III. Other education and promotion work

#### 1) New Generation Strides ahead on the Path of “Honesty” – Probity Education Variety Show for Teenagers

In order to promote integrity and honesty among teenagers, the CCAC held an outdoor event entitled New Generation Strides ahead on the Path of “Honesty” – Probity Education Variety Show for Teenagers, with the collaboration of the Youth Affairs Committee of Macau General Neighbourhood Unions Association, the Youth Committee of Macao Federation of Trade Unions, the Fu Lun Youth Association of Macau, the Macao New Chinese Youth Association and the General Association of Chinese Students Macau. Through infusing education in recreation activities, the CCAC hopes to draw more public attention on the importance of integrity education for teenagers, build the probity culture, so that the youngsters can realize the true meaning of life and live an abundant and meaningful life. The event had attracted a large number of audience who participated actively in the activities. The citizens identified with the importance of further promoting the integrity education for teenagers.



Guests officiating at the opening ceremony



Large numbers of residents participating at the event

#### 2) Activity of the “Integrity Volunteer Team”

The Integrity Volunteer Team of the CCAC was founded in 2001. Currently, there are over 500 members from different strata of society, including students, professionals in various fields, housewives and retired senior citizens. Over the past 10 years, the Integrity Volunteer Team has provided great assistance in various promotional and educational activities held by the CCAC. They supported and participated in different promotional activities zealously and selflessly, dedicated tirelessly to the building of a clean society. In celebration of the 10<sup>th</sup> anniversary

of the Integrity Volunteer Team, the CCAC organized a gathering for the Integrity Volunteer Team in 2011. During the event, the volunteers reviewed the promotional activities that they gave a hand to over the years and participated in group games in order to strengthen their mutual communication and enhance team spirit.

The Commissioner, Fong Man Chong, the Deputy Commissioner, Kuan Kun Hong, and the Chief of Cabinet of the Commissioner, Sam Vai Keong, participated in the activity and communicated with the volunteers. The Commissioner, Fong Man Chong, acknowledged the volunteers' selfless dedication over the ten years and hoped that they would continue to pay attention to and support anti-corruption works as well as join hands with the CCAC to build a clean society. The volunteers also shared their feelings and experiences about their assistance in promotion of integrity awareness and their expectation on constructing a clean society.

The volunteers have assisted various promotional activities of the CCAC as



Members of the Integrity Volunteering Team assisting the booth games



Participating the 28<sup>th</sup> Charity Walk for a Million

well as public charity activities. The CCAC hopes to extensively spread the message of integrity to every corner of society through their zealousness.

### **3) Regular promotion**

In order to enhance 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.



## **IV. Contacts and exchanges**

### **(1) Receiving visitors**

Invited by the CCAC, the Vice Minister of Supervision of China, Wang Wei, led a delegation to visit Macao in mid-November 2011 during which he met with the Chief Executive, Dr. Chui Sai On, at the Government House to exchange views on enhancement of integrity building and probity culture in society. Moreover, Mr. Wang also had a meeting with the Commissioner Against Corruption, Fong Man Chong, during which they exchanged opinions about the works on integrity building in the two places.

Mr. Wang stated that during the visit, he observed the steady and harmonious society and prosperity of Macao, hoping that development will continue and integrity promotion will be further enhanced. He recognized the direction of the CCAC's undertakings and acknowledged its devotion to system building, corruption prevention, and integrity education that has seen great achievements.

In 2011, the CCAC received a number of delegations such as the Supreme People's Procuratorate of China, the People's Procuratorate of Guangdong Province, the People's Procuratorate of Fujian Province, the Commission for Disciplinary Inspection of Shanghai, the Supervision Bureau of Shenzhen Municipality, the Zhuhai Supervision Bureau, the Hong Kong and Macao Affairs Office of the State Council, the Guangdong Provincial Public Security Department, the Casino Regulatory Authority of Singapore, the Corrupt Practices Investigation Bureau of Singapore, the Australian Consulate-General Hong Kong and Macau as well as the Consulate General of Canada in Hong Kong, etc.

### **(2) Visits and meetings abroad**

In 2011, the CCAC made the following visits abroad:

- The 3<sup>rd</sup> Seminar of the International Association of Anti-Corruption Authority (IAACA) in Shanghai. The Commissioner, Fong Man Chong, delivered a themed speech at the Seminar. Dr. Fong introduced the system of mutual judicial assistance of Macao under the policy of "One Country, Two Systems" and its characteristics to the participants. The Macao SAR has been striving to enhance integrity and combat corruption in the aspects of law and system building. He pointed out that system building facilitated

corruption prevention, while international and regional cooperation helped combat cross-border crimes. Exchange and communication enhance the standard of cooperation and law enforcement, while agreements will facilitate joint establishment of clean and fair social environment and order. During the stay in Shanghai, the delegation of the CCAC also visited the Shanghai Municipal Supervision Bureau;

- The 5<sup>th</sup> Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities (IAACA) in Morocco. The Deputy Commissioner, Kuan Kun Hong, delivered a keynote address. He introduced the legal regime of the Macao SAR Government in respect to fighting corrupt asset transfer and money laundering, as well as claim and recovery of proceeds of corruption crimes. Kuan stressed that the Macao Government has been highlighting and sparing no effort in corruption fighting. The law enforcement departments strictly carry out their functions under the sound legal system and fulfil their international obligations by propelling international cooperation in asset recovery and mutual legal assistance with the support and authorization of the Central Government of China. In addition, the CCAC delegation also accompanied the delegation of China and attended the “4<sup>th</sup> Session of the Conference of the States Parties to the *UNCAC*”;
- The 16<sup>th</sup> Steering Group Meeting of ADB/OECD Anti-Corruption Initiative for Asia and the Pacific in India. As the representative of the CCAC, Luís Rôlo delivered a speech to introduce how the CCAC can enhance institutional construction and eradicate the corruption hotbeds through the implementation of the functions of ombudsman, so as to play an effective role in corruption prevention;
- The 12<sup>th</sup> Conference of the Asian Ombudsman Association in Japan. The Commissioner Against Corruption, Fong Man Chong, delivered a speech entitled “Citizens’ Right to Access to Information under the Legal System of Macao”. He gave an introduction on how the Macao Government safeguards citizens’ right to access to information from three perspectives, namely, the legal framework, the role of judiciary and the role of ombudsman. During the conference, the election of new board members also took place and the Commissioner, Fong Man Chong, was elected as a member of the Board of Directors;

- The Board of Directors Meeting of the International Ombudsman Institute in Zambia;
- The thematic conference on “International Mutual Judicial Assistance in Combating Transnational Bribery” jointly organized by the Indonesian Corruption Eradication Commission and the Economic Cooperation Organization in Indonesia;
- The 2011 joint FATF / APG Typologies Workshop on combating money laundering in Korea;
- Visiting the People’s Procuratorate of Guangdong Province, Department of Supervision of Guangdong Province, the Higher People’s Court of Guangdong Province, the People’s Procuratorate of Guangzhou City, and the People’s Procuratorate of Shaoguan City etc.;
- Visiting the Corrupt Practices Investigation Bureau, the Public Service Division, the Casino Regulatory Authority of Singapore, the Singapore Police Force and the Embassy of the People’s Republic of China in the Republic of Singapore, etc.



Vice Minister of Supervision of China, Wang Wei, and the Commissioner Against Corruption, Fong Man Chong



The Commissioner, Fong Man Chong, and the Director of the Corrupt Practices Investigation Bureau of Singapore, Eric Tan Chong Sian



The Commissioner, Fong Man Chong, delivering a speech during the seminar to introduce the system of mutual judicial assistance in Macao



Deputy Commissioner, Kuan Kun Hong, delivering a speech at the conference of the International Association of Anti-Corruption Authorities



Representative of the CCAC, Luís Rôlo, delivering a speech at the 16<sup>th</sup> Steering Group Meeting of ADB/OECD Anti-Corruption Initiative for Asia and the Pacific



The Australian Consul-General in Hong Kong and Macao, Les Luck, visiting the CCAC

**PART VI**

**APPENDIX**





## APPENDIX I

Paragraphs 9 and 10 of Law no. 10/2000 of 14<sup>th</sup> August (*Organic Law of the Commission Against Corruption of Macao SAR*) stipulate that:

*“The Commission Against Corruption is entitled to:*

*(...)*

*9) With regard to any shortcomings it finds in any legal provisions, specially those which may affect 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 Legislative Assembly is the competent entity to legislate, 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 2011, 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 analysis on the eligibility of a certain type of retirees to obtain housing subsidy under Law no. 2/2011 of 28<sup>th</sup> March
2. Some legal issues regarding the Chief Executive-elect before sworn in (particularly the rights and obligations; applicable to the principal officials to be appointed as well)
3. Legal opinion and report regarding the part about integrity and honesty of the “Proposal for the awarding of contract for the construction of the memorial hall of Zheng Guanying’s former residence”

4. Legal opinion and report on the part about integrity and honesty of the “Contract for reclamation of land and construction of the dike of the new development zone – amendment of evaluation criteria”
5. Legal opinion and report on the part about integrity and honesty of the “Contract for construction of the walking system at Estrada da Baía de Nossa Senhora da Esperança – report of bid evaluation”
6. Preliminary legal opinion on the evaluation criteria of a particular construction work
7. Brief report concerning the resumption of a plot of land
8. Legal opinion on the “Flow chart for handling untapped land granted”
9. Legal opinion on the legality of the “Award of open tender of the supply and installation of large display screen facilities in the Traffic Control Centre” conducted by the Transport Bureau
10. Opinion concerning the “Discussion Paper on the Reform of Law Courses in Chinese Language and the Management of Teaching Staff of the University of Macau”
11. Preliminary opinion on the system of public disclosure of income and property interests of the Executive Council members to be regulated by Administrative Regulation or by law
12. Brief analysis regarding the issue of video recording and photograph taking during protests or demonstrations

\* \* \*

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



## **Legal analysis on the eligibility of a certain type of retirees to obtain housing subsidy under Law no. 2/2011 of 28<sup>th</sup> March**

### **Part I - Introduction**

1. On 8<sup>th</sup> August 2011, the Commission Against Corruption (CCAC) received an official letter (07684/GCE/2011) from the Cabinet of the Chief Executive, which was enclosed with an order by the Chief Executive with the following content: The CCAC is requested to render legal opinion on the issue brought out by the Association of Retirees and Pensioners of Macao (APOMAC) for reference.
2. The case originated with a letter sent from the APOMAC to the Chief Executive on 5<sup>th</sup> August 2011, which indicated their dissatisfaction over the Financial Services Bureau (DSF), that had denied the eligibility of a certain group of retirees (referring to the public servants who retired before the establishment of Macao SAR and transferred their pensions to the “General Pension Fund” of Portugal) to obtain housing allowance. They thought that the DSF had incorrectly interpreted the law and treated the retired public servants unreasonably, and thus requested the Chief Executive to pay attention to and solve the problem.
3. Other documents sent to the CCAC included:
  - (1) Correspondence from the APOMAC;
  - (2) Four attachments (legal documents);
  - (3) A copy of official letter no. 32/DTJ dated 11<sup>th</sup> February 2002 from the Public Administration and Civil Service Bureau (SAFP);
  - (4) A copy of the guidelines issued by the Secretary for Administration and Justice on 29<sup>th</sup> January 2002;
  - (5) A copy of official letter no. 1105120001/DIR dated 12<sup>th</sup> May 2011 from the SAFP;

(6) A copy of official letter no. 1106010005/DIR dated 1<sup>st</sup> June 2011 from the SAFP;

(7) Report no. 052/DDP/2011 dated 20<sup>th</sup> July 2011 and an official letter from the DSF.

4. The main problem that leads to dispute:

Can the retirees who transferred their pensions to the “General Pension Fund” of Portugal (CGA) before 20<sup>th</sup> December 1999 (establishment of Macao SAR) pursuant to Decree Law no. 14/94/M of 23<sup>rd</sup> February **be granted housing subsidies by the DSF of Macao according to Law no. 2/2011 of 28<sup>th</sup> March (Regime of Seniority Bonus and Housing and Family Subsidies), which was promulgated and entered into force recently?**

\* \* \*

## Part II: Analysis and legal basis

1) Paragraph 9 of Article 4 of the *Organic Law of the Commission Against Corruption of Macao SAR*, approved by Law no. 10/2000 of 14<sup>th</sup> August, states:

### **“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 of its position;*

(...)”.

The case involves complaint as well as interpretation of regulations, therefore the CCAC has the power to intervene into the case. Let us view the old and new legal regimes of housing subsidy first.

### Old regime

1. Regarding housing subsidy for employees of the Public Administration, Article 203 of the *Statute of Personnel of the Public Administration of Macao* (hereafter the *Statute*), approved by Decree Law no. 87/89/M of 21<sup>st</sup> December, states:

#### “(Allocation)”

*1. **The public servants and employees on service**, resigned from work awaiting retirement or retired, who reside in Macao and **receive salary and pension wholly or partly paid within the territory**, are entitled to receive the housing subsidies of which the amounts are indicated in Table 2. If the amount of the rental is less than that stated in Table 2, the housing subsidies they receive will be equal to the rental.*

*2. The public servants and employees on service who reside in the same household and have kinship with each other are also entitled to housing subsidies.*

*3. The right prescribed by the previous paragraph shall extend to temporary employees on service who have actually and consecutively served the Administration for over six months.*

#### *4. **Paragraph 1 is not applicable to the following staff:***

*a) Those who reside at the residences owned by the public, autonomous entities or the Municipal Council;*

*b) Those who have their own residence, except those who still have to pay home mortgage.*

*(...).”*

2. The article above clearly specifies the three conditions necessary for application for housing subsidy (positive conditions):

- (1) Public servants and employees who are on service, have resigned from work awaiting retirement or retired;
  - (2) Residing in Macao;
  - (3) Receiving all or part of salary, wage or pension paid by Macao government.
3. The following applicants who, although have fulfilled the above requirements, cannot enjoy housing subsidy (negative conditions):
  - (1) Those who live in the residences owned by the government (directly or indirectly owned by administrative entities);
  - (2) Those who own a residence and does not have to pay home loans. (e.g. no need to pay home mortgage instalments)
4. Later, the legislature amended Paragraph 3 of Article 203 of the *Statute* by Decree Law no. 80/92/M of 21<sup>st</sup> December as:

*“3. The right prescribed by the previous paragraph shall extend to temporary employees on service who have actually and consecutively served the Administration for over six months.”*
5. Then the legislature amended Paragraphs 7 and 8 of Article 203 of the *Statute* by Decree Law no. 62/98/M of 28<sup>th</sup> December as:

*“7. In December every year, the staff who are granted housing subsidy shall submit the statement mentioned in Paragraph 5 and the receipt of rental or retribution for the previous month mentioned in Paragraph 6 to the relevant departments.*

*8. The housing subsidy shall be reduced prorata when the rental of the house where the staffs live together is less than the total amount of the housing subsidy for all of them.”*
6. The content above reflects that the legislature did not make adjustment and amendment of the necessary conditions for applying and receiving housing subsidy when amending Article 203 of the *Statute*. However, when formulating Law no. 2/2011 of 28<sup>th</sup> March, the legislature seemed to make a clear and

**obvious change in their thought.** This point will be analysed later.

\* \* \*

### **New regime**

7. Regarding housing subsidy for public servants, Article 10 of Law no. 2/2011 of 28<sup>th</sup> March states,

#### ***“Entitlement to Subsidy***

*1. **Public service workers who are on service, have resigned awaiting retirement and have retired**, including retired judicial officers, are entitled to housing subsidy every month pursuant to this law and so do those who have kinship and reside in the same houses.*

*2. The people mentioned above who reside in the residences owned by the Macao SAR or other public legal persons or receive rental subsidy or those of similar types every month are not entitled to housing subsidy.”*

According to the above article, now the public servants only have to fulfil one requirement for receiving housing subsidy:

#### **Those who are on service, have resigned awaiting retirement and have retired.**

However, the legislature pointed out that the following people are not entitled to housing subsidy:

- (1) Those who live in the residences owned by the government;
  - (2) Those who receive monthly rental subsidy.
8. Comparing the new and old regimes, it is not difficult to find that the legislature removed two fundamental requirements:
    - (1) Residing in Macao; and

- (2) Those who receive salary, wage or pension paid by Macao government.
9. Moreover, it is worth mentioning here that both the housing subsidy regimes provided by the *Statute* (revoked) or Law no. 2/2011 are **general regimes** (*regime geral*), regardless of some **special** and even **exceptional** regulations formulated by the legislature, such as the provisions that apply to the staff who had already retired and transferred their pension to the CGA of Portugal prior to the establishment of Macao SAR.
10. For the staff who transferred their pension to the CGA of Portugal before December 1999, **even if they reside in Macao, they cannot request the Macao SAR Government to pay them housing subsidy before Law no. 2/2011 of 28<sup>th</sup> March came into effect**, because they, whose pension is not paid by the Macao SAR Government, do not fulfil the requirement provided by Paragraph 1 of Article 203 of the *Statute*.

\* \* \*

11. However, before the Macao SAR was established, did the legislature formulate some special provisions in relation to the general regime? In fact, before 1999, the legislature established **exceptional provisions** regarding the situation mentioned above, which is Decree Law no. 38/95/M of 7<sup>th</sup> August and Decree Law no. 96/99/M of 29<sup>th</sup> November. Article 3 of the former states:

***“(Home rental)***

*1. The amount of the monthly home rental that the pensioners under the situation mentioned in Sub-paragraph b) of Paragraph 3 of Article 17 of Decree Law no. 14/94/M of 23<sup>rd</sup> February shall pay to the services or entities responsible for administration of the houses after the transference of their pensions is determined according to the law effective on the day the pension is transferred.*

*2. **The pensioners who are entitled to housing subsidies under the Statute of Personnel of the Public Administration of Macao still have the entitlement after their pensions were transferred to the CGA of Portugal until 19<sup>th</sup> December 1999 if they are still residing in Macao, while the housing subsidy is to be distributed by the Financial Services Bureau.***

- a) – The article above is a transitional provision which was effective only until the establishment of Macao SAR on 20<sup>th</sup> December 1999.
  - b) – Another feature of the article is that one of the main requirements in the general regime has been revised. **That is, even the pension is not paid by the Macao government,** they are still entitled to housing subsidy (paid by the Macao government) **as long as they are residing in Macao.**
  - c) – Another modification is that the legislature no longer requires the Pension Fund to pay housing subsidies since it no longer needs to pay pension to this type of retirees, thus **the responsibility has been transferred to the Financial Services Bureau (DSF).**
12. Later, less than one month before the establishment of Macao SAR, the then Portuguese government in Macao formulated Decree Law no. 96/99/M (29<sup>th</sup> November) and repealed Paragraph 2 of Article 3 of Decree Law no. 38/95/M cited above – see Article 3 of Decree Law no. 96/99/M of 29<sup>th</sup> November.

In the preamble of Decree Law no. 96/99/M of 29<sup>th</sup> November, the legislature states that:

“(…)

*However, a majority of the pensioners mentioned above intend to continue to reside in Macao after 19<sup>th</sup> December 1999, hoping to remain as tenants of residences in the territory or continue to receive housing subsidy.*

*Therefore, the Macao government cannot neglect the fact that many of them are seniors, the difficulties they face in finding alternative residences with the pensions they receive, and the humanist and social issues concerning the abandonment of the residences they have lived in for a long time and the surrounding environment they are familiar with.*

*In this sense, the law aims to ensure that the retirees who have transferred the responsibility for payment of their pensions to the CGA of Portugal will maintain the right.*

(…).”

A question may be brought out here: What is the purpose of implementing Decree

Law no. 96/99/M by the legislature in less than one month before the establishment of Macao SAR? For enforcing it until December 1999? Of course not.

Let us focus on these retirees who had retired and transferred their pensions to the CGA of Portugal before 1999.

\* \* \*

2) **The stance of the Financial Services Bureau and the Public Administration and Civil Service Bureau**

1. The DSF stated in its official letter dated 20<sup>th</sup> July 2011 that:

*“Subject: Housing subsidy*

*Dear Sir/Madam,*

*Regarding the statement you have submitted recently for the purpose of being granted housing subsidy under Law no. 2/2011, after analysing the relevant information, **we have discovered that you have already received the transport subsidy to go back to settle in Portugal, therefore, your case does not meet the requirement provided by Decree Law no. 96/99/M.***

*For the reason above, it is not possible to offer you the housing subsidy provided by the Statute and Law no. 2/2011. Should you have any queries, please contact Mr. C at xxxxxxxx or Mr. S at xxxxxxxx.*

*Yours sincerely.”*

2. Moreover, the DSF pointed out in its proposal no. 052/DDP/2011 (20<sup>th</sup> July 2011) that:

*“(…)*

2. *After collecting the data of the people mentioned above, we can divide them into three groups:*

- 1) **Those who have transferred their pensions to the CGA of Portugal but have not yet received the transport allowance for**



settlement in Portugal;

- 2) Those who have already transferred their pensions to the CGA of Portugal as well as received the transport allowance for settlement in Portugal; and
  - 3) Those who receive pensions from the CGA of Portugal.
3. Before the entry into force of Law no. 2/2011, the DSF, pursuant to Decree Law no. 96/99/M and the Statute approved by Decree Law no. 87/89/M, distributed housing subsidy amounting up to MOP1,000 to the people in group 1 who did not live in the residences owned by the Macao SAR Government but in rented homes, or in homes owned by themselves but are still subject to home mortgage payment.

(...).”

According to the letter, the DSF considered that: even though Law no. 2/2011 of 29<sup>th</sup> March is effective, Decree Law no. 96/99/M of 29<sup>th</sup> November is still applicable. Therefore, one of the negative requirements for entitlement to housing subsidy considered by the DSF is: **the applicant shall have never applied for transport allowance for settlement in Portugal.** Otherwise, s/he is not qualified for receiving housing subsidy.

3. The aforementioned interpretation is based on the letter issued by the SAFP on 1<sup>st</sup> June 2011, which indicated that:

“(…)

3. *Questões relacionadas com o pessoal que transferiu as suas pensões para a CGA*

*3.1 Ao abrigo do n.º 2 do artigo 3.º do Decreto-Lei n.º 38/95/M, com a epígrafe “Renda”, “Os pensionistas que têm direito ao subsídio de residência, nos termos do Estatuto dos Trabalhadores da Administração Pública de Macau, após a transferência da respectiva pensão para a CGA, mantêm esse direito, até 19 de Dezembro de 1999, enquanto residirem no território de Macau, sendo o pagamento efectuado pela Direcção dos Serviços de Finanças.”*

3.2 Deste normativo resulta, assim, que foi intenção do legislador continuar a manter até 19 de Dezembro de 1999 e enquanto residirem em Macau, o direito ao subsídio de residência aos pensionistas que têm direito ao subsídio de residência nos termos do ETAPM.

3.3 E, nesse sentido, porque nos termos do ETAPM só os aposentados que preencham os requisitos do subsídio de residência é que têm direito a receber o subsídio de residência, significa isso que a manutenção consagrada no n.º 2 do artigo 3.º do Decreto-Lei n.º 38/95/M, do direito ao subsídio de residência até 19 de Dezembro de 1999, apenas contempla os pensionistas da aposentação que estejam a residir em Macau e que têm direito ao subsídio de residência nos termos do ETAPM, estando claramente de fora de seu âmbito os pensionistas de sobrevivência.

3.4 Posteriormente, com o Decreto-Lei n.º 96/99/M, veio este normativo a ser revogado (cfr. artigo 3.º), vindo-se agora estabelecer na alínea b) do artigo 1.º, o seguinte:

“Artigo 1º

(Direitos)

Ao pessoal a quem seja autorizada a transferência das respectivas pensões para a Caixa Geral de Aposentações é mantido o direito a:

a) ...;

b) Subsídio de residência nos termos do Estatuto dos Trabalhadores da Administração Pública de Macau, sendo o pagamento efectuado pela Direcção dos Serviços de Finanças.”

3.5 Com este preceito legal, visou o legislador garantir a manutenção do direito para além de 19 de Dezembro de 1999, a quem tenciona continuar a residir em Macau, o que deixou explícito no preâmbulo do Decreto-lei n.º 96/99/M: “...parte significa destes aposentados e pensionistas tencionam continuar a residir em Macau para além de 19 de Dezembro de 1999, mantendo a condição de arrendatários de moradias do Território, bem como o acesso ao subsídio de residência”,

*“Neste sentido o presente diploma visa garantir aos aposentados e pensionistas que transferiram a responsabilidade pelo pagamento das suas pensões para a CGA, a manutenção dos referidos direitos”.*

*3.6 Contudo, se a intenção do legislador, de condicionar a continuidade de residência em Macau como requisito de manutenção do subsídio de residência, cabe no corpo e espírito da norma em questão, uma vez que intrinsecamente à atribuição do subsídio de residência estava a necessidade de o aposentado residir em Macau, o mesmo já não acontece com a intenção de alargar a manutenção aos pensionistas de sobrevivência.*

*3.7 Com efeito, se atentarmos à letra deste normativo, em especial à expressão “é mantido o direito”, resulta claro que não se vem conferir um direito novo mas apenas manter o direito ao subsídio de residência a quem o tem nos termos do ETAPM, no caso, os pensionistas da aposentação e, assim, continuando-se a não abranger, uma vez mais, no âmbito desta manutenção os pensionistas de sobrevivência que transferiram as suas pensões para a CGA.*

*3.8 Pelo que, manifesto se torna concluir serem, então, dois os pressupostos decorrentes do Decreto-Lei n.º 96/99/M para que seja mantido o direito ao subsídio de residência nos termos do ETAPM e, deste 1 de Abril de 2011, nos termos da Lei n.º 2/2011:*

- *Tratar-se de pensionista de aposentação a quem foi autorizada a transferência da sua pensão para a CGA de Portugal; e*
- *Continuar a residir em Macau.*

***3.9 O facto de ser ter retirado o requisito de residência em Macau da Lei n.º 2/2011, em nada vem alterar, pois, os pressupostos decorrentes do Decreto-Lei n.º 96/99/M, porquanto relevante para essa manutenção é a continuidade da residência em Macau para este pessoal.***

*3.10 E, isto porque, como vimos já, a razão de ser das normas em causa [isto é, o n.º 2 do artigo 3.º do Decreto-Lei n.º 38/95/M e, mais recente, a alínea b) do artigo 1.º do*

*Decreto-Lei n.º 96/99/M*] ou, se quisermos, o fim visado pelo legislador ao ter garantida, sucessivamente, nestas normas aplicáveis, a manutenção do direito ao subsídio de residência, foi precisamente a circunstância de existir pensionistas da aposentação que optaram por continuar a residir em Macau, para além de 19 de Dezembro de 1999, justificando-se, assim, que lhes seja mantido o direito ao subsídio enquanto permanecerem, sem qualquer interrupção, nessa situação.

***3.11 Ora, deixar de permanecer nessa situação o pensionista da aposentação que fixe a sua residência em Portugal. E ainda que venha a regressar a Macau, a nova fixação de residência já não configura uma situação de continuidade de residência em Macau, para efeitos do Decreto-Lei n.º 96/99/M.***

*3.12 Por isso, estando o exercício do direito ao transporte por conta da RAEM condicionado à decisão de fixação de residência em Portugal, conforme o disposto no n.º 4 do artigo 17.º do Decreto-Lei n.º 14/94/M, somos do entendimento que o pessoal que tenha exercido o direito ao transporte por conta da RAEM regulado na alínea a) do n.º 3 do artigo 17.º do Decreto-Lei n.º 14/94/M, deixa de reunir o pressuposto decorrente do Decreto-Lei n.º 96/99/M e, em consequência, deixa de poder manter o direito ao subsídio de residência nos termos do ETAPM e, desde 1 de Abril de 2011, nos termos da Lei n.º 2/2011.*

*3.13 Pelo exposto e em resposta às questões colocadas temos que:*

***3.13.1 Relativamente à questão “Aqueles que recebem pensão de sobrevivência têm direito ao subsídio de residência?”, porque nos termos do artigo 203.º do ETAPM, os pensionistas de sobrevivência não tinham direito a receber o subsídio de residência, somos do entendimento que não se pode atribuir ao pessoal que transferiu a sua pensão de sobrevivência para a CGA de Portugal, o subsídio de residência ao abrigo da Lei n.º 2/2011;***

*3.13.2 Em face desta conclusão, desnecessário se torna*

*analisar as questões: “Um trabalhador aposentado que se encontra também a receber pensão de sobrevivência tem direito, por esta razão, a dois subsídios de residência” e “Se a pensão de sobrevivência for repartida em partes iguais entre duas pessoas, o subsídio de residência deverá ser repartido também em duas partes? Ou cada um recebe um subsídio de residência”;*

*3.13.3 Relativamente às questões “Aqueles que tiveram direito ao transporte e regressaram a Portugal têm direito ao subsídio de residência? (Não está previsto na lei vigente o requisito de ter residência em Macau); e “O exercício do direito a transporte para Portugal, referido na alínea a) do n.º 3 e n.º 4 do artigo 17.º do Decreto-Lei n.º 14/94/M, implicou o afastamento da manutenção do direito ao subsídio de residência?”, estando o exercício do direito ao transporte por conta da RAEM condicionado á decisão de fixação de residência em Portugal, conforme o disposto no n.º 4 do artigo 17.º do Decreto Lei n.º 14/94/M, somos do entendimento que o pessoal que exerça o direito ao transporte por conta da RAEM regulado na alínea a) do n.º 3 do artigo 17.º do Decreto-Lei n.º 14/94/M, deixa de reunir pressuposto decorrente do Decreto-Lei n.º 96/99/M e, em consequência, deixa de poder manter o direito ao subsídio de residência do ETAPM e, desde 1 de Abril de 2011, da Lei n.º 2/2011;*

*3.13.4 Relativamente à questão “O pensionista da aposentação que venha a fixar novamente residência em Macau pode voltar a manter o direito ao subsídio de residência?”, somos do entendimento tal não ser possível pois a nova fixação de residência já não configura uma situação de continuidade de residência em Macau, para efeitos do Decreto-Lei n.º 96/99/M.*

*(...)”*

*[English meaning]*

*“(..."*

*3. Problems concerning the personnel who have transferred their pensions to the CGA of Portugal*

*3.1 According to Paragraph 2 of Article 3 of Decree Law no. 38/95/M entitled ‘Home Rental’, ‘The pensioners who are entitled to housing subsidies under the Statute of Personnel of the Public Administration of Macao still have the entitlement after their pensions were transferred to the CGA of Portugal until 19<sup>th</sup> December 1999 if they are still residing in Macao, while the housing subsidy is to be distributed by the Financial Services Bureau.’*

*3.2 Under this provision, the legislature’s intention was to let the pensioners entitled to housing subsidy according to the Statute remain the entitlement when they were residing in Macao until 19<sup>th</sup> December 1999.*

*3.3 In this sense, since only the retirees qualified for housing subsidy under the Statute are entitled to housing subsidy, this means that the right to remain entitled to housing subsidy until 19<sup>th</sup> December 1999 was only granted to the retired pensioners who were still residing in Macao and were qualified for housing subsidy under the Statute. Obviously these did not include non-retirement pension receivers.*

*3.4 Later the provision was revoked by Decree Law no. 96/99/M (see Article 3), of which Paragraph b) of Article 1 states:*

*‘Article 1*

*(Rights)*

*The people who are allowed to transferred their pensions to the CGA remain entitled to:*

*a) ...;*

*b)Receive housing subsidy under the Statute of Personnel of the Public Administration of Macao from the Financial Services Bureau.’*

3.5 Under this provision, the legislature aimed to ensure that those who continued to reside in Macao after 19<sup>th</sup> December 1999 would maintain this right, which was clearly specified in the preamble of Decree Law no. 96/99/M, “...a majority of the pensioners mentioned above intend to continue to reside in Macao after 19<sup>th</sup> December 1999, hoping to remain as tenants of houses in the territory or continue to receive housing subsidy.” “In this sense, the law aims to ensure that the retirees who have transferred the responsibility for payment of their pensions to the CGA of Portugal will maintain the right.”

3.6 However, if the legislature’s purpose was to maintain continuing residency in Macao as a main requirement for continuing to receive housing subsidy, they should have placed the relevant content in the body and abstract of the relevant law. Since the legislature only required that the retirees entitled to housing subsidy should be those who resided in Macao, this reflects that they did not have the intention to extend the maintenance of the right to the non-retirement pensioners.

3.7 In fact, if we look at the literal meaning of this article, especially the expression “maintain the right”, it is clear that this is not to confer a new right but to merely maintain the right enjoyed by the people entitled to housing subsidy under the Statute. In this case, these people refer to the retirement pensioners. Therefore, this article does not cover the non-retirement pensioners who have transferred their pensions to the CGA.

3.8 To conclude, the people who remain entitled to housing subsidy under the Statute and Law no. 2/2011 effective since 1<sup>st</sup> April 2011 shall meet the two requirements provided by Decree Law no. 96/99/M:

- The retirement pensioners who are allowed to transfer their pensions to the CGA of Portugal, and
- Continue to reside in Macao.

**3.9 The fact that Law no. 2/2011 has removed the requirement of residency in Macao did not cause any change in Decree Law no. 96/99/M because the latter still maintains the requirement that relevant staff should continue to reside in Macao.**

3.10 Therefore, as mentioned above, the purpose of establishment of relevant provisions (Paragraph 2 of Article 3 of Decree Law no. 38/95/M and Paragraph b of Article 1 of Decree Law no. 96/99/M), or from the perspective of the legislature in the beginning, the purpose is to ensure the right to receive housing subsidy. Since some retirement pensioners chose to continue to reside in Macao after 19<sup>th</sup> December 1999, it is necessary to formulate the provision in order to ensure that their entitlement to housing subsidy is maintained when they are living in Macao.

**3.11 Nevertheless, for the retirement pensioners who no longer meet the above requirements and have chosen to settle in Portugal, if they settle in Macao again, they still do not meet the requirement of consecutive residency in Macao provide by Decree Law no. 96/99/M.**

3.12 Therefore, according to Paragraph 4 of Article 17 of Decree Law no. 14/99/M, they are entitled to the transport allowance paid by the Macao SAR only when they choose to settle in Portugal. We think that they have already exercised the right to obtain transport allowance to Portugal paid by the Macao SAR provided by Paragraph 3a) of Article 17 of Decree Law no. 14/94/M and thus they no longer meet the requirement under Decree Law no. 96/99/M. In this sense, they can no longer maintain their eligibility to receive housing subsidy under the Statute and Law no. 2/2011 effective since 1<sup>st</sup> April 2011.

3.13 To conclude, we would like to give the following response to the questions:

**3.13.1 As to the question “Are those non-retirement pensioners entitled to housing subsidy?”, according to Article 203 of the Statute, non-retirement pensioners are not entitled to housing subsidy. Therefore, we think that the non-retierment**



*pensioners who have transferred their pensions to the CGA of Portugal shall not receive housing subsidy under Law no. 2/2011.*

3.13.2 Based on the above conclusion, it is not necessary to analyse the following questions: “Can a retired staff who is also entitled to non-retirement pension receives double housing subsidies?” and “If the non-retirement pension is divided equally between two people, shall the housing subsidy be divided into two as well? Or Shall each of them receive a full housing subsidy?”

3.13.3 As to the questions “Are those who are entitled to transport allowance and have gone back to Portugal entitled to housing subsidy? (Currently, there are no provisions that require the recipients should reside in Macao)” and “Does exercise of the right to transport to Portugal prescribed by Paragraph 3a) of Article 17 of Decree Law no. 14/94/M lead to abandonment of maintenance of the eligibility to receive housing subsidy?”, according to Paragraph 4 of Article 17 of Decree Law no. 14/94/M, **they are entitled to the transport allowance paid by the Macao SAR only when they reside in Portugal. We think that: The people who are entitled to the transport allowance to Portugal paid by the Macao SAR no longer meet the requirement provided by Decree Law no. 96/99/M. Therefore, they shall not remain entitled to housing subsidy provided by the Statute and Law no. 2/2011 effective since 1<sup>st</sup> April 2011.**

3.13.4 With regard to the question “Are the retirement pensioners who settle in Macao again entitled to housing subsidy?” We think that it is impossible **because this is not the case prescribed by Decree Law no. 96/99/M – consecutive residency.**

(...)”

4. Having the above opinion presented by the SAFR, the DSF should handle the applications for housing subsidy by this type of retirees based on this stance.

5. However, we are reserved about the above opinion raised by the SAFP because:
  - (1) The relation between the norm of application (*norma remetente*) and the norm of applicability (*norma remetida*) and their natures, that is, Decree Law no. 96/99/M and Article 203 of the *Statute*, was not analysed and specified;
  - (2) There is no analysis of the change in the nature of housing subsidy by Law no. 2/2011;
  - (3) The letter indicated that Law no. 2/2011 does not provide any new rights for certain people but maintains the rights they have already had. In fact, this interpretation is incorrect because, for instance, the public servants who retired before or after 1999 and have been residing abroad (or in Mainland China) are not qualified for housing subsidy according to Article 203 of the *Statute* since they are not residing in Macao. However, now they are entitled to housing subsidy under Article 10 of Law no. 2/2011.
  - (4) The SAFP has committed a logical mistake when interpreting the law: it continued to relate Article 203 of the *Statute*, which has already been revoked, to Decree Law no. 96/99/M and totally neglected Article 10 of the currently effective Law no. 2/2011, which revokes Article 203 of the *Statute*.
  - (5) In this commentary report, the SAFP purposefully made reference to the preamble of Decree Law no. 96/99/M of 29<sup>th</sup> November – to ensure that the retirees who are still residing in Macao after they transferred the responsibility to pay for their pension to Portugal are still entitled to housing subsidy. In this sense, it should have taken care of the cases of this group of people more carefully when formulating Law no. 2/2011 of 28<sup>th</sup> March. Special or transitional provisions should have been provided, but it did not do so in reality.
  - (6) The interpretation by the SAFP is an ideal one, i.e. an interpretation that should be done. Honestly speaking, it is a complementary interpretation. However, it is necessary to emphasize here that this interpretation is not applicable to all situations, especially

when the legal thought and criteria for interpretation is not allowed. Otherwise, it will contradict the intent of law. Article 8 of the *Civil Code* states:

***“(Interpretation of the law)”***

*1. Interpretation of the law shall not be restricted to literal meaning only. **The legal thought is reconstructed** from the text especially given the unity of the legal regime, the circumstances in which the law is formulated and the specific cases in which the law is applied.*

*2. However, **the interpreter can only consider the meaning which have a minimum of literal correspondence in legal sense, even if the expression is not perfect.***

*3. When determining the meaning and scope of the law, the interpreter shall assume that the solution established by the legislature is the most pertinent and the legislature know how to express their thought with appropriate terms. ”*

In this sense, we only partly agree with the stance adopted in the above opinion because it does not take into account other situations and problems.

Here we are analysing some key issues.

\* \* \*

**3) Is Decree Law no. 96/99/M still applicable to the requests for housing subsidy currently?**

Article 1 states:

***“(Rights)”***

*The people who are allowed to transferred their pensions to the CGA **remain entitled to:***

*a) Continue to live in the local housing by paying the rental to the services or*

*entities responsible for administration of the housing when they are residing in Macao;*

**b) Receive housing subsidy paid by the Financial Services Bureau under the Statute of Personnel of the Public Administration of Macao.”**

As mentioned above, before Decree Law no. 96/99/M of 29<sup>th</sup> November was implemented, in 1995, the then Portuguese government in Macao established a provision, Decree Law no. 38/95/M of 7<sup>th</sup> August, for the same matter. Article 3 of Decree Law no. 38/95/M states:

***“(Home rental)***

*1. The amount of the monthly home rental that the pensioners under the situation mentioned in Sub-paragraph b) of Paragraph 3 of Article 17 of **Decree Law no. 14/94/M** of 23<sup>rd</sup> February shall pay to the services or entities responsible for administration of the houses after the transference of their pension is determined according to the law effective on the day the pension is transferred.*

*2. The pensioners who are entitled to housing subsidies under the Statute of Personnel of the Public Administration of Macao still have the entitlement after their pensions were transferred to the CGA of Portugal until 19<sup>th</sup> December 1999 if they are still residing in Macao, while the housing subsidy is paid by the Financial Services Bureau.”*

1. Later, on 29<sup>th</sup> November 1999 when less than one month before the establishment of Macao SAR, the government implemented Decree Law no. 16/99/M, in which there was an additional article about housing subsidy and some essential points in Decree Law no. 38/95/M of 1995 were removed. Hence the new Decree Law did not mention “effective until 19<sup>th</sup> December 1999” and “residing in Macao”.
2. According to the content and nature of Decree Law no. 96/99/M of 29<sup>th</sup> November, we understand that:
  - (1) Article 1 of Decree Law no. 96/99/M is not for the purpose to create a new regime;
  - (2) Paragraph 2 of Article 3 of Decree Law no. 38/95/M of 7<sup>th</sup> August reflects that the legislature neither showed its stance nor added new contents

regarding the regime of housing subsidy but it merely quoted the regime of housing subsidy (general regime) provided by the *Statute*;

- (3) According to the then effective Article 203 of the *Statute*, one of the requirement might not exist, which was that those who receive all or part of their retirement pensions paid by Macao government cannot receive the subsidy because the responsibility to distribute their pensions has been transferred to Portugal.

However, one thing is for sure: Sub-paragraph b) of Article 1 of Decree Law no. 96/99/M of 29<sup>th</sup> November does not mention “residing in Macao” (on the contrary, Paragraph a) does) but points out the general regime, which refers to Article 203 of the *Statute* at that time.

**In fact, Article 203 clearly specified one of the requirements – residing in Macao.**

However, this general regime is amended by Law no. 2/2011, which removes the requirement of “residing in Macao”.

***Quid Juris? How to solve this problem by legal means?***

3. Given the analysis above, we consider that:

- (1) An exceptional rule cannot and shall not modify a general regime. That is, Decree Law no. 96/99/M of 29<sup>th</sup> November cannot modify the legal regime under Law no. 2/2011 of 28<sup>th</sup> March.
- (2) When an exceptional rule makes reference to a general regime while the latter has been modified or revoked, the interpretation cannot accord with the revoked content.
- (3) An exceptional rule under the old regime cannot be used to interpret an effective general regime since the current regime does not cover old contents. In this sense, Decree Law no. 96/99/M cannot be used to interpret the currently effective Law no. 2/2011.

We believe that interpretation indicated in the letter from the SAFF stems from the incorrect thought stated above.

Therefore, the Public Administration cannot assess the requests for housing subsidy merely based on Decree Law no. 96/99/M of 29<sup>th</sup> November.

\* \* \*

4) **Did point 3.13.3 in the letter from the SAFP indicate a correct understanding of Decree Law no. 96/99/M of 29<sup>th</sup> November?**

- (a) The right to claim for the expense for transport to Portugal mentioned in Sub-paragraph a) of Paragraph 3 of Article 17 of Law no. 14/94/M is subject to Paragraph 4 of the same Article. That is, the claimers shall be those who intend to settle in Portugal;
- (b) Therefore, it is assumed that the retirees who have exercised the right to receive transport allowance do not reside in Macao and have returned to Portugal;
- (c) Whether the right provided by Decree Law no. 96/99/M is maintained depends on whether the retirees reside in Macao;
- (d) When this requirement disappears, the relevant right will also disappear.

Decree Law no. 96/99/M does not require that only the retirees residing in Macao are entitled to housing subsidy (but this requirement was provided by a previous law, Decree Law no. 38/95/M of 7<sup>th</sup> August). At that time, this requirement was not provided by Decree Law no. 96/99/M but Article 203 of the *Statute*, which, however, has been revoked by Law no. 2/2011.

Sub-paragraph a) of Article 1 of Decree Law no. 96/99/M clearly points out that if the retirees still stay in Macao, they remain entitled to live in “government housing” (which have already been allocated to them). Subparagraph b) states that, “*Receive housing subsidy paid by the Financial Services Bureau under the Statute of Personnel of the Public Administration of Macao*”.

**The title of the above article does not mention the requirement of residency in Macao also.** Therefore, the interpretation of Sub-paragraph b) of Article 1 of Decree Law no. 96/99/M, which is that receiving the transport allowance will

lead to termination of the entitlement to housing subsidy, is not correct, because the currently effective Law no. 2/2011 has revoked the second requirement – residency in Macao.

If the retirees return to Macao, they will meet the second requirement. In this case, their entitlement to housing subsidy will be resumed according to Decree Law no. 96/99/M and Article 10 of Law no. 2/2011 of 28<sup>th</sup> March.

As far as the nature of law is concerned, Decree Law no. 96/99/M of 29<sup>th</sup> November is an exceptional norm. Therefore, Article 10 of the *Civil Code* shall be observed:

*“Exceptional norm shall not be applied by analogy, but broad interpretation is allowed.”*

In addition, we have to remember that on 29<sup>th</sup> January 2002, the Secretary for Administration and Justice issued the following instruction:

*“1. Under the legal regime provided by current applicable laws, the retirees who have transferred their pensions to the CGA of Portugal will not lose their identity as retirees in Macao for all legal purposes.”*

\* \* \*

## 5) Meaning and scope of the new regime

Two of the requirements provided by the *Statute* have been removed by the new housing subsidy system. As a result, the range of beneficiaries has been undoubtedly widened, because it no longer requires that the recipients shall be those who reside in Macao. The only one requirement is that they shall be retirees.

Therefore, it is possible to identify the following groups of people:

Group 1: The retirees who have never claimed for transport allowance and is now residing in a country that is not Portugal (e.g. Mainland China), regardless of whether they retired before the “integration” of public servants into the public service of Portugal or in the year of 1999, are entitled to housing subsidy under Article 10 of Law no. 2/2011 of 28<sup>th</sup> March .

Group 2: Why aren't the retirees who have been "integrated" but are now residing in Macao entitled to housing subsidy? Do discrimination and unfairness exist in this case?

We have to, according to currently effective law, determine whether the applicants meet the requirements for entitlement of housing subsidy under the current system.

\* \* \*

### **Legislative policy**

1. To sum up, the text of Article 10 of Law no. 2/2011 of 28<sup>th</sup> March is deficient, which is not thorough enough and thus has caused controversy.
2. As far as legislative policy is concerned, even though the nature of housing subsidy has been transformed from a kind of financial aid in the past to now a kind of general benefit (even those who own a home and do not have to pay home mortgage can enjoy it) by legislative means, it is necessary to take into account some situations in order to prevent controversy and injustice.
3. From a legislative point of view, beneficiaries should be those who have a certain connection or link with the system of Macao. For example, they reside in Macao or receive their pensions paid by Macao SAR Government. In this case, controversy will less likely occur.
4. It is hard to imagine that the people who do not have any connection with the legal regime of Macao are also entitled to housing subsidy. We are referring to the following extreme cases:
  - a) Those who retired before Macao SAR was established;
  - b) Those who have transferred their pensions to the CGA of Portugal;
  - c) Those who do not reside in Macao (may not reside in Portugal but in another country or Mainland China);
  - d) Macao SAR Resident Identity Card holders who claim that they are



residing in Macao and request for housing subsidy.

5. From a theoretical viewpoint, we also think that the above individuals' applications shall not be approved because there is no longer any connection between them and the regime of Macao SAR.
6. However, if the above stance is adopted, it should be backed by adequate reason and basis. The difficulty we are facing stems from defective legislation.
7. From another viewpoint, one thing is for sure: these people cannot expect that the Macao SAR Government (not Portuguese government) will offer them support for housing since they have already retired and transferred their pensions to the CGA of Portugal before the establishment of Macao SAR in 1999. If the Macao SAR Government offers housing subsidy to those who have no connection with Macao SAR, it will violate the principle of fairness because this is not a general benefit enjoy by every Macao citizen.
8. Therefore, theoretically these people should not be entitled to housing subsidy. However, it does not seem so under the current regime.
9. The interpretation made by the SAFP is an ideal solution. In other words, the current legal regime should provide such stipulation. However, given the current legislation, it is impossible to reach this ideal result.

\* \* \*

### Defects in current regime

1. Given the serious defects in the current regime, the best solution is to adopt legislative measure in order to plug the loopholes. The solution is simple. Just add a requirement in Article 10 of Law no. 2/2011 of 28<sup>th</sup> March. For example:

*"1. Public service workers on service, have resigned awaiting retirement and have retired, including retired judicial officers, **who receive salary and pension wholly or partly paid within the territory**<sup>6</sup>, are entitled to receive housing subsidy every month pursuant to this law and so does those who have kinship*

<sup>6</sup> The requirement that the CCAC suggests adding.

*and reside in the same house with each other.*

*2. The people mentioned above who reside in the residences owned by the Macao SAR or other public legal persons or receive rental subsidy or those of similar types every month are not entitled to receive housing subsidy.”*

2. Certainly, revising the law will lead to another risk: the potential beneficiaries under the current version may raise an objection, arguing that it will infringe upon their interests. Although this argument lacks legal basis, it may have negative impact on the society. Therefore, careful consideration is needed.
3. About this issue, it is necessary to consider other related matters, such as the following instruction issued by the Secretary for Administration and Justice on 29<sup>th</sup> January 2002:

*“1. Under the legal regime provided by current applicable laws, the retirees who have transferred their pensions to the CGA of Portugal **will not lose their identity as retirees in Macao for all legal purposes.**”*

4. This instruction<sup>7</sup> has both advantage and shortcomings:

Advantage: The public servants who have retired in Portugal but are carrying out public duties in Macao currently have to receive only half of their salaries just as other retired local public servants do.

Shortcomings: Once recognized as retired public servants, their entitlement to certain benefits should also be recognized, such as housing subsidy.

5. Another point worth consideration: Should the retirees be required to submit a statement of their residency in Macao in order to receive housing subsidy? If this requirement is established, it may give rise to another unfair situation:
  - a) For example, the retirees who are receiving pensions paid by the Macao SAR Government but residing in another country or Mainland China are entitled to housing subsidy pursuant to Law no. 2/2011 of 28<sup>th</sup> March.

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<sup>7</sup> The CCAC is sceptical of its legality. Can an administrative instruction indicate such stipulation? However, this issue is not our focus.

- b) If residency in Macao is not required, it is possible to only require that the qualified retirees shall be those who receive their pensions paid by the Macao SAR Government. However, this requirement is not clearly specified in Law no. 2/2011. Therefore, the interpreter cannot apply it. As a result, the same problem will appear.
- 6. In conclusion, This is all about going from one extreme to another. **It seems that Law no. 2/2011 of 28<sup>th</sup> March leaves the door open too much.**
- 7. Who will bear the consequences of the shortcomings of the legislation? We cannot answer this question, but we are sure that the decision is up to the Chief Executive, because Article 3 of Law no. 2/2011 of 28<sup>th</sup> March states, *“The power to carry out the acts provided by this law is possessed by the Chief Executive, unless there are any special stipulations.”*
- 8. **Therefore, the Chief Executive has two options:**
  - (1) To leave the mistake uncorrected and make the best of it by recognizing these retirees’ entitlement to housing subsidy. The negative consequence is that the Macao SAR Government has to pay an extra expense every year, though the grievance will be redressed.
  - (2) To enforce the law strictly by revising the law immediately in order to redress the legal defects mentioned in this analysis. In this case, a lot of explanations and clarifications will be required and he will probably face the retirees’ objection.

\* \* \*

### Part III: Conclusion

- 1. Sub-paragraph b) of Article 1 of Decree Law no. 96/99/M is an exceptional provision which is only applicable to the retirees who have their pensions transferred to Portugal.
- 2. Therefore, the provision above cannot be adopted to interpret and complement a general regime – the *Statute* in the past and currently Law no. 2/2011 of 28<sup>th</sup> March.

3. Residency in Macao is no longer required for retirees' entitlement to housing subsidy under Law no. 2/2011.
4. Article 10 of Law no. 2/2011 of 28<sup>th</sup> March should not be interpreted by using a regulation which has already been revoked.
5. According to Article 10 of Law no. 2/2011 of 28<sup>th</sup> March, the retirees who have their pensions transferred to the CGA of Portugal are entitled to housing subsidy. Once such interpretation is considered inconsistent with the legislative intent, procedure of law revision should be commenced immediately in order to perfect the relevant law.

\* \* \*

**These are the CCAC's conclusion and suggestion about the relevant issues and only serve as reference for the Chief Executive.**

\* \* \*

Commission Against Corruption, 24<sup>th</sup> August 2011.

The Commissioner Against Corruption  
Fong Man Chong

\* \* \*

## APPENDIX II

### Some of the recommendations and investigation reports by CCAC

Under Paragraph 4, 9 and 12 of Article 4 of Law no. 10/2000 (*Organic Law of the Commission Against Corruption of Macao SAR*), 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 2011, the CCAC rendered a number of recommendations to government departments and submitted the investigation reports to the Chief Executive. Some of them are published here for public reference.

## **Case I – Various problems of Macao Polytechnic Institute**

### **Key Points:**

- The legal status and nature of Macao Polytechnic Institute
- The relation between departments with administrative and financial autonomy and their supervisory bodies
- Significance of the *Statutes of Macao Polytechnic Institute* and its legal effects
- The Board of Management of Macao Polytechnic Institute and other subunits shall act in conformity with the *Statutes of Macao Polytechnic Institute*
- Some units and operating procedures contravene the *Statutes of Macao Polytechnic Institute*
- Some regulations established by Macao Polytechnic Institute also contravene the *Statutes of Macao Polytechnic Institute*

\* \* \*

### **A comprehensive report on problems concerning the organizational structure and operation of Macao Polytechnic Institute<sup>8</sup>**

<sup>8</sup> In this report, the “appendixes” refer to a set of documents provided by MPI to CCAC other than the ones in the report itself.

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## **A comprehensive report on problems concerning the organizational structure and operation of Macao Polytechnic Institute**

### **Part I: Background**

The cases archive of “Commission Against Corruption” (hereinafter referred to as “CCAC”) shows that for a considerable period of time (up to the end of 2009) the CCAC had been receiving complaints and reports against the “Macao Polytechnic Institute” (hereinafter referred to as “MPI”). As a result, the former opened different case files to follow up the complaints.

It was found that, however, the number of complaints against MPI were still on the increase in 2010, with a majority of them concerning its operation and personnel and financial management. Below are the synopses of part of the complaints:

1. On 12<sup>th</sup> January 2010, the CCAC received a complaint from an MPI staff who served on a recruitment committee for teaching posts, alleging that nonstandard approaches and procedures had been adopted in the screening process, thereby causing the panel members to fall into the trap of making untrue statements.
2. On 15<sup>th</sup> January 2010, the CCAC received a complaint from another MPI staff, alleging that MPI had hired a large number of non-local workers, most of whom being academic staff. The complainant therefore believed MPI had not only gone against the principle of giving employment priority to local teachers but also hindered their chances of promotion.
3. On 25<sup>th</sup> January 2010, a report from an MPI staff went to the CCAC, alleging that an academic staff produced fake receipts and asked for reimbursement.
4. On 5<sup>th</sup> February 2010, another complaint from an MPI staff was filed to the CCAC, pointing out that someone allegedly involved in misuse of authority for personal gains.
5. On 22<sup>nd</sup> February 2010, the CCAC found that a recruitment notice published on a newspaper by MPI contained content contravening the law. The former then followed up the matter under its jurisdiction and made suggestions accordingly.

6. On 7<sup>th</sup> May 2010, an MPI staff lodged a complaint to the CCAC, alleging that MPI allowed somebody to run a food store at its facilities without a licence.
7. On 14<sup>th</sup> May 2010, an academic staff of MPI filed a complaint to the CCAC, urging its investigation into a case where MPI had allegedly carried out teacher recruitment by improper means.
8. On 25<sup>th</sup> October 2010, the CCAC received a complaint alleging that MPI handled promotion of academic staff through illegal methods and procedures and was urged to look into the matter.
9. On 26<sup>th</sup> October 2010, a complaint was filed to the CCAC, pointing out that some person-in-charge of MPI involved in abuse of power and making illegal decisions, hence it urged CCAC's investigation.
10. On the same day, another two complaints went to the CCAC, one alleging the promotion of a director of MPI had contravened the law and the other alleging that the criteria for promotion within the institute were not legal and fair. The CCAC was urged to look into the matters.

Above are only some of the many complaints received.

\* \* \*

Rather than rare incidents, the matters indicated in the string of complaints received from MPI staff largely concerned the institute's organizational structure, operation, management, staff recruitment and promotion and expenditure. The traditional way of handling complaints, which involves placing complaints on individual case files, seemed unable to resolve the problems of MPI thoroughly. As a matter of fact, in the past, when complaints poured in the CCAC did endeavour to follow them up. However, the problems were never solved promptly and properly. Take the above-mentioned complaints as an example, the CCAC opened an individual case file for each of them, provided them with individual analysis and conclusions and then notified relevant complainants and MPI.

To grasp the problems of MPI and provide its staff members with an opportunity to voice their opinions and point out the problems, on **24<sup>th</sup> May 2010, the Commissioner Against Corruption of the CCAC and the President of MPI**

**issued a joint letter to call for, by 10<sup>th</sup> June 2010, submission of complaints and suggestions to MPI or the CCAC. The purpose was to facilitate a comprehensive analysis and evaluation by the CCAC on MPI's problems.**

During the stated period MPI received some letters from its academic and administrative staff.

The CCAC subsequently designated personnel to look into various complaints against MPI, whilst commencing a careful study on the documents regarding the operation, organizational structure and internal provisions of the institute.

\* \* \*

The CCAC placed the collected complaint letters on more than ten case files and analyzed the problems in details. Despite that some of the cases were closed due to the lack of grounds, verifiable facts or understanding of some circumstances, the considerable number of complaints received did reveal a fact that managerial and operational problems were prevalent in MPI.

What the said complaints had in common can be concluded as below:

- (1) None of the complainants had anything to do with personal or direct interests. Even though some complaints were backed by sufficient grounds, the complainants would not be affected by any possible changes the complaints might lead to, that is, they would not benefit from the complaints they lodged.
- (2) All of those complaints were filed by MPI's staff and the complained against was MPI, unlike ordinary ones filed by different people from different places usually with personal interests involved.
- (3) Some of the complaints might not be of significance but they somehow insinuated that MPI's overall operation has been unsatisfactory. Some of the problems have even lasted for years yet remain unsolved thus far.

\* \* \*

As mentioned above, records show that the CCAC has been receiving complaints from MPI staff and they have been handled accordingly. While some of the problems were solved, many disappointing circumstances remained unchanged, resulting in continual complaints from its staff. The trouble lied in MPI's failure in dealing with the core issues properly.

The CCAC stayed in contact whenever possible with the management of MPI and met with them on work conferences to exchange opinions and discuss the problems. After studying relevant information, the CCAC believed it should conduct a comprehensive analysis to identify the exact problems, and then notify the supervisory body of MPI of its findings and suggestions. The decision was aimed to eliminate further grievance about MPI's operation and reputation, which would very possibly undermine the institute's development and operational efficiency.

\* \* \*

In the process of implementing its duties, the CCAC obtained plenty of documents and information from MPI, including:

- *Statutes of Macao Polytechnic Institute* approved by Ordinance no. 469/99/M of 6<sup>th</sup> December;
- *Statutes of Personnel of Macao Polytechnic Institute* approved by Order no. 29/ SAAEJ/99 of 23<sup>rd</sup> August;
- Order no. 186/2008 of the Secretary for Social Affairs and Culture of 29<sup>th</sup> December;
- *Recruitment Procedure Administrative Staff, Recruitment Procedure for Full-Time Academic Staff, Recruitment Procedure for Full-Time Academic Staff from Mainland China*;
- *Recusal Statement of Members of Recruitment Committees/Grading Panels and Recusal Statement of Members of Recruitment Committees*;
- Proposal no. 127/SAGF/RES/99 and annex – Table of Establishment of non-academic staff;

- Proposal no. P031/PES/2009 (Candidates for Deputy Director of Centre of Continuing Education and Special Projects) and annex – Proposal no. 174/SAGF/PES/96;
- *Table of Establishment of Non-Academic Staff*;
- *Establishment of Non-Academic Staff and Promotion Methods* approved by Resolution no. 06R/CG/PES/2009;
- *Promotion Methods for Non-Academic Staff of the Same Class*;
- Internal notice no. 020/PES/06 of the Personnel Office - *Attendance System* and the audit report;
- *Regulations for Promotion of Academic Staff of the Macao Polytechnic Institute*;
- Proposal no. 019/SAGF/GAB/99 and *Appendix*;
- Resolution no. 01R/CG/2005 - *Guidelines for Staff Establishment and Promotion Criteria for the Rank of Professor of Macao Polytechnic Institute*;
- *Guidelines for Grading and Interview Arrangements for the Recruitment of Full-Time Academic Staff* and *Grading Table for Recruitment of Academic Staff*;
- *Taught Course and Teaching Evaluation Questionnaire* and *Internal Assessment Report on Teaching Quality*;
- *Regulations for Technical and Scientific Committee of Macao Polytechnic Institute*;
- Proposal no.174/SAGF/PES/96(14.08.6) – Annex: *Subsidy for Managerial Members*;
- List of members of the Technical and Scientific Committee;
- Proposal no. P002/PRE/2006 and *Composition and Operating Methods of the English Language Teaching and Research Committee*;
- *Handbook for Academic Staff*;

- Resolution no.32D/CG/2007 of the Board of Management ( Setting up the Registry under the Academic Affairs Department and changing the name of Division for Student Affairs to Student Management Office)
- Resolution no.27D/CG/2009 of the Board of Management (Delegating certain functions to the heads of administrative and the librarian);
- Resolution no.15D/CG/2009 of the Board of Management;
- By-laws of Teaching Quality Committee
- The Plan for the Establishment of the Teaching Material Development Committee of Macao Polytechnic Institute;
- By-laws of Language and Culture Research Centre of Macao;
- Resolution no. 26D/CG/2002 (Academic Requirements for Full-Time Academic Staff);
- Resolution no.003R/CG/PES/02 (Regulations for Training Funding for Academic and Non-Academic Staff);
- Resolution no.14R/CG/PES/2009 (new Regulations for Training Funding for Academic and Non-Academic Staff);
- Resolution no.21D/CG/2004 (Methods for Handling Prize Money Received by Academic Staff and Students from Participating in Competitions in the Name of the Institute);
- Resolution no.11D/CG/2002 (Regulations for Attendance during Office Hours and Smart Card Attendance Recording System for Full-Time Academic Staff);
- Resolution no. 010S/CG/PES/2009 (Regulations for Working Hours).

\* \* \*

## Part II: Analysis and Grounds

### I – Introduction

Excerpts from the complaint letters below provide a glimpse of the problems:

“(…)

*The internal regulations are just not in compliance with the orders published on the gazette. When they are put into exercise, there are still changes. So things could turn out to be very different from what has been expected.*

(…)

*As everybody knows, MPI's academic year begins on 1<sup>st</sup> September and ends on 31<sup>st</sup> August of the following year, which justifies that academic staff have to notify their resignation or retirement by the second semester of every year (i.e. by March or April). MPI is then supposed to work on the replacement of vacancies upon notifications and that has to be done prior to 1<sup>st</sup> September when the new school year starts. However, MPI requires its existing academic staff to file, within one month from 1<sup>st</sup> September, their applications for promotion. Since the spots have been filled, where on earth are the opportunities for internal promotion? Obviously MPI has not the least intention of promoting its existing staff members but considers them as the inferior. According to the customary practice of government departments, before any external recruitment takes place, priority should always be given to internal staff when vacancies arise. MPI, however, is just doing the opposite of what is expected. Their motivation is hard to be understood.”*

“(…)

*A prudent attitude is the first thing MPI must have to better or improve its management and operation. Sensible management means staff members are always treated fairly in terms of remuneration, reward and punishment. If MPI continues to handle matters with a double standard, efforts made for improvement will only prove to be futile and no progress will ever be seen!*

(…)

*Five or six years ago some associate professor of MPI was admitted to a PhD programme at the Macau University of Science and Technology. MPI offered him tuition subsidies and reduced his teaching hours. Two years ago the institute even said yes to his request for a three months' leave for finishing up his doctoral thesis (although it was a no-pay leave his absence from teaching turned out to have lasted six months). Now, two years later, the associate professor said he quit the programme already!*

*(...)*

*What's more, for matters such as some staff disclosing the emails of their superiors to others, going back to hometown or staying out of town without applying for leaves beforehand and having other teachers to substitute them in class without authorization, the institute merely gave warnings to relevant staff!*

*(...)"*

\* \* \*

According to Decree Law no. 49/91/M of 16<sup>th</sup> September, the Chief Executive (or "Governor" before Macao's handover) is the supervisory body (*entidade tutelar*) of the Macao Polytechnic Institute. According to Article 6 of the decree law:

*"1. Macao Polytechnic Institute is subject to the supervision<sup>9</sup> of the Governor.*

*2. The supervisory body<sup>10</sup> has the following powers:*

- a) To approve the Statutes and the Statutes of Personnel of Macao Polytechnic Institute;*
- b) To confirm any amendment made to the organizational structure, commencement and rescission of courses;*
- c) To confirm annual events schedules;*

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<sup>9</sup> Here the Chinese is "監管" (regulation) but the correct legal expression should be "監督" (supervision).

<sup>10</sup> Here the Chinese is "監管者" (supervisor) but the correct expression should be "監督實體" (supervisory body).



- d) *To approve annual budget plans, accounts and reports;*
- e) *To mandate inspections deemed necessary;*
- f) *To exercise other powers vested by law or the Statutes.”*

The Chief Executive has therefore the power and obligation to ensure that MPI operates in accordance with the legal framework and carries out its educational activities in compliance with the government’s policy.

The supervisory power was delegated to the Secretary for Social Affairs and Culture, pursuant to Article 5 and Annex 5 of Administrative Regulation no. 6/1999 of 20<sup>th</sup> December (*Structures, Terms of Reference and Operation of Government Departments and Entities*) on the establishment of the Macao SAR. The provisions are as follows:

*“1. The Secretary for Social Affairs and Culture exercises functions in the following spheres:*

- 1) **Education**;
- 2) *Health*;
- 3) *Social work*;
- 4) *Culture*;
- 5) *Tourism*;
- 6) *Sport*;
- 7) *Youth affairs*;
- 8) *Social security*.

*2. For the purpose of the preceding paragraph, **when the circumstances so demand, the departments and entities indicated in Annex 5 of this administrative regulation is under the jurisdiction or supervision of the Secretary of the Social Affairs and Culture. Annex 5 is a component of this administrative regulation.***”

“Annex 5

(Referred to in Paragraph 2 of Article 5)

(...)

9) Macao Polytechnic Institute;

(...)”

**Nonetheless, in view of the fact that the Chief Executive is the original competent body and that some of the problems do not fall into the said spheres, it is advised that this report be presented to the Chief Executive.**

In addition, according to Article 2 of Law no. 10/2000 of 14<sup>th</sup> August (*Organic Law of the Commission Against Corruption*), CCAC functions independently and is accountable to the Chief Executive. Therefore once it detects any problems about the operation of administrative entities, it should propose suggestions to the Chief Executive so that the illegality and impropriety can be rectified by appropriate means.

\* \* \*

In the course of handling complaints against administrative entities we found that the relation between a supervisory body and a supervised body, along with applicable legal regimes, is always neglected. Let us take MPI for example.

According to Article 6 of Decree Law no. 49/91/M of 16<sup>th</sup> September:

“1. *Macao Polytechnic Institute is subject to the supervision of the Governor (now the Chief Executive).*

2. *The supervisory body has the following powers:*

- a) *To approve the Statutes and the Statutes of Personnel of Macao Polytechnic Institute;*
- b) **To confirm any amendment made to the organizational structure, commencement and rescission of courses;**

- c) *To confirm annual events schedules;*
- d) *To approve annual budget plans, accounts and reports;*
- e) *To mandate inspections deemed necessary;*
- f) *To exercise other powers vested by law or the Statutes.*

(...)”

As mentioned above, in view of the fact that the Chief Executive acts as the original supervisory body of MPI and the supervisory power has been delegated to the Secretary for Social Affairs and Culture, the CCAC has the obligation to present the problems spotted in the course of exercising the duties and its suggestions to the supervisory bodies.

First of all, what the fundamental concept of supervision (*tutela*) is in the legal sense should be made clear.

1. “Administrative supervision” exists based on the premise that there are two different bodies: a “supervisory body” and a “supervised body”, of which one must be a public legal person. The supervised body is usually the public legal person.

“Administrative supervision” is different from all other forms of supervision systems in the following ways:

- (1) First, in administrative supervision, a “supervisory body” and a “supervised body” are usually two separate legal persons or units. This is different from the supervisory system established within the same legal person (i.e. internal supervision).
- (2) It is different from judicial supervision that can only be exercised by the court;
- (3) It is different from internal regulation as it is subject to authorization (*autorização*) or approval (*aprovação*).

2. We may look at the scope of supervision from two perspectives:
  - (1) Supervision over content of decisions (made by the supervised body);
  - (2) Supervision over legality.

For (1), the supervisory body should look at whether the relevant decisions are opportune (*oportuno*) and appropriate (*conveniente*), especially from the points of view of administrative management, financial management and technical management. The supervision does not focus on the legality of the decisions (even though illegalities should be dealt with whenever they occur).

With regard to (2), consideration should always be given to whether the decisions comply with law.

According to the traditional theory, administrative supervision is divided into five types:

**(a) Integrative supervision:**

This type of supervision empowers the supervisory body to authorize or approve the acts of the supervised body.

Authorization means official permission given to an act to happen.

When it comes to approval, the supervised body may perform an act but the act will have no effect. Only when the act has been approved by the supervisory body does it becomes effective. In short, decisions (acts) should not be carried out when they are yet to be approved.

**(b) Supervision intended for inspection:**

This type of supervision empowers the supervisory body to oversee the structure and operation of the supervised body.

**(c) Supervision intended for carrying out punitive acts:**

This type of supervision empowers the supervisory body to impose sanctions on the supervised body when any irregular act conducted by the latter is found. It is a type of disciplinary supervision.

**(d) Supervision intended for abolishing acts:**

This type of supervision empowers the supervisory body to abolish the acts of the supervised body.

**(e) Supervision intended for acting on behalf of the supervised body:**

This type of supervision empowers the supervisory body to enforce acts (decisions) that are legally due for the supervised body when the latter does not act so.

\* \* \*

There are four principles in administrative supervision, as follows:

- (1) Administrative supervision must not be presumed but only exists under certain conditions expressly prescribed by law.
- (2) The scope and types of supervision must also be expressly prescribed by law and must not be presumed.
- (3) The supervisory body does not have power to give orders but to establish guidelines on the acts and activities of the supervised body.
- (4) The supervised body may file complaints, administrative appeals or judicial appeals against the decisions of the supervisory body, provided that they conform to all requirements as stipulated by procedural law.

In conclusion, the supervisory body has the obligation to keep an eye on the content and legality of the acts of the supervised body and also to ensure the latter functions and performs its duties in compliance with the legal framework.

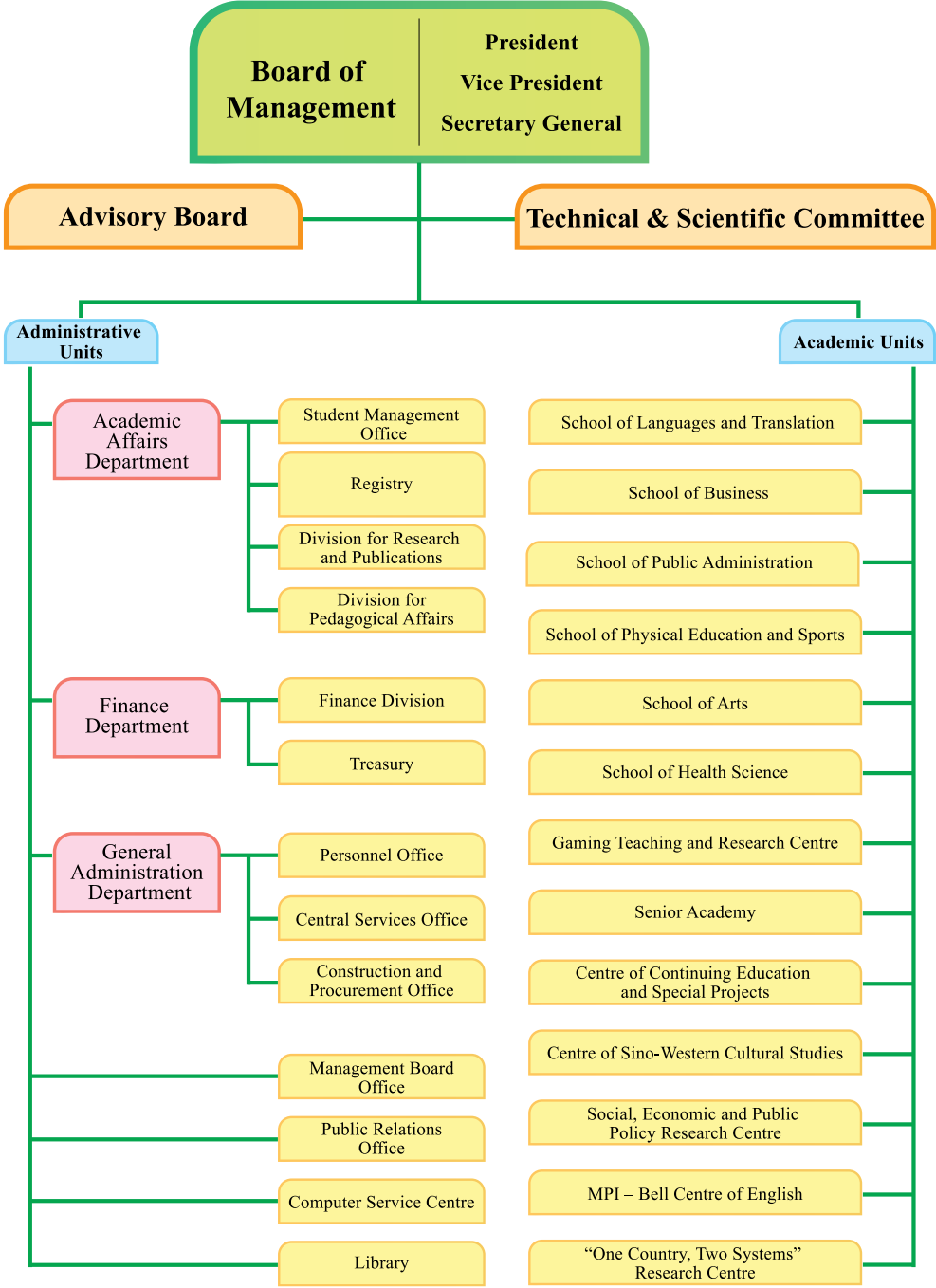
This is the very significance of administrative supervision.

With the understanding of the basic concepts above, we now analyze various problems concerning the operation of MPI.

\* \* \*

II – Problems with the organizational structure

The legal components of MPI are as follows:



The organizational structure of MPI is included in the *Statutes of Macao Polytechnic Institute* approved by Ordinance no. 469/99/M of 6<sup>th</sup> December.

# **1. The establishment of some units under the Board of Management fails to comply with the *Statutes***

Strictly speaking, the Board of Management should be called the management council (*Conselho de Gestão*). It serves as a decision making unit that “gives commands”, arguably the “core” of MPI (although it is also an executor). What serves as the “fundamental law” of the autonomous institution is the *Statutes*, which stipulates that the Board of Management consists of three members (see Article 13 of the *Statutes*):

- (1) The President (who presides at meetings);
- (2) The Vice President;
- (3) The Secretary General.

The Board of Management has the following powers:

- (1) Power of financial and property management;
- (2) Power of recruitment;
- (3) Power of establishment and rescission of internal units;
- (4) Power of establishment and revision of the *Statutes*;
- (5) Power of entering agreements with external parties.

Except in special circumstances, the units and their operation rules as stipulated in the *Statutes* will not be analyzed in the report.

In the process of examining the materials provided by MPI and handling relevant complaints, it was found that the management of MPI established some committees and subunits under the Board of Management and the Technical and Scientific Committee, as follows:



With the materials available we can summarize the process and purpose of the establishment of each of these “new units” and relevant problems in the following table:



### 1. Legal basis and process of establishment:

	Committee/ Subunit	Functions	Legal basis for establishment presented by MPI management	Reference (Document No.)
Committees under the Board of Management	Management Board Office	To provide administrative and technical support for the Board of Management.	Article 34	Appendix 1
	Teaching Quality Committee (TQC)	<ul style="list-style-type: none"> <li>- To give advice on curriculum planning policies.</li> <li>- To give advice on qualitative and quantitative standards for teaching and learning.</li> <li>- To suggest criteria to be met by the tertiary education courses.</li> <li>- To conduct academic evaluation of suggestions on the improvement of existing and new courses.</li> <li>- To discuss and approve criteria for admission to degree programmes and related issues.</li> </ul>	No legal basis for establishment or information showing prior consultation with TSC	Appendixes 2 and 3
	Teaching Materials Development Committee (TMDC)	<p>An affiliate of TQC</p> <ul style="list-style-type: none"> <li>- To coordinate, plan, manage and oversee the teaching materials development of the institute.</li> <li>- To develop plans for compilation, publication and selection of teaching materials.</li> <li>- To examine budget proposals for teaching materials compilation.</li> <li>- To examine/design teaching materials development for degree programmes and general courses (i.e. English, Computing, Mathematics, Mandarin and Cantonese), and to hire teaching materials editors for various subjects.</li> </ul>		Appendix 4

Committees under the Board of Management	Academic Supervision and Arbitration Committee (ASAC)	<p>may attend classes and check content of teaching plans, assignments, test papers and exam papers. It may also have interviews with or attend hearings of those involved in academic disputes, review academic performance of the students and teaching performance of the academic staff involved.</p> <p>- To handle other academic work delegated by the Board of Management.</p> <p>* According to MPI, the name and functions will be revised (Appendix 16)</p>	Subparagraph a) of Paragraph 2 of Article 14 and Subparagraph b) of Paragraph 1 of Article 19	Appendixes 5-7
	Teaching and Research Evaluation Committee (TREC)	<p>- To look into and analyze cases related to teaching and research, it may attend classes and check content of teaching plans, assignments, test papers and exam papers. It may also have interviews with or attend hearings of those involved in cases related to teaching, review academic performance of the students and teaching performance of the academic staff involved.</p> <p>- To present reports on cases about teaching or research to the Board of Management.</p>	No document supporting relevant establishment <sup>11</sup> .	Appendix 8

<sup>11</sup> According to Proposal no.P003/DAP/2006 (see Appendix 8), pursuant to Subparagraph d) of Paragraph 2 of Article 14 of the *Statutes* and after consultation with TSC, the Board of Management approved the *Teaching and Research Evaluation Committee – Terms of Reference*. However, the proposal does not justify the establishment of TREC.

	Committee/ Subunit	Functions	Legal basis for establishment presented by MPI management	Reference (Document No.)
Committees under Technical and Scientific Committee	English Language Teaching and Research Committee (ELTRC)	<ol style="list-style-type: none"> <li>1. To organize the English teaching and research work of the institute.</li> <li>2. To develop plans for English teaching and research work of the institute.</li> <li>3. To evaluate the quality of teaching of English.</li> <li>4. <u>To provide recommendations and advice for the promotion of English teachers.</u></li> <li>5. <u>To serve on English teacher recruitment committees and provide academic evaluations.</u></li> <li>6. To ensure the implementation of the MPI 5-level English proficiency plan.</li> <li>7. <u>To provide recommendations for the selection of the English course coordinator of each academic unit.</u></li> <li>8. To organize English competition activities on behalf of the institute.</li> </ol>	Subparagraph a) of Paragraph 2 of Article 14 and Subparagraph b) of Paragraph 1 of Article 19	Appendix 9
	Computer Teaching and Research Committee (CTRC)	<ol style="list-style-type: none"> <li>1. To organize the computer teaching and research work of the institute.</li> <li>2. To design plans for computer teaching and research work of the institute.</li> <li>3. To evaluate the computer teaching quality.</li> <li>4. <u>To provide recommendations and advice for the promotion of computer teachers.</u></li> <li>5. <u>To serve on computer teacher recruitment committees and provide academic evaluations.</u></li> <li>6. <u>To make recommendations for the selection of the computer related course coordinator of each academic unit.</u></li> <li>7. To organize computer competition activities on behalf of the institute.</li> </ol>	No legal basis for establishment or information showing prior consultation with TSC	Appendix 10

Committees under Technical and Scientific Committee	Gaming Academic Committee (GAC)	<ol style="list-style-type: none"> <li>1. To design development strategies for teaching and research in the gaming area in the institute.</li> <li>2. To coordinate teaching and research work in the gaming area in the institute.</li> <li>3. To evaluate applications for gaming research projects and to present suggestions to the Committee.</li> <li>4. To organize and carry out significant research projects in the gaming area.</li> <li>5. To build cooperative relationship with other institutes or individuals in the gaming area.</li> <li>6. To perform other tasks appointed by the Board of Management.</li> </ol>	No legal basis for establishment or information showing prior consultation with TSC, albeit with consultation with TSC's permanent members.	Appendix 11
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## 2. Composition of the new units:

Committee	Composition	Reference (Document No.)
TQC	<p><b>Permanent members:</b> President of MPI (chairman), Vice President, directors of all schools, the librarian, Head of the Academic Affairs Department, Head of the Computer Service Centre, Head of the Division for Pedagogical Affairs.</p> <p><b>Members appointed each academic year:</b> Three professors appointed by the President and two full-time academic staff elected by each school.</p>	Appendix 3
TMDC	<p><b>Director:</b> Appointed by TQC.</p> <p>Assistant director: Nominated by the Director and approved by TQC.</p> <p><b>Members:</b> Recommended by the Academic Affairs Department, the library, Division for the Pedagogical Affairs, Division for the Research and Publications, all schools, ELTRC, CTRC and the Putonghua Teaching Standardization Co-ordination Group, assessed and suggested by the Director, and then approved by TQC.</p>	Appendix 4
ASAC	Three professors.	Appendix 5

TREC	<p><b>Chairman:</b> Appointed by the Board of Management. The candidate can be a school director of relevant fields, a TQC member or a professor.</p> <p><b>Members:</b> Invited by the Chairman; members should be veteran academic staff in the related areas in the institute, and of a rank not lower than those involved in teaching and research cases.</p> <p>The chairman may invite external experts to be members if necessary.</p>	Appendix 8
ELTRC	<p><b>Chairman:</b> A concurrent position serving for a two-year term.</p> <p><b>Assistant to Chairman:</b> May be appointed upon the proposal of the Chairman.</p> <p><b>Members:</b> The English course coordinator or the person-in-charge of each academic unit.</p>	Appendix 9
CTRC	<p><b>Chairman:</b> President of MPI.</p> <p><b>Vice Chairman:</b> Voted by members.</p> <p><b>Members:</b> Computer related course coordinator of each academic unit, Head of Computer Service Centre, Head of Division for Pedagogical Affairs, Head of Division for Research and Publications, Person in charge of the Computer Information Office of Macao Tourism and Casino Career Centre, and two full-time academic staff appointed by the Board of Management.</p>	Appendix 10
GAC	<p>Personnel of the Social, Economic and Public Policy Research Centre;</p> <p>Personnel of the MPI-Melco Gaming and Entertainment Information Technology Research and Development Centre;</p> <p>Personnel of the Gaming Teaching and Research Centre;</p> <p>Personnel of the MPI-Queen Mary University of London Information Systems Research Centre;</p> <p>Representative of the Computer Service Centre;</p> <p>Representative of the MPI-BMM Testing Centre for Gaming Devices;</p> <p>Gaming research personnel of the School of Business;</p> <p>Gaming research personnel of the School of Public Administration;</p> <p>Other relevant personnel.</p>	Appendix 11

\* \* \*

Let us look at the Board of Management first.

According to Article 14 of the *Statutes*:

*“1. To ensure the administrative, financial and property management of MPI, the Board of Management has the following powers, particularly:*

*a) To set out general guidelines and development plans for MPI after consultation with the Technical and Scientific Committee and the Advisory Board;*

*b) To set out plans and reports of MPI and submit them to the supervisory body for approval;*

*c) To set out budget proposals of MPI and submit them to the supervisory body for approval;*

*d) To receive MPI's revenues;*

*e) To accept, in accordance with law, donations, legacies and bequests for MPI that entail no extra charges, and take necessary conservation measures;*

*f) To approve the transfer and lease of movable and immovable property, the creation of encumbrances and other rights over them, and whenever appropriate, the abolition of them that are deemed unnecessary or inappropriate;*

*g) To approve the purchase of goods and services and the lease of movable and immovable property necessary for the operation of MPI;*

*h) To decide the selection and employment of all personnel of MPI;*

*i) To decide the appointment and dismissal of directors and deputy directors of all academic units and course coordinators of all centres;*

*j) To approve, in accordance with law and the regulations of MPI and after consultation with relevant academic units, the participation in teaching in other educational institutes on a part-time basis;*

*k) To approve the signing of covenants, agreements, protocols and contracts referred to in Paragraph 2 of Article 3 of this Statutes;*

*l) To discuss and decide on matters related to the normal operation of MPI but are not within the explicit competence of other entities.*

*2. After consultation with the Technical and Scientific Committee, the Board of Management has also the following powers:*

*a) To approve the establishment, integration, change and rescission of academic units, relevant departments and research centres;*

*b) To approve the commencement, integration, change and rescission of courses of MPI;*

*c) To reach decisions on modifications of MPI's regulations and present them to the supervisory body for approval;*

*d) To pass the statutes of personnel and other internal regulations of MPI;*

*e) To approve proposals with regard to the symbol of MPI;*

*f) To decide the tuition fee payable by students of various courses of MPI, as well as extra fee for registration, examinations, retakes and other services;*

*3. The Board of Management may delegate part of its functions to its members and leaders of academic units and administrative departments of MPI."*

As mentioned above the Board of Management is chiefly a decision making unit and therefore its operation is relatively simple. Nonetheless, it also needs secretarial services and other administrative support. Therefore it established the Management Board Office.

\* \* \*

### **(I) About the Management Board Office:**

According to Article 34 of the *Statutes of Macao Polytechnic Institute*:

*"1. The composition and competence of all technical administrative departments are defined by the regulations approved by the Board of Management.*

2. *The Board of Management may establish subunits or functional departments within the technical administrative departments when necessary.*

On 17<sup>th</sup> June 2002, the Board of Management discussed and decided on the establishment of the Management Board Office (see Appendix 1) to ensure effective coordination of various subunits.

According to Resolution no. 15D/CG/2009 (see Appendix 12) of the Board of Management, the Management Board Office is led and administered by the Board of Management, so it should not be considered a subunit of a technical administrative department. Although the Board of Management shall establish subunits in accordance with Paragraph 2 of Article 34 (which provides that “*The Board of Management may establish subunits or functional departments within the technical administrative departments when necessary*”), it may consider bringing the Management Board Office under its direct management to carry out administration in accordance with Subparagraph 1) of Paragraph 1 of Article 14 of the *Statutes*. This may sound more practical.

\* \* \*

## **(II) About TQC, TMDC, ELTRC, CTRC and GAC**

According to the explanation of the management of MPI, the Board of Management established the following units/committees in accordance with Subparagraph 1) of Paragraph 1 of Article 14 of the *Statutes of Macao Polytechnic Institute*:

- (1) The Teaching Quality Committee;
- (2) The Teaching Materials Development Committee;
- (3) The English Language Teaching and Research Committee;
- (4) The Computer Teaching and Research Committee;
- (5) The Gaming Academic Committee.



Among them the English Language Teaching and Research Committee, the Computer Teaching and Research Committee and the Gaming Academic Committee (the last three committees) are the dedicated task forces created under the Technical and Scientific Committee in accordance with Paragraphs 1, 4 and 5 of Article 6 of the *Regulations for Technical and Scientific Committee*.

Let us analyze this part first.

The Technical and Scientific Committee is an original organization (as set forth by the *Statutes*) and its composition and powers are specified in Articles 18 and 19 of the *Statutes of Macao Polytechnic Institute* (approved by Ordinance no. 469/99/M of 6<sup>th</sup> December).

According to Article 19 of the *Statutes*:

*“1. The **Technical and Scientific Committee** has the following powers:*

*a) **To propose** to MPI on the principles on education, research, cultural promotion and social services in accordance with the region’s education policy;*

*b) **To provide opinions** on commencement, suspension, change and rescission of academic units and programmes;*

*c) **To approve** the regulations about study assessment, promotion and pre-requisite;*

*d) **To decide on** the issues of subject equivalence and recognition in relation with degrees, diplomas, study plans and disciplines;*

*e) **To propose** the composition of the jury of admission and promotion examination in MPI;*

*f) **To provide opinions** on the purchase of books and other academic equipment;*

*g) **To provide opinions** on all matters authorized by the President of MPI to TSC;*

*h) **To provide opinions** on the amendments of the *Statutes* and *Statutes of**

*Personnel of MPI;*

*i) To set up academic awards.*

*2. Consultation must be made with the Technical and Scientific Committee on all affairs that fall within its jurisdiction.*

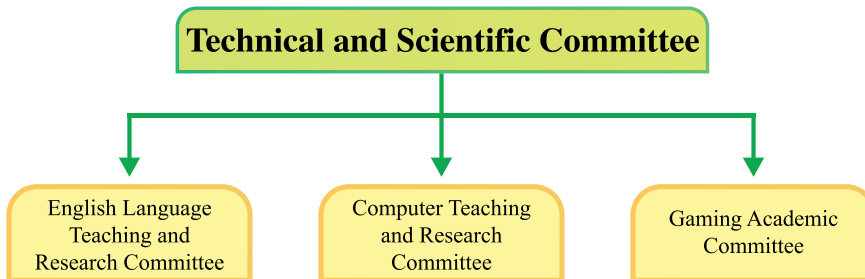
*3. The Technical and Scientific Committee is subject to its own regulations.”*

Obviously, although Technical and Scientific Committee is a consultative and decision making body, its major function is a consultancy. This justifies the use of the underlined expressions in Subparagraphs a), b), e), f) and g) in the above provisions, as follows:

- a) To propose to MPI on the principles on education, research, cultural promotion and social services in accordance with the region’s education policy;*
- b) To provide opinions on commencement, suspension, change and rescission of academic units and programmes;*
- e) To propose the composition of the jury of admission and promotion examination in MPI;*
- f) To provide opinions on the purchase of books and other academic equipment;*
- g) To provide opinions on all matters authorized by the President of MPI to TSC;*
- h) To provide opinions on the amendments of the Statutes and the Statutes of Personnel of MPI;*

The underlined expressions above are different from those used in Subparagraphs c), d) and i), as the Technical and Scientific Committee is vested with the decision making power in Subparagraphs c), d) and i), which is clearly defined in the article.

Let us see how the management of MPI put the above article into practice.



If the establishment of these dedicated task forces was to realize work specialization, which means the Technical and Scientific Committee comes to final opinions based on discussions and proposals of the task forces and then presents them to the Board of Management for approval, there would not be a problem. However, the case is that they have altered relevant provisions at liberty without conforming to the provisions set forth in the *Statutes*.

The English Language Teaching and Research Committee is subject to its Operating Methods established by the Board of Management, which stipulates the following:

- “1. To organize the English teaching and research work of the institute;
2. To develop plans for English teaching and research work of the institute;
3. To evaluate the quality of teaching of English;
4. To provide recommendations and advice for the promotion of English teachers;
5. To serve on English teacher recruitment committees and provide academic evaluations;
6. To ensure the implementation of MPI 5-level English proficiency plan;
7. To provide recommendations for the selection of the English course coordinator of each academic unit;

8. *To organize English competition activities on behalf of the institute.*

***Composition:***

1. *A chairman, which is a concurrent position serving for a two-year term;*
2. *An assistant to chairman that may be appointed upon the proposal of the Chairman;*
3. *Members are the English course coordinators or the people-in-charge of all the academic units.*
4. *Secretarial work is carried out by the Division for Pedagogical Affairs.*

***Academic qualifications of Chairman and selection criteria:***

1. *Possession of a Doctoral Degree in the related fields;*
2. *Excellent qualifications in English language teaching and research work;*
3. *Publication of a minimum of five theses in major Chinese or foreign journals in the recent five years;*
4. *A minimum of five years' teaching experience in the relevant fields;*
5. *Serving as a course coordinator or in a higher position for a minimum of four years;*
6. *The Chairman is selected from the academic staff in the institute through open recruitment. The procedure is carried out by the Division for Pedagogical Affairs. The result will be examined and approved by the Committee of the institute and the Board of Management respectively.*

***Remuneration:***

1. *The amount of monthly salary received by the Chairman is equivalent to that of a professor plus the value of 140 points of the salary index of the public service;*

2. *The amount of monthly salary received by the Assistant to the Chairman is equivalent to that of an associate professor or a higher rank plus the value of 110 points of the salary index of the public service.*

***Operation:***

1. *At least one meeting shall be summoned each month;*
2. *A biannual evaluation report on teaching and research shall be submitted to the Board of Management in writing;*
3. *An annual report shall be presented to the Technical and Scientific Committee both orally and in writing.*

(...)”

Since the Technical and Scientific Committee does not have decision making power, any dedicated task forces/committees under it surely should not have such power either. In other words, in view of that the powers of such task forces have exceeded those of the Technical and Scientific Committee, their establishment should be considered a violation of law.

\* \* \*

Let us also look at the **Computer Teaching and Research Committee.**

Like the English Language Teaching and Research Committee, the *Organizational Structure of the Computer Teaching and Research Committee and Operating Methods* provides that the committee has the following functions:

1. *To organize the computer teaching and research work of the institute;*
2. *To design plans for computer teaching and research work of the institute;*
3. *To evaluate the computer teaching quality;*
4. *To provide recommendations and advice for the promotion of computer teachers;*

5. *To serve on computer teacher recruitment committees and provide academic evaluations;*
6. *To make recommendations for the selection of the computer related course coordinator of each academic unit;*
7. *To organize computer competition activities on behalf of the institute.*

\* \* \*

Like the two above-mentioned committees, the Gaming Academic Committee has also involved in the same violation.

The management of MPI replied with the following justification: ***“The Board of Management establishes TQC, TMDC, ELTRC, CTRC and GAC in accordance with Subparagraph 1) of Paragraph 1 of Article 14 of the Statutes. The last three committees ‘are dedicated task forces established by the Technical and Scientific Committee in accordance with Paragraphs 1, 4 and 5 of Article 6 of its regulations’”*** (see Part 6 on p.5 and point 3 of Part 4 on p.4, Appendix 13).

Let us see if such explanation is justifiable.

According to Article 6 of the *Regulations for Technical and Scientific Committee* (hereinafter referred to as the *Regulations for TSC*) (see Appendix 14):

“1. The Committee meets in plenary sessions and has a standing committee composed of one representative from each of the schools. Dedicated task forces can also be set up to give opinions on special issues entrusted by the plenary with regard to academy, education and academic staff.”

(...)

4. *Meetings of a dedicated task force are presided over by its leader. The position of leader is assumed by the chairman or a member of the task force appointed by the chairman.*

5. *Meeting dates of a dedicated task force are decided by the leader whenever he/*

*she deems suitable. Proposals will be approved at meetings by an absolute majority of members, followed by the approval of the plenary.”*

Like what is said above, although TQC, TMDC, ELTRC, CTRC and GAC do not directly involve in teaching and research work, TQC, TMDC, ELTRC and CTRC are actually responsible for supervising and coordinating the teaching and research work of the institute, and GAC is in charge of designing development strategies for teaching and research and coordinating teaching and research work in the gaming area in the institute.

It can be understood that the functions of these committees do not simply involve “administrative, financial and property” management as specified in Subparagraphs b) to l) of Paragraph 1 of Article 14 of the Statutes. Therefore, MPI could not use Subparagraph l) of Paragraph 1 of Article 14 of the Statutes as the legal basis for the establishment of the five committees.

In addition, Subparagraph a) of Paragraph 1 and Paragraph 2 of Article 14 of the Statutes also provide that:

*“1. To ensure the administrative, financial and property management of MPI, the Board of Management has the following powers, particularly:*

*a) To set out general guidelines and development plans for MPI after consultation with the Technical and Scientific Committee and the Advisory Board;*

*(...)*

*2. After consultation with the Technical and Scientific Committee, the Board of Management has also the following powers:*

*a) To approve the establishment, integration, change and rescission of academic units, relevant departments and research centres;*

*b) To approve the commencement, integration, change and rescission of courses of MPI;*

*c) To reach decisions on modifications of MPI's regulations and present them to the supervisory body for approval;*

d) To pass the statutes of personnel and other internal regulations of MPI;

e) To approve proposals with regard to the symbol of MPI;

f) To set the tuition fee payable by students of various courses of MPI, as well as extra fee for registration, examinations, retakes and other services;

(...)"

When it comes to the general guidelines and development plans of MPI and approval of academic affairs, the Board of Management must have consultation with TSC.

However, **there is no information showing that the Board of Management had consultation with TSC before approving the establishment of the said committees (except ELTRC). Even though MPI considered the creation of those committees as implementation of functions empowered by Paragraph 2 of Article 14 of the Statutes, relevant procedure was not appropriate.**

As a matter of fact, according to Subparagraphs a) and b) of Paragraph 2 of Article 14 of the *Statutes*, although the Board of Management has the power to approve the commencement, integration, change and rescission of “academic units, relevant departments and research centres” and “courses of MPI”, the actual functions of the five committees (TQC has the power to review teaching quality reports of all the schools, give advice on qualitative and quantitative standards for teaching and learning, give suggestions on policies and regulations regarding curriculum planning, discuss and approve criteria for admission to degree programmes and oversee the quality of courses; TMDC is in charge of managing and overseeing all affairs relating to teaching materials development of the institute; ELTRC and CTRC are responsible for organizing, developing plans for and evaluating the quality of teaching and research work of English and computer of the institute respectively; GAC is responsible for design development strategies for and coordinating teaching and research work in the gaming area in the institute) apparently exceed those of independent academic units, research centres or courses. Therefore, it is certain that the five committees cannot be considered “independent” academic units defined in the Statutes.

Therefore, Paragraph 2 of Article 14 of the Statutes cannot serve as the legal basis of the establishment of the said five committees either.



The following is worth our attention:

- TQC is responsible for ensuring teaching quality and course management;
- TMDC is responsible for managing issues regarding teaching materials;
- ELTRC, CTRC, GAC are responsible for developing plans for and organizing teaching and research work in the fields of English, computer and gaming in the institute respectively.

It is not difficult to find that:

- (1) These functions all correspond to the legal powers of TSC and the Pedagogical Scientific Committee<sup>12</sup> [see Subparagraphs b) and f) of Paragraph 1 of Article 19 and Subparagraphs a) to c) and e) of Paragraph 1 of Article 28 of the *Statutes*];
- (2) The functions of ELTRC and CTRC, namely giving recommendations and advice on the promotion of English/computer teachers, serving on English/computer teacher recruitment committees and providing academic evaluations and giving recommendations for the selection of the English/computer related course coordinator of each academic unit, all correspond to the legal powers of the directors/heads of academic units and PSC [see Subparagraph d) of Article 25 and Subparagraphs h) and i) of Paragraph 1 of Article 28 of the *Statutes*].

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<sup>12</sup> According to Article 28 of the *Statutes*:

“1. The Pedagogical Scientific Committee has the following powers:

- a) To make suggestions and give advice on issues of a pedagogical nature;
- b) To give advice on the operation of courses and submit proposals with regard to the commencement, change and rescission of courses;
- c) To give advice on the regulations for study, evaluation, promotion of students and prerequisites;
- d) To make suggestions on teaching training activities;
- e) To draft regulations for courses or revise the existing ones, and present them to the President for feedbacks;
- f) To submit the annual work plan, activity report and budget proposal on each of the courses or events;
- g) To give advice on applications for the equivalency of courses taken at other tertiary education institutions;
- h) To coordinate the evaluation of teaching performance of teachers;
- i) To give advice on the employment of academic staff;
- j) To assign teaching duties every year;
- k) To propose collaboration with other public and private entities in organizing activities.

2. The Pedagogical Scientific Committee is subject to its own regulations.”

Therefore, even though the Board of Management had consulted TSC before approving the establishment of the five committees, the Board of Management must not change, merely through a resolution, the powers of any management body, academic unit and PSC of academic units of MPI as stipulated in the Statutes. After all, with the existence of the five committees, in what way can MPI ensure that the Board of Management has consultation with TSC and PSC on certain matters in accordance with law [Paragraph 2 of Article 19 and Subparagraph a) of Paragraph 1 of Article 28] with respect to issues that have been delegated to these committees but is also related to teaching and research?

Such practice of the Board of Management obviously has made substantial changes to the decision making mechanism constructed by the lawmaker (under which TSC gives opinions to the Board of Management who then makes decisions; PSC gives opinions to the directors who then make suggestions to the Board of Management. The Board of Management then makes decisions) through teaching and teaching materials of the subjects of MPI (such as English, computer and gaming research). Given that the positions of committee members are not assumed by TSC or PSC members, this has actually deprived them of the right and obligation to discuss and voice their opinions on academic and research issues of the institute. Therefore the relevant committees cannot be considered internal task forces of TSC or PSC; as a matter of fact, there is no provision in the *Statutes* stipulating that TSC and PSC may give up the powers vested to them by the lawmaker. Moreover, the Board of Management may only delegate its powers to “the members of Board of Management and the leaders of academic units and administrative departments of MPI” (Paragraph 3 of Article 14 of the *Statutes*).

In summary, the Board of Management has diluted the powers of TSC and PSC via the establishment of various types of committees, which has actually amended the Statutes. The act has changed not only the internal operation of the MPI but also the structure of institute. Even though MPI deemed it necessary to make amendments to the *Statutes*, according to Subparagraph a) of Paragraph 2 of Article 6 of Decree Law no. 49/91/M of 16<sup>th</sup> September and Subparagraph c) of Paragraph 2 of Article 14 of the *Statutes*, the new Statutes is still subject to the ratification/approval of supervisory body and should then be published on Series I of the *Official Gazette of the Macao SAR* to ensure the observance of the legal administrative procedure.

\* \* \*

### (III) About ASAC and TREC:

- (1) According to Proposal no. P021/DAP/2007 of MPI, on 28<sup>th</sup> May 2007 the Board of Management approved the establishment of the Academic Supervision and Arbitration Committee (ASAC) and passed the *Regulations for Academic Supervision and Arbitration Committee*. The committee is responsible for arbitrating disputes relating to teaching and research and handling other academic work delegated by the Board of Management (see Appendix 5). **However, no legal basis for the establishment of ASAC and the approval of its regulations could be seen in the proposal.**
  
- (2) On 29<sup>th</sup> October 2009, the coordinator of ASAC pointed out in his proposal no. P54/ASAC/2009 that during the previous two years “ASAC arbitrated some complaints concerning teachers’ promotions and cases about teachers’ academic qualifications. ASAC also provided plenty of suggestions and advice for the institute on the establishment and revision of relevant rules and regulations and other potential academic development issues that would arise when it is upgraded to a university.” In order to effectively exercise the academic evaluation and arbitration functions of ASAC discussed and decided on 11<sup>th</sup> September by the Board of Management, the coordinator also proposed that “ASAC’s incorporation into the structure of MPI and transformation from an academic advisory body into an entity of the institute with the following rules...”. After consultation with TSC, on 6<sup>th</sup> November 2009 the Board of Management approved the establishment of ASAC as an entity of the institute. However, relevant rules can only be decided after legal advice has been sought (see Appendix 6).

There is no legal basis for the establishment of ASAC as an entity shown in this proposal.

- (3) Later on, on 9<sup>th</sup> November 2009, the President pointed out in the proposal no. P080/PRE/2009 that after consultation with TSC the Board of Management approved the establishment of ASAC on 6<sup>th</sup> November 2009 in accordance with Subparagraph a) of Paragraph 2 of Article 14 and Subparagraph b) of Paragraph 1 of Article 19 of the Statutes. A request for approval of the establishment of ASAC was also presented to the Chief Executive in accordance with Subparagraph b) of Article 6 of Decree Law no. 49/91/M of 16<sup>th</sup> September. After perusal the Chief Executive put down the word “seen” on the document on 20<sup>th</sup> November 2009 (see Appendix 7).

- (4) The CCAC once received complaints from MPI staff claiming that hiring the coordinator of the committee was the real intention of the President behind the establishment of ASAC (see cases no. 060/C/2010 and 140/C/2010). Therefore, the CCAC had meetings with MPI representatives<sup>13</sup> to understand the matter (see Appendix 15). According to MPI's explanation, the committee was set up under the Division for Research and Publications of the Academic Affairs Department in accordance with Paragraph 2 of Article 34 of the *Statutes* (i.e. "*The Board of Management may establish subunits or functional departments within the technical administrative departments when necessary*"). **In a response to MPI, the CCAC, however, pointed out that no description of ASAC's functions was specified in the provisions regarding the legal powers of the Academic Affairs Department in the *Statutes*. Therefore, Paragraph 2 of Article 34 of the *Statutes* cannot be considered the legal basis for the establishment of ASAC.**

MPI then explained that "*ASAC assists the Board of Management in giving advice on disputes in relation to teaching and research, while the Board of Management remains to be the decision maker. MPI also inquired whether ASAC can be established under the Board of Management in accordance with Subparagraph 1) of Paragraph 1 of Article 14 of the *Statutes* (i.e. "to discuss and decide on matters related to the normal operation of MPI but are not within the explicit competence of other entities."*)". The CCAC suggested MPI that it should be clear about whether the functions of the entity to be set up have anything to do with the institute's "normal operation", and that it should present a detailed report to and get approval from its supervisory body. Also, the institute should be aware of whether the denomination of the entity agrees with its functions.

MPI representatives committed that it would "examine whether there are other similar cases about establishing new entities in excess of powers and present them to the supervisory body for approval".

On 17<sup>th</sup> May 2010, in a reply letter to the CCAC, the President of MPI stated that regarding the establishment of ASAC, "*the Board of Management is currently under the process of modifying the relevant denomination and functions in accordance with the *Statutes of Macao Polytechnic Institute* and will present*

<sup>13</sup> MPI representatives who attended the meeting were the Vice President, the Secretary General, the Chief of General Administration Department, the Head of the Personnel Office and a legal advisor.

them to the supervisory body for approval upon completion” (see Appendix 16).

As the reply letter from MPI only mentioned what the institute would do to the denomination and the functions of ASAC, obviously **MPI has yet to fulfil its pledge to “examine whether there are other similar cases about establishing new entities in excess of powers and present them to the supervisory body for approval”. The institute was merely following up the matters related to ASAC.**

**As a matter of fact, Order no. 15/2011 of the Chief Executive of 31<sup>st</sup> January (revision of the *Statutes of Personnel of Macao Polytechnic Institute*) published at an earlier time mentioned nothing about these issues.**

- (5) Judging from the above facts, it is clear that MPI already came to realize that Subparagraph a) of Paragraph 2 of Article 14 and Subparagraph b) of Paragraph 1 of Article 19 of the *Statutes* could not be considered the legal basis for the establishment of ASAC. However, at the meeting held on 3<sup>rd</sup> May 2010, instead of admitting the establishment had been based on the aforesaid provisions, MPI attempted to convince that ASAC should be considered a committee set up under the Division for Research and Publications of the Academic Affairs Department by citing Paragraph 2 of Article 34 of the *Statutes* (i.e. “*The Board of Management may establish subunits or functional departments within the technical administrative departments when necessary*”). After the CCAC representatives showed disapproval of using this as the legal basis, MPI attempted to sound out the possibility of using Subparagraph l) of Paragraph 1 of Article 14 of the *Statutes* as the legal basis to set up ASAC.
- (6) Since MPI stated in a reply letter to the CCAC that, regarding the establishment of ASAC, “*the Board of Management is currently under the process of modifying the relevant denomination and functions in accordance with the Statutes of Macao Polytechnic Institute and will present them to the supervisory body for approval upon completion*”, MPI should bear in mind that **matters not within the explicit competence of other entities** as defined in Subparagraph l) of Paragraph 1 of Article 14 of the *Statutes* **shall be related to the normal operation of MPI but not be listed in Subparagraphs b) to k) of the same paragraph that simply cover administrative, financial and property management.**
- (7) Despite that there is no document supporting the establishment of the Teaching

and Research Evaluation Committee (TREC), according to the *Regulations for Teaching and Research Evaluation Committee*, the convenor of TREC is appointed by the Board of Management on a case-by-case basis and the members are appointed/invited by the convenor. Moreover, the members must be the ones who involve in teaching in interdisciplinary academic units or individual academic units. According to Paragraph 1 of Article 18, Paragraph 2 of Article 19 and Subparagraphs a) and h) of Paragraph 1 of Article 28 of the Statutes, when the circumstances so demand, TREC can be set up after consultation with TSC or PSC.

- (8) However, since the convenors appointed by the Board of Management “can be a school director of the relevant field” [according to Subparagraph a) of Article 25 of the *Statutes*, “*the director shall ensure the management and coordination of work within the academic unit, and especially: a) to represent the academic unit and ensure its normal operation*”]. In that case, the Board of Management may face the questions of whether the directors of the academic units can intervene in or will have too much discretion to deal with the issues of the academic units they belong to. Therefore, Subparagraph a) of Paragraph 2 of Article 14, Subparagraph b) of Paragraph 1 of Article 19, Paragraph 2 of Article 34 and Subparagraph l) of Paragraph 1 of Article 14 of the *Statutes* **cannot be considered the legal bases for the establishment of TREC. MPI has also to review whether the establishment of TREC has contravened the Statutes.**
- (9) **Although it is understandable that to optimize and improve the operational efficiency dedicated committees/task forces were established under the managing bodies to coordinate and organize certain types of activities within the academic or functional units, MPI must bear in mind that the functions of these units shall not exceed the powers of the managing bodies as stipulated in the Statutes. Otherwise, it would go against the management structure created based on the Statutes by the lawmaker.**

\* \* \*

## 2. The composition of Technical and Scientific Committee (TSC) fails to comply with the *Statutes*

- (1) According to Article 2 of the *Regulations for TSC*, the committee is composed of

the the following parties:

- a) *The President, who is the Chairman;*
- b) *The Vice President;*
- c) *Directors of all academic units;*
- d) *Deputy directors of all academic units;*
- e) *All centre coordinators (including deputy centre coordinators);*
- f) *All course coordinators (including assistant course coordinators);*
- g) *No more than two professors or PhD degree holders appointed among the academic staff of each course.”*

Judging from Article 16 (i.e. “*the regulations passed at the plenary session on 3<sup>rd</sup> March 2005 will take effect in the following meeting after the approval of the Board of Management*”) and Paragraph 1 of Article 8 (i.e. “*the plenary meetings are convened three times within each school year, namely in October, February and July*”) of the *Regulations for TSC*, there is a reason to believe that the commencement of operation of TSC could date back to as early as July 2005.

(2) However, according to Paragraph 2 of Article 18 of the *Statutes*:

*“The Technical and Scientific Committee is composed of the following parties:*

- a) *The President, who is the Chairman;*
- b) *The Vice President;*
- c) *Directors of all academic units;*
- d) *Deputy directors of all academic units;*
- e) *All centre coordinators;*
- f) *All course coordinators;*

g) Professors or PhD degree holders.”<sup>14</sup>

**Apparently, there are noticeable discrepancies between the provisions of the Regulations for TSC and the provisions of the Statutes with respect to the composition of the committee.**

- (3) According to MPI’s explanation (see point 2 of Part 4 on p.4, Appendix 13), since 2005 the positions of coordinators of the Social, Economic and Public Policy Research Centre and MPI-Bell Centre of English have been assumed by the President of MPI, and the deputy directors have been in charge of administration. For the majority of the degree programmes, there are assistant course coordinators helping the course coordinators carry out course administration. As all of them take up administration and understand the operation and development needs of relevant units/courses, MPI believes it is appropriate to consider “all centre coordinators” and “all course coordinators” as referred to in relevant provisions of the Statutes should include all deputy centre coordinators and assistant course coordinators.

In 2005, given the number of members who were professors or PhD degree holders reached nearly 40 and the growth in the number of professors was outpaced by that of academic staff with a PhD degree, if all the PhD degree holders were to be included as members of TSC, the operation efficiency of the committee would be affected due to the excess of members. Therefore, it was necessary to limit the number of members of this category. Besides, Article 18 of the *Statutes* does not regulate that all the professors or PhD degree holders must become TSC members. Therefore, at the plenary meeting on 3<sup>rd</sup> March 2005, TSC decided that amendments would be made to the two subparagraphs above with regard to the composition of the committee.

MPI also pointed out that Subparagraph f) of Article 7<sup>15</sup> of the *Statutes* stipulates that the institute has the power to lay down internal regulations including the *Regulations for TSC*, and that Paragraph 3 of Article 19<sup>16</sup> of the *Statutes* also

<sup>14</sup> The Portuguese version of the article is “*Compõem o Conselho Técnico e Científico: a) O Presidente, que preside; b) O vice-presidente; c) Os directores das unidades académicas; d) Os subdirectores das unidades académicas; e) Os coordenadores de centros; f) Os coordenadores dos cursos; g) Os professores coordenadores e os possuidores do grau de doutor.*”

<sup>15</sup> Article 7 of the *Statutes* provides that “the Macao Polytechnic Institute has the following powers: (...) f) To establish its internal regulations in accordance with the law and the *Statutes* (...)”.



provides that TSC is subject to its own regulations. The *Regulations for TSC* also stipulates that TSC itself may put forward and approve any revision to be made to its regulations. Therefore the composition of the committee set out in the *Regulations for TSC* is in fact revised by TSC according to Article 18 of the Statutes.

- (4) What is worth our attention is that the explanation given by MPI for the revised Subparagraph g) of Article 2 of the *Regulations for TSC* (i.e. “No more than two professors or PhD degree holders appointed among the academic staff of each course.”) was that since the growth in the number of professors was outpaced by that of academic staff with a PhD degree, if all the PhD degree holders were to be included as members of TSC, the operation efficiency of the committee would be affected due to the excess of members. Therefore, it was necessary to limit the number of members of this category. This means that MPI believed if the composition of TSC adhered to Subparagraph g) of Paragraph 2 of Article 18 of the *Statutes* (Professors or PhD degree holders), the operational efficiency of the committee would be affected. Obviously, this is how the institute actually implemented the above-mentioned provision in the past: those who were professors or PhD degree holders were definitely eligible to become TSC members and take part in discussions on the institute’s affairs. Later the institute came to realize there were too many candidates meeting these requirements – in 2005, the number of members who were professors or PhD degree holders reached nearly 40 and the growth in the number of professors was outpaced by that of academic staff with a PhD degree. Therefore it made a decision to revise the relevant provision to limit the number.
- (5) **However, MPI’s decision on the revision in fact has substantially changed the content of Subparagraph g) of Paragraph 2 of Article 18 of the Statutes.** According to the subparagraph, neither shall the number of professors and PhD degree holders be limited nor are they subject to the appointment by the committee or the superior. **However, the Regulations for TSC has not only set a limit to the number (no more than two), but has also made them subject to the “appointment” by the committee.**

**In other words, whether professors or academic staff with a PhD degree are**

<sup>16</sup> Paragraph 3 of Article 19 of the *Statutes* provides that “the Technical and Scientific Committee is subject to its own regulations”.

**“appointed” as TSC members are totally at the discretion of the committee or the superior** (i.e. the Board of Management, directors, deputy directors or course coordinators). Moreover, given the *Regulations for TSC* stipulates that “no more than two professors or academic staff with PhD degrees from each of the courses can be appointed”, relevant organization or superiors are at their discretion to appoint one, two or even none of the said people as TSC members.

- (6) MPI added that in practice there are deputy positions in all centres, research centres and degree programmes to take charge of or assist with administration. Therefore the “all centre coordinators” and “all course coordinators” as indicated in Subparagraphs e) and f) of Paragraph 2 of Article 18 of the *Statutes* should also refer to relevant “deputy centre coordinators” and “assistant course coordinators”. Compared with the said two subparagraphs that do not expressly indicate the deputy positions in writing, Subparagraphs b) (the Vice President) and d) (deputy directors of all academic units) of the same paragraph do clearly list the deputy positions. Undoubtedly, MPI’s interpretation contradicts the lawmaker’s intention to list the deputy positions if they should exist.
- (7) Let us also look at Paragraph 1 of Article 21 of the *Statutes* with respect to the composition of the Advisory Board: “(...) c) *The President*; d) *The Vice President* (...) g) *Directors of all academic units*”. The lawmaker specifies that the Vice President shall be a member of the Advisory Committee. Since the committee also consists of “directors”, would that mean we should consider them both directors and deputy directors according to MPI’s interpretation? If so, such interpretation would just sound far-fetched.

Therefore the following legal explanation should be considered acceptable: **the lawmaker already took into account whether to include any deputy positions in a governing body. If such positions are seen fit, the lawmaker would expressly list them as members. Therefore, MPI should not interpret that Subparagraphs e) and f) of Paragraph 2 of Article 18 also refer to deputy directors and assistant course coordinators.**

- (8) It should also be noted that according to Paragraph 1 of Article 23 of the *Statutes*, “the Macao Polytechnic Institute is composed of various academit units in the forms of tertiary institutions, centres and colleges (...)”<sup>17</sup>. Therefore, it can be understood that the “centres”<sup>18</sup> set up by MPI (according to the information

<sup>17</sup> The Portuguese version is: “O MPI estrutura-se em unidades académicas na forma de Escolas Superiores, Centros e Academias vocacionadas ...”.

provided by the institute, the word “Centre” is used as the English title for all the academic units named “研究所” (literally, “research centre”) in Chinese) can be equivalent to the independent academic units, namely “tertiary institutions” or “colleges”; also, according to Article 30 which provides that “*after consultation with the Technical and Scientific Committee and approval of the Board of Management, the President may approve the establishment of centres within the Macao Polytechnic Institute and these centres can be/can be not integrated into the academic units (...)*”<sup>19</sup>, the centres can be subunits under academic units or independent units not under any of the academic units.

(9) According to Article 24 of the *Statutes*:

“1. (...) ”

2. *When the circumstances so demand, the deputy director shall act on behalf of the director in the event of absence or inability to perform duties of the latter.*
3. *The President may, on the recommendations of the director of relevant academic unit, appoint a coordinator to arrange and organize work of each course, field or centre.*
4. *After consultation with the Technical and Scientific Committee and approval of the Board of Management, the President shall appoint or dismiss directors, deputy directors, centre coordinators and course coordinators of all academic units.”*<sup>20</sup>

Judging from the above provisions, the lawmaker of the *Statutes* **only stipulates that the academic units can have deputy positions** – deputy directors (*subdirector*) and that the President may, on the recommendations

<sup>18</sup> For example, the Centre of Sino-Western Cultural Studies and the Social, Economic and Publicity Research Centre (see Appendix 17).

<sup>19</sup> The Portuguese version is: “*O Presidente, após deliberação do Conselho de Gestão e ouvido o Conselho Técnico e Científico, pode autorizar a criação, no MPI, de centros integrados ou não em unidades académicas ...*”.

<sup>20</sup> The Portuguese version is: “*1. (...) ; 2. Quando as circunstâncias o justificarem o director pode ser coadjuvado por um subdirector, que o substitui nas suas faltas e impedimentos. 3. O Presidente pode, sob proposta do director da respectiva unidade, nomear um coordenador para proceder à organização e coordenação das actividades de cada curso, área ou centro. 4. Os directores e os subdirectores das unidades académicas, os coordenadores de centros e de cursos são nomeados e exonerados pelo Presidente, após deliberação do Conselho de Gestão, ouvido o Conselho Técnico e Científico(...)*”.

of the director (*director*), appoint a coordinator (*coordenador de cada curso, área ou centro*) within relevant academic unit. This justifies why the positions “centre coordinators” (*coordenadores de centros*) and “course coordinators” (*coordenadores de cursos*) exist; **nevertheless, those provisions of the Statutes do not indicate that any deputy positions (i.e. deputy centre coordinators (*vice-coordenadores de centros*) and assistant course coordinators (*vice-coordenadores de cursos*)) shall be created for the coordinators (*coordenadores*).**

(10) **Therefore we can draw such a conclusion: For any centre (*centro*) under the academic units, no such position as deputy coordinator (*vice-coordenador*) can be created for centre coordinators (*coordenador de centro*);** for those “independent” centres not under any academic units, the lawmaker does not expressly regulate whether they can have deputy positions. Anyhow, since Subparagraphs e) and f) of Paragraph 2 of Article 18 of the Statutes regulate that centre coordinators and course coordinators are eligible members of TSC, even though MPI created the positions of deputy coordinators by the reason of the Statutes not expressly prohibiting the creation of such positions within independent centres, these deputy coordinators are not eligible to be TSC members (without prejudice to those happen to be academic staff with a PhD degree).

(11) What is worth our attention is that although Subparagraphs c) and d) of Paragraph 2 of Article 18, Subparagraph g) of Paragraph 1 of Article 21 and Article 24 of the Statutes give the Chinese titles “校長” and “副校長” to the heads or deputy heads of academic units, the Portuguese equivalence for the said Chinese titles are “*directores / subdirectores das unidades académicas*” (“*directors/deputy directors of academic units*”) in the Statutes. Therefore, the heads/deputy heads of the academic units (*unidades académicas*) do not merely refer to the directors/deputy directors of the tertiary schools, but should also refer to the heads/deputy heads of colleges and centres/research centres.

In other words, if those with the name of centres (中心 / 研究所) are independent academic units, the President may, in accordance with Paragraphs 2 and 4 of the aforementioned Article 24, appoint deputy directors (*subdirector*), who in fact have the same status as the deputy directors of the tertiary schools or colleges. Therefore, if the centres (中心 / 研究所) (including the Social, Economic and Public Policy Research Centre and MPI – Bell Centre of English) set up by MPI are independent academic units, the deputy directors of these centres in

fact have the same status as the deputy directors of the academic units (*Os subdirectores das unidades académicas*) as referred to in Subparagraph d) of Paragraph 2 of Article 18 of the *Statutes*, thus they are eligible to become TSC members. To put it simple, for those independent academic units with the name of “centre”, as their deputy directors fall into the category of “deputy directors all academic units” (*subdirectores das unidades académicas*), it makes sense that they are considered TSC members by the institute.

- (12) **The fact that the institute has included the deputy centre coordinators (*vice-coordenadores de centros*) and assistant course coordinators (*vice-coordenadores de cursos*) as TSC members in accordance with the Regulations for TSC has in fact gone against the idea enshrined in Paragraph 2 of Article 18 of the Statutes.**

- (13) To sum up, although both Subparagraph f) of Article 7 and Subparagraph d) of Paragraph 2 of Article 14 of the *Statutes* empower MPI to establish/revise its internal operation regulations, MPI must exercise relevant powers in accordance with the law and the *Statutes*. Therefore, MPI can only incorporate details into the framework established by the *Statutes* (including amendments made to details regarding operation), but must not (and shall not) go beyond the provisions of the Statutes. Otherwise that would be considered illegally revising the *Statutes*.

- (14) **Since the revisions made by MPI to the composition of TSC in Subparagraphs e) to g) of Paragraph 2 of Article 18 of the Statutes (including increasing and limiting the number of members of particular categories) have not simply modified the Regulations for TSC, but have substantially changed the provisions of the Statutes, and there is no information showing the changes were approved by the supervisory body, the act are considered violation of the law.**

- (15) According to Subparagraph a) of Paragraph 2 of Article 6 of Decree Law no. 49/91/M of 16<sup>th</sup> September (i.e. “*the supervisory body has the power to approve the Statutes of Macao Polytechnic Institute*”) and Subparagraph c) of Paragraph 2 of Article 14 of the *Statutes* (i.e. “*after consultation with the Technical and Scientific Committee, the Board of Management may reach decisions on modifications of MPI’s regulations and present them to the supervisory body for approval*”), **if MPI deems it necessary to change the composition of TSC for the sake of better operation, it should do it in accordance with the**

law, which involves consultation with TSC before making the decision to revise Paragraph 2 of Article 18 of the *Statutes* and finally presenting it to the supervisory body for approval (rather than making amendment to the said two subparagraphs regarding the composition of the committee merely by the approval granted at the plenary meeting on 3<sup>rd</sup> March 2005). Otherwise, the composition and operation of relevant committee will run the risk of violating the law, thus impairing the credibility of MPI.

\* \* \*

### 3. Academic units and centres

According to Article 23 of the *Statutes*:

*“1. The Macao Polytechnic Institute is composed of various academities in the forms of tertiary institutions, centres and colleges that undertake education, ensure teaching and research and other activities with respect to academy, culture, techniques, arts and the society.*

*2. The Macao Polytechnic Institute, without violating Subparagraph a) of Paragraph 2 of Article 14, has the following academic units: (...).*

*3. The Macao Polytechnic Institute may, in accordance with applicable law and the provisions of the *Statutes*, **propose** the establishment or integration of new academic units, as well as the change or rescission of the existing academic units.” (Note: MPI only has the power to propose).*

In addition, according to Subparagraph a) of Paragraph 2 of Article 14:

*“After consultation with the Technical and Scientific Committee, the Board of Management has also the following powers: a) To approve the establishment, integration, change and rescission of academic units, relevant departments and research centres.”*

Article 30 of the *Statutes* also provides that:

*“After consultation with the Technical and Scientific Committee and*

*approval of the Board of Management, the President may approve the establishment of centres within the Macao Polytechnic Institute and these centres can be/can be not integrated into the academic units. They aim to undertake investigation, research, training, continuous education activities or provide necessary services to the society.”*

Judging from above provisions, the centres of MPI can be subunits under some academic units, independent academic units or independent units (non-academic). No matter whether the academic units are with the name of “centre” (like ASAC and ELTRC mentioned in Part 1), the establishment of academic units must take place only **after TSC has been consulted, the Board of Management has reached a resolution which is then submitted by President to the submitted /supervisory body for ratification** in accordance with Subparagraph b) of Paragraph 2 of Article 6 of Decree Law no. 49/91/M of 16<sup>th</sup> September [i.e. “*the supervisory body has the following powers: (...) b) To confirm any amendment made to the organizational structure, commencement and rescission of courses (...)*”].

\* \* \*

## **1) Procedure of establishing academic units does not conform to the Statutes**

- (1) According to the organizational structure of MPI (see Appendix 17), in addition to the seven academic units including tertiary schools and colleges as referred to in Paragraph 2 of Article 23 of the *Statutes*, MPI has also the following academic units:

Academic unit	Legal basis	Consultation with TSC	Ratification by the supervisory body	Reference
Gaming Teaching and Research Centre	Established on 2 <sup>nd</sup> July 2009 by the Board of Management in accordance with Articles 14 and 19 of the <i>Statutes</i>	Yes	No	Appendix 18
Centre of Continuing Education and Special Projects	According to Subparagraph d) of Paragraph 1 of Article 24 of the former <i>Statutes of Macao Polytechnic Institute</i> , this centre was established in 1992 as a “unit” of the MPI, equivalent to an academic unit today.			
Centre of Sino-Western Cultural Studies	It was established on 10 <sup>th</sup> September 2001 but there is no information showing the legal basis for the establishment. It started to appear in the organizational structure of MPI in the <i>APM (Macao Public Administration)</i> in 2002. It was also listed as an academic unit of MPI between 2003 and 2009 in the <i>Macao Yearbook</i> .	No	No	Appendixes 19-21
Social, Economic and Public Policy Research Centre	It was formed in May 2005 as a result of merge between the Centre of Social Economic Research and the Centre of Research and Planning of Human Resources. There is no information showing the legal basis for the establishment. The centre was listed as an academic unit of MPI in the <i>APM (Macao Public Administration)</i> in 2008 and the <i>Macao Yearbook</i> in 2008 and 2009.	No	Yes	Appendixes 20-22
MPI-Bell Centre of English	It was established in August 2002 but there is no information showing the legal basis for its establishment. It started to be listed as an academic unit of MPI in the <i>APM (Macao Public Administration)</i> and the <i>Macao Yearbook</i> in 2003.	No	Yes	Appendixes 20, 21 and 23



“One Country, Two Systems” Research Centre	It was established in accordance with the order of the Chief Executive but there is no information showing the legal basis for the establishment. It was listed as an academic unit of MPI in the <i>Macao Yearbook</i> in 2009.	No	Yes	Appendixes 21 and 24
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- (2) According to the above information, we can find that MPI does not provide any legal basis in their documents with respect to the establishment of the Centre of Sino-Western Cultural Studies, the Social, Economic and Public Policy Research Centre, the MPI-Bell Centre of English and the “One Country, Two Systems” Research Centre. According to the organizational structure of MPI and the public information from the administration [*the APM (Macao Public Administration) and the Macao Yearbook*], the above centres are all academic units of MPI. Therefore, **the establishment of such units should take place only after the consultation with TSC. Otherwise, the procedure would go against the law** (in spite of the fact that the “One Country, Two Systems” Research Centre was established in accordance with the order of the Chief Executive, MPI was obliged to make sure that relevant procedure conformed to the provisions of law when establishing relevant academic unit). **With regard to the establishment of the Gaming Teaching and Research Centre and the Sino-Western Cultural Studies, they both lacked the ratification by the supervisory body.**
- (3) According to Proposal no. P014/CFCPE/09 (see Appendix 25), MPI established the History Research Centre on Macao History in 2009 for the purpose of compiling the *Macao Local Records* and fully utilizing the talent of its 16 staff members with a PhD degree in History. The position of director of the centre is concurrently held by the President. The research centre has also a standing deputy director and a deputy director. The Head of the Division for Research and Publications suggested that the Board of Management approve the establishment of the research centre in accordance with Article 30 of the *Statutes*. Later on, the Board of Management approved the establishment in accordance with Subparagraph a) of Paragraph 2 of Article 14 and Subparagraph b) of Paragraph 1 of Article 19 of the *Statutes*. Obviously, MPI has considered the research centre as an academic unit. However, there is no information showing that the establishment was ratified by the supervisory body. Therefore the

procedure of establishment of the research centre has still violated the law.

- (4) It should be noted that although the position of director of the research centre is concurrently held by the President, there is still a standing deputy director and a deputy director. According to Paragraph 2 of Article 24 of the *Statutes* (i.e. “*When the circumstances so demand, the deputy director shall act on behalf of the director in the event of absence or inability to perform duties of the latter*”), the academic unit may only have one deputy director (“*Subdirector*”). Therefore, MPI has violated the *Statutes* by appointing two deputy directors at the History Research Centre on Macao History.

## **2) Procedure of establishing collaborative institutions and centres of academic nature does not conform to the *Statutes***

- (1) According to Paragraph 2 of Article 3 of the *Statutes*:

*“In pursuit of its mission, the Macao Polytechnic Institute may enter covenants, agreements, protocols and contracts with public or private tertiary education institutes and domestic and foreign counterparts and participate in the operation of other local or international legal persons.”*

Also, according to Subparagraph a) of Paragraph 1 and Paragraph 2 of Article 19 of the *Statutes*:

*“1. The Technical and Scientific Committee has the following powers:*

*a) To propose to MPI on the principles on education, research, cultural promotion and social services in accordance with the region’s education policy;*

*(...)*

*2. **Consultation must be made** with the Technical and Scientific Committee on all affairs that fall within its jurisdiction.*

*(...)”*

Regarding the establishment of collaborative institutions aiming at academic research, the Board of Management shall consult TSC before granting approvals to covenants, agreements, protocols and contracts as referred to in Paragraph 2 of Article 3 of the *Statutes*, and shall then get the ratification by its supervisory body in accordance with Subparagraph b) of Paragraph 2 of Article 6 of Decree Law no. 49/91/M of 16<sup>th</sup> September.

- (2) According to the “Table of Subunits of MPI” (see Appendix 17), subunits named “centre” (中心 / 研究所) that are not listed in the organizational chart include the following<sup>21</sup> :

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<sup>21</sup> Some are not listed in the table, such as the Digital Terrestrial Television Research and Testing Centre jointly established by the IPM and the Bureau of Telecommunications Regulation (DSRT) that started operation according to the news article on the Macao Daily News(B7) on 21<sup>st</sup> September 2010. “Should any manufacturer, company or institute intend to test their products, they may file applications to DSRT. After approval they may deliver their products to the centre for testing. After the strict testing process MPI will issue a test report that is to be ratified by DSRT. If the concerned products pass the test, DSRT will list them as qualified products and upload their information to their website for public references.”(see Appendix 75).

Name	Consultation with TSC	Ratification by the supervisory body	Legal basis	Units in collaboration	Reference
Language and Culture Research Center of Macao (hereinafter referred to as Language and Culture Centre)	Yes	Yes	Subparagraph a) of Paragraph 2 of Article 14 and Subparagraph b) of Paragraph 1 of Article 19 of the <i>Statutes</i>	Beijing Language and Culture University and Institute of Applied Linguistics of Ministry of Education	Appendixes 26 and 27
MPI-SYSU Gaming Research Centre (hereinafter referred to as Gaming Research Centre)	Yes	Yes		Sun Yat-Sen University	Appendix 27
MPI-Melco Gaming and Entertainment Information Technology Research and Development Centre (hereinafter referred to as Melco Gaming Information Centre)	No	Yes	No reference	Melco Group	Appendix 28
MPI-BMM Testing Centre for Gaming Devices (hereinafter referred to as BMM Testing Centre)	No	Yes	Articles 3 and 4	Bellamy Mill & Monypenny Co.	Appendix 29
MPI-QMUL Information Systems Research Centre (hereinafter referred to as QMUL Centre)	No	Yes	No reference	Queen Mary, University of London	Appendix 30
The Languages Training & Testing Centre	Established in December 1997 in accordance with the former <i>Statutes</i>		No reference	Beijing Language and Culture University	Appendix 31

Portuguese Countries Research Centre	No	Yes	No reference	Beijing Foreign Studies University/ under the School of Languages and Translation	Appendix 32
Chinese-English and Cross-Cultural Communication Centre	No	No	No reference	under the School of Languages and Translation; hereinafter referred to as the Chinese-English Translation Centre	Appendix 33

- (3) Except that of the Chinese-English Translation Centre which is under the School of Languages and Translation, the operating modes of the other collaborative institutions mentioned above are listed as below:

Name	Composition and operating funds of the management (operation) entities	Reference
Language and Culture Centre	<p>Presidents: Assumed by the President of MPI, the Chairperson of the University Council of Beijing Language and Culture University and the Director of the Institute of Applied Linguistics of Ministry of Education. The position of director of the centre rotates among the three presidents.</p> <p>Standing institutions: The office of the centre is established at the Macao Polytechnic Institute. Liaison offices are also established at the Beijing Language and Culture University and the Institute of Applied Linguistics of Ministry of Education.</p> <p>Executive Director: Assumed by the personnel of MPI.</p> <p><b><u>Operating funds: The running cost of the office of the centre and the liaison offices are raised by the three parties on their own.</u></b></p>	Appendixes 34 and 35
Gaming Research Centre	<p>The Center for Studies of Hong Kong, Macao and Pearl River Delta of the Sun Yat-Sen University was entrusted to manage the centre.</p> <p>* No statutes of the centre or report no. I016/PRE/2009 about the approval of the Board of Management for the establishment.</p>	Appendix 36

Melco Gaming Information Centre	Members: Three members appointed by MPI and Melco respectively. President: One of the three members appointed by the MPI. Director of the centre: Hired by MPI to take charge of general affairs of the centre. Operating funds: Investment amounting to MOP2 million made by Melco within two years (between May 2007 and April 2009).	Appendix 28
BMM Testing Centre	Operating funds: MPI provided the venue, simple renovation and technical assistance for the establishment of the centre; BMM is responsible for the employment of technicians and provide training for local talent. The latter provided MPI with not less than MOP300,000 for the purpose of scientific research and scholarship (for a two-year term).	Appendix 29
QMUL Centre	Members: Three members appointed by MPI and Queen Mary, University of London respectively. President: One of the three members appointed by MPI.	Appendix 30
Portuguese Countries Research Centre	Directors: Two directors (assumed by the MPI President and the President of the Beijing Foreign Studies University). Deputy Directors: Three deputy directors (two from MPI: the Director of the School of Languages and Translation and Jorge Baptista Bruxo, and one from the Beijing Foreign Studies University).	Appendix 32
The Languages Training & Testing Centre	Established in December 1997 in accordance with the former <i>Statutes</i> . There is no information about the Director or members of the management (operation) body.	Appendix 31

- (4) According to the information listed in 2.(2), the Language and Culture Centre and the Gaming Research Centre were established by MPI in accordance with Subparagraph a) of Paragraph 2 of Article 14 and Subparagraph b) of Paragraph 1 of Article 19 of the *Statutes of Macao Polytechnic Institute*, which shows that MPI regards these two centres as the academic centres under MPI. While there was no information showing the legal bases for the establishment of the Melco Gaming Information Centre, the BMM Testing Centre, the QMUL Centre, the Portuguese Countries Research Centre and the Languages Training & Testing Centre, the public information from the administrative authority (the *Macao Yearbook* (from 2003 to 2009)) shows that MPI has included the Melco Gaming Information Centre, the QMUL Centre and the Languages Training & Testing Centre as their units.
- (5) It should be noted that the above-mentioned centres were jointly established by MPI and local institutions or academic or research insititutions outside the territory. Rather than internal entities or subordinates of MPI, they are collaborative institutions jointly established by MPI and other independent entities. Judging from their operating methods, we can also find that these

centres are not entirely subordinated to MPI, which can be reflected by the composition of the management (operation) entities (three/two parties being responsible for managing/giving directions to committee members), the appointment of people in charge (e.g. leaders of the three parties of the partnership of the Language and Culture Centre rotating the president position, and the Sun Yat-Sen University being entrusted to manage the Gaming Research Centre), and funding (e.g. the operating funds of **the office and the liaison offices of the Language and Culture Centre** being raised by the three parties on their own; the Melco group investing MOP2 million into the Melco Gaming Information Centre; the BMM providing MPI with not less than MOP300,000 to support the scientific research and scholarship of the BMM Testing Centre each year). **Therefore, it is questionable whether the afore-mentioned collaborative institutions can be considered subunits of MPI.**

- (6) Although MPI already presented the matters that MPI did not have the power to make decision on to the supervisory body and received its ratification (i.e. the establishment of collaborative institutions with other entities and acceptance of funding from private entities), there was no information showing that MPI had ever consulted TSC regarding the establishment of the Melco Gaming Information Centre (aiming to provide software research and development services for Macao's gaming industry), the BMM Testing Centre (aiming to research on and develop a set of authentication standards for gaming devices for the territory) and the QMUL Centre (aiming to research on multi-media and internet application technologies). According to the analysis shown in 2.(1), whenever MPI needs to set up joint academic units with other entities it must consult TSC in accordance with Subparagraph a) of Paragraph 1 and Paragraph 2 of Article 19 of the *Statutes*. Otherwise it will be a violation of the *Statutes*.
- (7) According to the information shown in 2.(3), the two-year term of cooperation between MPI and the BMM Testing Centre should have expired already. MPI did not provide relevant agreement to the CCAC for reference. If the agreement is not auto-renewable, MPI still has to consult TSC and get the ratification by the Secretary before deciding to continue its cooperation with BMM.
- (8) As for the Chinese-English Translation Centre, the Chairman of ELTRC drafted a proposal on 31<sup>st</sup> October 2006, where he/she suggested that

an independent research institute – MPI Translation and Cross-Cultural Communication Research Centre should be established, and also recommended a candidate for the position of director for the centre. After discussion the Board of Management renamed the centre as the “Chinese-English and Cross-Cultural Communication Centre” and included it as a unit of the School of Languages and Translation (see Appendix 33). However, according to Article 30 of the *Statutes* (i.e. “after consultation with the Technical and Scientific Committee and approval of the Board of Management, the President may approve the establishment of centres within the Macao Polytechnic Institute and these centres can be/can be not integrated into the academic units (...)”, MPI still has to consult TSC in accordance with the law as to the establishment of units within its academic units, and then get the ratification by the supervisory body in accordance with Subparagraph b) of Paragraph 2 of Article 6 of Decree Law no. 49/91/M.

- (9) Since MPI has given the same Chinese titles (中心主任 / 副主任) (directors/ deputy directors, and centre coordinators/deputy centre coordinators) to all heads/deputy heads of the centres of different levels (centres equivalent to academic units, subunits under academic units or non-academic independent units), chances are there are positions with the same Chinese titles (中心主任 / 副主任) being vested with different powers and functions. Some of the “中心主任 / 副主任” have the Portuguese titles of “*Director/Subdirector de Centro*” (Directors/Deputy directors of centres) (equivalent to directors/ deputy directors of schools that are deemed as academic units). In this case, these directors and deputy directors are eligible members of TSC. Some others have the Portuguese titles of “*Coordenador / Coordenador adjunto de Centros de Estudos ou de Investigação*” (Coordinators/Deputy Coordinators of Research Centres) (who belong to the subunits under academic units or non-academic independent units), but these deputy coordinators are not eligible members of TSC (unless they are professors or PhD degree holders. In this case they can still become TSC members in accordance to Subparagraph g) of Paragraph 2 of Article 18 of the *Statutes*). To avoid confusion or even unnecessary suspicion within the institute and in society, it is advisable that MPI give appropriate Chinese titles to heads or deputy heads of units of different types of nature or levels (centres equivalent to academic units, non-academic independent units and all types of subunits under academic units). It should make sure the titles accord with their responsibilities when handling personnel appointment



and work distribution. This is to ensure that relevant appointment and distribution conform to the principle of legality and the principle of good will enshrined in the *Code of Administrative Procedure*.

### 3) **Failure to ensure that each academic unit has its own Pedagogical Scientific Committee; some regulations of PSC do not conform to the Statutes**

- (1) Paragraph 1 of Article 24 of the *Statutes* provides that the director and the Pedagogical Scientific Committee are the entities of each academic unit.

Paragraph 2 of Article 27 also provides that:

*“The Pedagogical Scientific Committee of each tertiary school is composed of the following parties:*

- a) The director, who is the chairman;*
- b) The deputy director;*
- c) Course coordinators of the school;*
- d) A representative of the academic staff of relevant course or project;”*

Paragraph 3 provides that:

*“The Pedagogical Scientific Committee of the Seniors Academy is composed of the following parties:*

- a) (...);*
- b) An academic staff or an officer of the school appointed by the director;*
- c) Five to nine people with recognized qualifications from the Seniors Academy appointed by the President upon the suggestion of the director.”*

Paragraph 2 of Article 28 also provides that “**the Pedagogical Scientific Committee is subject to its own regulations**”. Since the *Statutes* does not provide any description on how “d) A representative of the academic staff of relevant course or project” is elected, MPI may formulate methods

for the election of the representative as referred to in Subparagraph d) to decide whether he/she should be appointed by the director, elected among academic staff, the most veteran professor, or the one who holds a PhD degree for the longest period of time provided there is no professor in the school.

- (2) MPI provided the CCAC with the operation regulations for PSC of only four schools, namely the School of Business (ESCE), the School of Arts (ESA), the School of Health Science (ESS) and the School of Physical Education and Sports (ESEFD). It neither presented those of the School of Languages and Translation (ESLT), the School of Public Administration (ESAP), the Seniors Academy (ACS) and other academic units that are not specified in the *Statutes* nor gave any details about whether these schools and academic units have already established relevant regulations.

- (3) Relevant regulations provided by MPI can be summarized as follows:

School	Composition of PSC	Operation	Reference
ESCE	--Director --Course coordinators -- Assistant course coordinators --Co-opted members appointed on an ad hoc basis	At least one meeting is held each month	Appendix 37
ESA	--Director --Course coordinators (of the music course, the visual art course and the design course) -- Assistant course coordinators of the design course -- Administrative assistant to the school affairs (All of their names are provided)	At least one meeting is held each month	Appendix 38
ESS	--Director --Course coordinator -- Assistant course coordinator --Professor -- Academic staff with a PhD degree A total of seven members	No provision can be seen in the respective regulation	Appendix 39
ESEFD	No provision can be seen in the respective regulation	No provision can be seen in the regulation	Appendix 40

- (4) Looking at the lists of academic staff of the schools shown on the website

of MPI, we found that none of the schools (a total of six schools, including the above mentioned four schools, the School of Languages and Translation and the School of Public Administration) had deputy directors as referred to in Paragraph 2 of Article 24 of the *Statutes* (see Appendixes 41 and 42). Therefore, PSC of the said four schools certainly did not include deputy directors.

- (5) With regard to the stipulation that one of PSC members should be “a representative of the academic staff of relevant course or project”, none of the *Regulations for Pedagogical Scientific Committee* of the four schools provided by MPI gives a clear explanation for this. However, the position of “Assistant Course Coordinator” is the common component of PSC of ESCE, ESA and ESS. (According to information (see Appendix 41), ESCE has five course coordinators (from the accounting & finance course, the commerce course, the E-commerce course, the management course and the public relations course respectively), but only the E-commerce course has an assistant course coordinator; ESA has three course coordinators (from the design course, the music course and the visual art course respectively), but only the design course has two assistant course coordinators; ESS has three course coordinators (two from the biomedical science with two specialties, namely medical laboratory science and pharmacy and one from the nursing course), but only the nursing course has an assistant course coordinator). Although MPI claimed that the assistant course coordinators were in fact the “representatives of the academic staff of relevant course or project”, since not all of its courses had an assistant course coordinator, MPI still, apparently, failed to fully observe the provisions of the *Statutes*.

ESS has included “professors and academic staff with a PhD degree” as their PSC members. After referring to the list of academic staff of ESS, we found that the school did not have professors but eight associate professors. According to Article 12 of the *Regulations for Academic Staff* approved by Order no. 29/SAAEJ/99 of 23<sup>rd</sup> August revised in accordance with Order no. 186/2008 of the Secretary for Social Affairs and Culture of 29<sup>th</sup> December, the candidate who is to be promoted to or to apply for the position of associate professor shall hold a PhD degree. Therefore, it can be understood that the school has at least eight academic staff with a PhD degree. Since the *Regulations for PSC* of ESS specifies that the school has seven members, of which one is the director, three are the

course coordinators and one is the assistant course coordinator, it can be understood that only the other two members are academic staff with a PhD degree. It is therefore unclear as to how MPI can ensure one of PSC members of a school is a representative from its academic staff.

- (6) **Judging from all the above facts, the composition of PSC of the School of Business, the School of Arts and the School of Health Sciences does not fully comply with the Paragraph 2 of Article 27 of the Statutes.**
- (7) It should also be noted that ESA even appointed administrative staff/non-academic staff as its PSC member(s). Since Paragraph 2 of Article 27 is applicable to PSCs of all the tertiary schools (except the Seniors Academy<sup>22</sup>), unless the lawmaker specifies which non-academic staff can be PSC members, all non-academic staff shall not be appointed as PSC members of ESA in accordance with law. Apparently, the composition of PSC of ESA does not comply with the said provision of the Statutes.
- (8) Considering that PSC is a collegial body but that the above mentioned schools do not specify in their operation regulations for PSC on such aspects as the minimum number of attendees in meetings, method and procedure of voting, rights and obligations of the meeting attendees by invitation, valid decisions, minutes taking requirements and replacement mechanism (the arrangement for filling vacancies of the director or the course coordinator), these schools shall observe the provisions in respect to the operation of collegial bodies in Articles 16-30 of the *Code of Administrative Procedure*.
- (9) What also comes to our attention is that the Board of Management has the obligation to fulfill Paragraph 2 of Article 28 which provides that it shall establish internal operation regulations that conform to the provisions of the *Statutes* for PSC of each school/academy unit. However, MPI provided the operation regulations for only four academic units out of the seven regulated by the *Statutes*. When it comes to the several additional

<sup>22</sup> Paragraph 3 of Article 27 of the *Statutes* provides that “the Pedagogical Scientific Committee of the Seniors Academy is composed of the following parties: a) (...); b) An academic staff or an officer of the school appointed by the director; c) Five to nine people with recognized qualifications from the Seniors Academy appointed by the President upon the suggestion of the director”. The exceptional provision of allowing a non-academic staff to be a PSC member established by the lawmaker is applicable to the Seniors Academy only.

academic units established by MPI (see above), MPI did not explain if these academic units have established relevant regulations either. This would clearly arouse a feeling that MPI has implemented its obligations stated in the *Statutes* in a neglectful way, and that the operation of some schools has even gone against the *Statutes*.

\* \* \*

#### 4) Technical-administrative departments

1. According to Article 32 of the *Statutes*:

*“1. The Macao Polytechnic Institute has the following technical-administrative departments, which operate under the coordination and supervision of the Secretary General:*

- a) The General Administration Department;*
- b) The Finance Department;*
- c) The Academic Affairs Department;*
- d) The Welfare and Recreation Department;*
- e) The Public Relations Office (...) and also defines the responsibilities of these departments.*

Article 34 provides that:

*“1. The composition and powers of each technical-administrative department are defined by the regulations ratified by the Board of Management.*

*2. The Board of Management may establish subunits or functional departments within the technical-administrative departments when necessary”.*

According to this provision, the Board of Management may establish subunits within the technical-administrative departments when necessary.

Part of the functions of the subunits of the technical-administrative departments does not conform to the *Statutes*

2. Part of the functions of the subunits established upon the decision of the Board of Management does not accord with those defined in the *Statutes* for the technical-administrative departments. Major functions of the subunits are summarized as follows:

Administration Departments Article 32 of the <i>Statutes</i>	Subunits/Major Functions
General Administration Department: (Paragraph 2) Responsible for personnel management, arranging consultation procedure, purchasing of goods and services, maintenance of tangible and intangible goods, documents and files.	<p><b>Personnel Office</b> It is responsible for personnel and payroll management and is formed by <b>three functional groups: payroll section</b>, non-academic staff affairs section and academic staff affairs section; the scope of services includes <b>organizing staff recreation activities and arranging welfare distributions</b> (see Appendix 43 - <i>Handbook for Academic Staff</i>, p. 7-8).</p> <p><b>Construction and Procurement Office and the Central Services Office</b> Two divisions are results of the break-up of the Purchasing and Estates Office in 2005. The former is mainly responsible for procurement, construction works, and maintenance, property registration and management; the latter is responsible for supervision of maintenance of facilities and equipment, management of campus facilities, reception and dispatch of documents, the management of institute vehicles and drivers and sundries (see Appendix 44).</p>
Finance Department: (Paragraph 3) Responsible for financial management for the Macao Polytechnic Institute, including organizing and managing the accounts of MPI and managing, preparing and excuting budget plans in accordance with the instruction of the MPI.	<p><b>Finance Division and Treasury</b> The Treasury was established upon the decision made by the institute in 2004 (see Appendix 45). According to the information provided by MPI, there is no clear division of functions between the two.</p>

<p>Academic Affairs Department: (Paragraph 4) Responsible for organizing students activities, arranging the granting of degrees, diploma, academic qualifications and registration and filing of relevant documents.</p>	<p><b>Student Management Office and Division for Research and Publications</b> These two subunits (the former was named Divisions for Student Affairs then and was renamed as the Student Management Office in 2007 (see Appendix 47)) were established and the Division for Coordination and Communication was abolished upon the decision made by the institute in July 2001. <b><u>However, when the decision was made, the scopes of services of these two units were not specified</u></b> (see Appendix 46); According to the <i>Handbook for Academic Staff</i> (see Appendix 43, p. 5-7) the two subunits have the following functions respectively:</p> <p><b>Student Management Office:</b> Promoting degree programmes offered by the Institute, promoting courses offered by Seniors Academy, grants, scholarships, employment information and coordinating the subsidies for IELTS, BULATS and PSC.</p> <p><b>Division for Research and Publication:</b></p> <ol style="list-style-type: none"> <li><b><u>1. To evaluate staff's applications of subsidies for research projects and propose which projects to be subsidized and the corresponding subsidy amounts.</u></b></li> <li><b><u>2. To make assessments on the results of research projects.</u></b></li> <li><b><u>3. To review the Institutes's Research Management Regulations, and to raise suggestions and give recommendations on how to improve the systems.</u></b></li> <li><b><u>4. To fulfill other functions related to research management.</u></b></li> </ol> <p><b>Division for Pedagogical Affairs</b> It was established upon the decision made by the institute in October 2001. <b><u>However, when the decision was made, the scope of services of the unit was not specified</u></b> (see Appendix 48). According to the <i>Handbook for Academic Staff</i> (see Appendix 43, p. 6-7), the division has the following responsibilities:</p> <ol style="list-style-type: none"> <li>Teaching quality management: to assist in the development of teaching quality assurance policies and procedure, including academic rules and regulations, to arrange class observations, and to arrange professional accreditation of programmes by external bodies, etc.</li> <li>Administrative support to teaching: to administer examinations; to disseminate programme information, to provide classroom allocation and to be in charge of booking external venues, etc.</li> <li>Maintenance of joint academic programmes: to administer students recruitment and to provide administrative support, etc.</li> </ol>
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	<p><b>Registry</b> It was established upon the decision made by the institute in 2007. It is responsible for enrollment, and organizing the work for enrollment, student profiles management, academic records management, academic information system management, issuing of certificates, organizing enrollment promotion campaigns, school opening and graduation ceremonies, etc (see Appendix 47).</p>
Welfare and Recreation Department: Responsible for organizing different types of social and recreational activities for the promotion of the well being and welfare of all MPI students and staff (Paragraph 5).	Data with regard to this subunit cannot be seen according to the information provided by the MPI or the publicized official information.
Public Relations Office: Responsible for work related to information, communication, dissemination and promotion of MPI (see Paragraph 6)	<ol style="list-style-type: none"> <li>1. To promulgate the Institute to local, regional and international institutions and to promote academic activities and achievements;</li> <li>2. To contact the media and provide them with information in relation to the Institute;</li> <li>3. To be responsible for the visual identity of the Institute, supervision and production of promotional materials, etc.</li> </ol> <p>(See Appendix 43, <i>Handbook for Academic Staff</i>, p.10)</p>

3. Judging from the table above, we can find that the functions of the **Division for Research and Publication** is beyond the legal functions of the Academic Affairs Department it is subordinated to. When MPI was invited by the CCAC to participate in the meeting (for the purpose of handling the cases no. 060/C/2010 and 140/C/2010), the IPM admitted the existence of problems in the structure of the Academic Affairs Department. The CCAC representatives then reminded MPI that it “should look into whether similar situations exist so they can be submitted to the supervisory body for recognition altogether” (see the highlighted part in Appendix 15).

The Personnel Office has three functional groups, one of which being in charge of payroll. This function, however, overlaps with the legal functions (managing finance and executing budget plans) of the **Finance Department** (which is formed by the Finance Division and the Treasury).

4. The **Welfare and Recreation Department** as referred to in Subparagraph d) of Paragraph 1 of Article 32 of the *Statutes* is not shown in the organization chart of MPI (see Appendix 17). While the organization chart of MPI was shown in the yearly *APM (Macao Public Administration)* between 2000 and 2008 (see Appendix 20), its Welfare and Recreation Department was listed as a subunit of the institute only in 2000 and 2001, which means that between 2002 and 2008



this subunit was not shown in the organization chart of MPI in the *APM*. Also, according to the table above, the legal functions of the Welfare and Recreation Department, which include organizing social and recreational activities for the promotion of the well being and welfare of all MPI students and staff, were already delegated to the Student Management Office (which is responsible for organizing and promoting **student recreation and welfare** activities) under the Academic Affairs Department and the Personnel Office (which is responsible for organizing and promoting **staff recreation and welfare** activities) under the General Administration Department. Therefore, there are reasons to believe that the Welfare and Recreation Department no longer exists.

5. MPI then gave the following explanation: The establishment of the Welfare and Recreation Department dated back to 1991, the year when the institute was founded. Since the department had only three members (including the head), it seemed that the department was established only for the sake of hiring some people and was anything but a waste of administration resource. After Macao's Handover to China, two staff of the department left their position and the other one was dispatched to other departments. The department then existed in name only. Therefore, the functions of this department were delegated to the Personnel Office and the Academic Affairs Department later. In 2007, the institute planned to make amendments to the *Statutes*, including abolishing the Welfare and Recreation Department. It submitted relevant documents to the supervisory body for ratification. However, the documents have not been approved so far. This is the reason why the institute has not yet abolished the Welfare and Recreation Department no longer in operation (on the reverse side of Appendix 49).
6. In spite of what MPI has explained, it should be noted that even though the responsibilities originally taken up by the Welfare and Recreation Department have already been delegated to other departments, since the legal procedure of cancellation is yet to be finished, MPI should still list the Welfare and Recreation Department in its organization chart lest there is suspicion of illegality.
7. According to Paragraph 2 of Article 34 of the *Statutes* (the composition of each technical-administrative department), the Board of Management may establish subunits or functional departments within the technical-administrative departments when necessary. Nevertheless, it shall define the functions of the additional subunits, so that the functions and scopes of activities of all the subunits are clear. However, information shows that although the Treasury, the Student

Management Office, the Division for Research and Publication and the Division for Pedagogical Affairs are the additional units established by the Board of Management, it did not clearly define their scopes of services and the work distribution between these units and the other subunits under the same departments. Since MPI believed some department was established only for the sake of hiring some people and was anything but a waste of administration resource, they should also think about whether the same problem would occur when the scopes of services and work distribution of said subunits were not clearly defined.

8. According to Resolution no. 15D/CG/2009 of the Board of Management (see Appendix 12), the Academic Affairs Department is under the supervision of the Vice President and the Gaming Teaching and Research Centre is under the supervision of the Secretary General. However, according to Paragraph 2 of Article 16 and Paragraph 1 of Article 32 of the *Statutes*, the Secretary General is the executive taking charge of administration, finance and property management and overseeing the technical-administrative departments. Therefore, academic units (including the Gaming Teaching and Research Centre) do not fall into the jurisdiction of the Secretary General; the Academic Affairs Department – an administrative department that should have been supervised by the Secretary General, however, fell into the jurisdiction of the Vice President. Such arrangement went against the legal powers of the Secretary General as stipulated in the *Statutes*. Apparently, Resolution no. 15D/CG/2009 of the Board of Management contravenes the *Statutes*.

\* \* \*

### **III – Staff establishment, allocation and recruitment**

#### **1. Amendments to the establishment/provision of personnel should be subject to the approval of the supervisory body**

1. According to Paragraph 3 of Article 9 of the *Statutes of Personnel of Macao Polytechnic Institute* approved by Order no. 29/SAAEJ/99 of 23<sup>rd</sup> August (hereinafter referred to as the *Statutes of Personnel*), “the Board of Management shall stipulate the total number of positions for each group of personnel and submit them to the supervisory body for approval. Then it shall, in the interest of MPI, allocate the staff to different departments according to their professional skills.”

Therefore, MPI has the obligation to stipulate the total number of positions for each group of personnel and submit them to the supervisory body for approval. MPI explained it had already fulfilled the duty in accordance with law in 1999 and provided relevant evidence (see Point 2 of Part 2 on p.1, Appendix 13).

2. According to MPI’s proposal no. 127/SAGF/PES/99 (see Appendix 50) dated 23<sup>rd</sup> November 1999 with regard to the establishment/allocation of non-academic staff of MPI, the President sent a request to the then Secretariat for Administration, Education and Youth Affairs (hereinafter referred to as the then Secretariat) for its approval for the table of establishment of non-academic staff of MPI (hired under indefinite-term contracts) attached in the proposal and also indicated that it would publish a notice on the *Government Gazette*; given the increase of or change in personnel, the President also indicated in the request that the Board of Management should make decisions on the approval of the new establishment of non-academic staff, and that this can be exempted from the ratification by the supervisory body. The request was approved through the order of the then Secretariat on 17<sup>th</sup> December 1999.
3. According to information, it is found that MPI did not publish the table of establishment of non-academic staff on the *Government Gazette* (now the *Official Gazette of Macao SAR*). Given the fact that many regulations in relation to the allocation/establishment of staff or even rights and obligations within autonomous bodies/public corporations approved by the Chief Executive or principal officials are not considered by the Macao SAR as orders for external

regulations<sup>23</sup> referred to in Subparagraphs 4) and 5) of Article 3 of Law no. 3/1999<sup>24</sup>, it is not mandatory to publish them on Series I of the *Official Gazette*. Therefore MPI should not be considered to have violated the law simply because their table of staff establishment had not been published on the *Official Gazette*.

4. Regarding the part - **“the Board of Management should make decisions on the approval of the new establishment of non-academic staff, and that this can be exempted from the ratification by the supervisory body”** - which was approved through the order of the then Secretariat on 17<sup>th</sup> December 1999, it is actually a substantial amendment to Subparagraph 3 of Article 9 of the *Statutes of Personnel* approved by Order no. 29/SAAEJ/99, which provides that *“the Board of Management shall stipulate the total number of positions for each group of personnel and submit them to the supervisory body for approval”*, since it means any change in the total numbers of positions for the groups of personnel no longer has to be submitted to the supervisory body for approval<sup>25</sup>.
5. It should be noted that according to Paragraph 1 of Article 4 of Decree Law no. 11/91/M of 4<sup>th</sup> February (hereinafter referred to the *Framework Act*), which provides that *“structures and operation of all public and private education institutions that engage in tertiary education activities within Macao shall be stipulated”*, all the institutions that engage in tertiary education in Macao shall establish their own statutes (*estatutos*) in accordance with law. Article 5 also provides that the statutes shall cover the following aspects: basic regulations for internal bodies undertaking academy, teaching and learning, finance and administration, personnel policies for academic staff and non-academic personnel as well as operation regulations for courses. **The said statutes and any amendments made to them shall be ratified through the ordinance of the Governor (now the Chief Executive) and only come into effect after they are published on the Official Gazette** (Paragraph 2 of Article 4 of the *Framework Act*). Also, according to Subparagraph 2 of Article 6 of Decree Law no. 49/91/M of 16<sup>th</sup> September upon which the establishment of MPI was based,

<sup>23</sup> The most typical example is the *Staff Regulations of the Civic and Municipal Affairs Bureau*. Similar examples include the Monetary Authority of Macao and the Macau Trade and Investment Promotion Institute.

<sup>24</sup> The following shall be published on Series I of the *Official Gazette*, otherwise they do not have any legal effect: (...) (4) *Administrative orders, and orders for external regulations of the Chief Executive*; (5) *Orders for external regulations of principal officials in the Macao SAR*.

<sup>25</sup> On 17<sup>th</sup> December 1999, right before Macao's handover to the People's Republic of China on 20<sup>th</sup> December 1999, the then Secretariat, acting as the supervisory body of MPI, approved that any change in the total numbers of positions for the groups of personnel had no longer to be submitted to the supervisory body for approval. It is questionable whether such procedure was appropriate.

*“the supervisory body has the following powers: a) To approve the Statutes and the Statutes of Personnel of Macao Polytechnic Institute; b) To confirm any amendment made to the organizational structure, commencement and rescission of courses”.* Apparently, be it the statutes of MPI or the establishment of and amendment to the *Statutes of Personnel* (for both academic staff and non-academic staff), they shall be ratified by the supervisory body in accordance with law<sup>26</sup> and **come into effect only after they are published on the Official Gazette.**

6. Therefore, although the amendment made to the *Statutes of Personnel* - “any change in the total numbers of positions for the groups of personnel no longer has to be submitted to the supervisory bodies for approval” – was already approved by the then Secretariat on 17<sup>th</sup> December 1999, MPI’s failure to publish a notice on the *Government Gazette* regarding the amendment could constitute a violation of law. In other words, **even if the Board of Management have approved the change in the number of positions for non-academic staff, it is still subject to the approval of the supervisory body. Any amendment made to the table of establishment of non-academic staff/the total numbers of positions for the groups of personnel should also be submitted to the supervisory body for ratification.**
  
7. Paragraph 3 of Article 9 of the *Statutes of Personnel* provides that “*the Board of Management shall stipulate the total number of positions for each group of personnel and submit them to the supervisory body for approval*” and Paragraph 2 of the same article provides that “*the staff of Macao Polytechnic Institute are classified according to tables I and II in this Statutes of Personnel*”. Table I refers to the leadership and management (including the Secretary General, department heads, division heads and group leaders); Table II refers to general staff (senior officers, officers, professional officers, administrative staff, workers and assistants). However, the “**leadership and management**” category was not found in the table of establishment of non-academic staff submitted to the supervisory body by MPI.
  
8. It is true that the Macao SAR Government does not decree that the staff allocation/

<sup>26</sup> When the CCAC was handling the case no. 184/C/2008, it expressed its position to MPI through a meeting (see the minutes on p.71-73 of the case document), which was then recognized and accepted by MPI. Afterwards, the resolution reached by the Board of Management in 2002 on amending the academic qualifications required for the appointment and promotion of professors, associate professors and lecturers as stipulated in the *Regulations for Academic Staff* was submitted to the Secretary for approval and confirmation, and was then published on the *Official Gazette* by MPI (see Order no.186/2008 of the Secretary for Social Affairs and Culture).

establishment approved through the orders of the secretariats must be published in Series I of the *Official Gazette*. However, as the government is striving to increase the transparency of its governance, in particular by developing a sound officials accountability system and mechanisms that, internally and externally, ensure the accountability, integrity and professionalism of the officials, if MPI neither submits the number of positions for the leadership and management to supervisory body nor makes them public, how can it assure that the said goal could be realized in an effective way?

9. Therefore, MPI should establish its staff establishment table that includes the positions for the leadership and management, submit it to the supervisory body for approval and make it public.
10. It has been nearly ten years since MPI did not publish its staff establishment on the *Official Gazette*, but the situation has improved recently. Article 9 of the *Statutes of Personnel* amended in accordance with the Order no. 15/2011 of the Chief Executive of 31<sup>st</sup> January<sup>27</sup>. The new content is as follows:

*“1. Employees may be admitted to the Macao Polytechnic Institute under indefinite-term or definite-term contracts.*

*2. The staff of Macao Polytechnic Institute are classified according to tables I, II, II.I, II.II, II.III and II.IV.*

*3. The Board of Management shall stipulate the total number of positions for the leadership and management and each group and the career grades of personnel and submit them to the supervisory body for approval. Then it shall, in the interest of MPI, allocate the staff to different departments according to their professional skills.*

*4. The Board of Management may, according to the need of the Macao Polytechnic Institute, allocate staff to carry out duties not indicated in the contracts, provided that the duties correspond to the same categories and do not conflict with the academic qualifications and work experience of the staff. Nevertheless, the change should not cause any decrease in salary received in the original position and impair the rights vested by the contract.”*

<sup>27</sup> This order also leads to other problems, but the CCAC is not going to look into them in this report.

11. We should note that there are still defects in the amended article, as follows:

- a) The total number of personnel is not specified;
- b) There is no provision about the mandatory publication on the *Official Gazette*.

12. There is yet another concern: according to the information (provided it is complete) presented by MPI to the CCAC in 2010, the Institute had more than 500 staff members in total:

- Number of academic staff: 282;
- Number of non-academic staff: 271 <sup>28</sup>.

Is the ratio between the two groups of personnel reasonable? Is there any room for slimming down the organization and the workforce?

\* \* \*

## 2. Establishment/allocation of academic staff

1. According to Article 34 of the *Regulations for Academic Staff* approved by the Order no. 29/SAAEJ/99 of 23<sup>rd</sup> August, which provides that “*relevant provisions in the Statutes of Personnel of Macao Polytechnic Institute are also applicable to the academic staff of MPI*”, Paragraph 3 of Article 9 of the *Statutes of Personnel* which provides that “*the Board of Management shall stipulate the total number of positions for each group of personnel and submit them to the supervisory body for approval*”, Article 1 and the appendix of the *Regulations for Academic Staff* which regulate that the academic staff indicated in the *Table of Salaries of Academic Staff* are categorized into professors, associate professors, lecturers and assistant lecturers, MPI has the obligation to stipulate the total number of positions for its academic staff.
2. Regarding the above subject, MPI claimed that it did once make a suggestion to the supervisory body on stipulating the number of positions for full-time

<sup>28</sup> People that involved in the outsourced services have not been taken into account.

academic staff before Macao's handover of to China. However, the supervisory body did not give any instruction on this matter. MPI also provided the relevant proposal or appendixes for the CCAC as evidence. According to MPI, apart from the above documents, there was no other information about stipulating the total number of positions for full-time academic staff (see point 2 of Part 3 on p.2, Appendix 13).

3. Information shows that MPI once wrote the proposal no. 019/SAGF/GAB/99 with regard to "professors and associate professors who shall be first hired under indefinite-term contracts", where it cited Paragraph 2 of Article 1 of the *Regulations for Academic Staff*, which provides that:

*"Under normal circumstances, the academic staff referred to in the previous paragraph are hired under renewable contracts with a term of two years or less. However, if the academic staff is a Macao resident, who does not have connection with other educational institutes or organizations in or outside of Macao and has involved in teaching in MPI for at least four years, the positions listed in Subparagraphs a) and b) may be hired under indefinite-term contracts."*

4. In addition, according to Article 34, which provides that "*relevant provisions in the Statutes of Personnel of Macao Polytechnic Institute are also applicable to the academic staff of MPI*", MPI suggested that its current professors and associate professors be hired under indefinite-term contracts, and that the **list** of professors, visiting professors, adjunct associate professors and visiting associate professors MPI **had already hired** up to 31<sup>st</sup> August 1999, forms of employment and types of identification documents of the mentioned people be listed in the appendix. However, we could only see the words "For the next conference." ("*Para um próximo Conselho.*") put down by the Board of Management on 8<sup>th</sup> October 1999 in the column for orders on the proposal (see Appendix 51). There was no information showing that the Board of Management



had ever made any decision on the number of positions for academic staff<sup>29</sup>.

5. The above proposal suggested that visiting professors, adjunct associate professors and visiting associate professors be hired under indefinite-term contracts. However, according to Article 2 of the *Regulations for Academic Staff*, these personnel are considered “specially recruited staff”. Paragraph 3 of the same article provides that “*the academic staff referred to in this article may be hired on a part-time or full-time basis under contracts for a period of no more than two years, which are renewable for the same or shorter length of time*”. Therefore, these specially recruited staff shall not be hired under indefinite-term contracts according to law.
6. **As a matter of fact, according to Point 1 above, MPI has the obligation to stipulate the total number of positions for its academic staff and submit it to the supervisory body for approval in accordance with law. Even though MPI has had only 25 professors, associate professors and lecturers as referred to in Subparagraph 1 of Article 1 of the *Regulations for Academic Staff* (up to 2010) (other academic staff are visiting professors and adjunct professors referred to in Article 2 (see Appendix 52)), MPI shall still fulfill the duties described in the *Regulations for Academic Staff* and the *Statutes of Personnel*.**

\* \* \*

<sup>29</sup> With regard to the establishment of positions of professors, the CCAC once received complaints alleging that MPI promoted some academic staff to a professorial rank in some research centre even though there was no relevant vacancy (see case no. 255/C/2009). According to MPI’s clarification in a letter (see Appendix 53), the Board of Management approved the *Establishment of Professors and Criteria for Promotion of Macao Polytechnic Institute* on 9<sup>th</sup> March 2005 (see Appendix 54). It explained that the reason why the attached table to the rules only provided **the number of positions for professors for all the schools, but not for the Board of Management, centres and administrative departments** was that the number of professors of the research centre, which they considered as one of the centres, was “to be determined”. It also pointed out that on the day of the institute’s meeting (with the presence of all the members of the Board of Management) where the application for promotion was accepted, the relevant professorial rank was created and confirmed. The CCAC believed that it was an extraordinary situation of the Board of Management and **the act mentioned above reflected the possibility that the Board of Management may immediately increase the positions for professors if there are applications for promotion from staff. This will call into question the transparency and impartiality of MPI (since whether the applications for promotion are accepted shall depend on whether relevant vacancies in the academic unit or research unit exist). Therefore, to prevent such situations from happening again, MPI should stipulate the establishment of academic staff.**

### 3. Allocation of researchers

1. We could not find any regulation with regard to the recruitment and promotion of researchers personnel in the *Statutes*, the *Statutes of Personnel* and the *Regulations for Academic Staff*. The position is only mentioned in Subparagraph d) of Paragraph 3 of Article 18 of the *Statutes*, which provides that researchers<sup>30</sup> may be invited to participate in the meetings hosted by the Technical and Scientific Committee but they do not have the right to vote.
2. **When the CCAC was handling the cases of MPI, it came to know that the criteria for recruiting researchers was based on that for employing professors, associate professors and lecturers (see Appendix 53). However, due to the fact that MPI has a considerable number of non-pedagogical centres and research centres (see the previous analysis), the content of examination for recruiting candidates is different from that for recruiting academic staff (see the previous analysis) and that researchers are not TSC members, if MPI recruits researchers with the criteria for recruiting professors and associate professors, it might make people misunderstand that the researchers are also TSC members. Therefore, if MPI has the need to hire research specialists, it should standardize the career grades of researchers or give appropriate titles that correspond to the functions of different researchers.**

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<sup>30</sup> Subparagraphs a) to e) of Paragraph 3 of Article 18 of the *Statutes* provide that “According to the resolution of the committee, the following parties may be invited to participate in the meetings but they do not have the right to vote: a) The Secretary General; b) Leaders of other educational institutes that has maintained a close academic relationship with MPI”; c) Teaching staff from other higher education institutes; d) Researchers; e) Other individuals of recognized competence in areas related to the activities of MPI”. When comparing these subparagraphs, we could find that Subparagraphs b), c) and e) expressly indicate that the parties are not staff of MPI. However, the lawmaker does not indicate that the Secretary General referred to in Subparagraph a) and the researchers referred to in Subparagraph d) are from other institutes. We therefore have the reason to believe that the Secretary General and the researchers mentioned in the Subparagraphs a) and d) respectively are considered personnel of MPI.

#### 4. Recruitment, promotion and continual appointment of academic staff

According to Subparagraph h) of Paragraph 1 of Article 14 of the *Statutes*, the Board of Management has the power “to decide the recruitment of all personnel of MPP”. Subparagraph d) of Article 25 provides that directors of academic units, in order to ensure the administration of their academic units, shall “propose the recruitment, promotion and continual appointment of academic or non-academic staff, and the recruitment of academic staff and the related issues should only take place after consultation with the Pedagogical Scientific Committee”<sup>31</sup>. Therefore, the Chinese version “有關教員的錄用等方面” (which means “the recruitment of academic staff and the related issues”) should be understood as “有關教員的錄用、晉升及續聘等方面” (which means “the recruitment, promotion and continual appointment of academic staff”). Also, Subparagraph i) of Paragraph 1 of Article 28 of the *Statutes* provides that “The Pedagogical Scientific Committee gives advice on the recruitment of academic staff”. Therefore, with regard to the recruitment, promotion and continual appointment of academic staff, **the directors shall only make relevant proposals after consultation with PSC of the schools and then submit them to the Board of Management for decision making. Otherwise, relevant procedure is a violation of law.**

\* \* \*

### Recruitment

#### 1. The necessity to include the step of “submitting to the Tertiary Education Services Office for advice” in the recruitment procedure

- (1) For the recruitment of academic staff, MPI especially established the “*Recruitment Procedure for Full-Time Academic Staff*”, the “*Recruitment Procedure for Full-Time Academic Staff from Mainland China*” and the “*Recruitment Procedure for Part-Time Academic Staff*” (see Appendix 55). The first two recruitment procedures include the step of “submitting to the Tertiary

<sup>31</sup> The Portuguese version is “Ao director compete garantir a gestão e a coordenação da respectiva unidade académica e, em especial:...d) Propor a admissão, promoção e renovação dos contratos de pessoal docente ou não-docente, ouvida, quanto ao primeiro, a Comissão Pedagógico-Científica...”.

Education Services Office (GAES) for advice”<sup>32</sup>. In the course of dealing with a case, the CCAC came to know that the mentioned step in relevant procedures was out of MPI’s consideration of its need to comply with Decree Law no. 11/98/M (Subparagraph j) of Paragraph 1 of Article 2 of the *Statutes of Tertiary Education Services Office*), which provides that GAES has the responsibility to “*evaluate the needs of academic and non-academic staff, conduct studies on personnel systems and establish management criteria for higher education institutes*”. However, GAES claimed that “*there is no condition or competence for them to decide on the qualifications/requirements for the appointment of academic staff in higher education institutes, and that the qualifications required for prospective academic staff have always been decided by their own employers*” (see Appendix 15).

- (2) It should be noted that neither the *Statutes*, the *Statutes of Personnel* nor the *Regulations for Academic Staff* has the stipulation that MPI shall consult other administrative departments in the process of personnel recruitment. **To avoid any dispute between MPI and other administrative departments regarding who will be accountable, MPI should review if it is an indispensable step in relevant procedures. There should be clear provisions in the Statutes, the Statutes of Personnel and the Regulations for Academic Staff once the step is deemed necessary.**

\* \* \*

## 2. The step of “consulting the Pedagogical Scientific Committee” is missing in the recruitment procedure

Despite that the “*Recruitment Procedure for Full-Time Academic Staff*”, the “*Recruitment Procedure for Part-Time Academic Staff*” and the “*Recruitment Procedure for Full-Time Academic Staff from Mainland China*” all indicate the step that “the schools shall make proposals for recruitment of staff” and “the schools shall make proposals for employment of staff”, they do not indicate the **step of consulting PSC for advice that has to be taken before the proposals are made. Even though MPI has been observing the provision of the Statutes which**

<sup>32</sup> In fact, the *Recruitment Procedure for Administrative Staff* has also included the step of “submitting to the Tertiary Education Services Office (GAES) for advice” (see the last page of Appendix 55).

**regulates that “PSC must be consulted”, the step should still be indicated in the relevant flow chart so that the steps shown in the flow chart conform to the provisions of the *Statutes*.**

### **3. No regulations governing the execution of exemption rights of the recruitment committee**

- (1) To standardize the grading rules and interview arrangements for the recruitment of full-time academic staff, the Board of Management established the *Guidelines for Grading and Interview Arrangements for the Recruitment of Full-Time Academic Staff* (hereinafter referred to as the *Recruitment Guidelines*) and the *Grading Table for the Recruitment of Academic Staff* (hereinafter referred to as the *Grading Table*). The *Recruitment Guidelines* has come into effect since 26<sup>th</sup> November 2007. Point 5 of the *Recruitment Guidelines* stipulates that “*each member of the recruitment committees shall grade the interviews according to the Grading Table for the Recruitment of Academic Staff in the appendix (...). After interviews each member of the recruitment committees shall hand in the completed grading tables to the Personnel Office for calculating the total grades covering a grade for resume assessment and a grade for the interviews). The candidates with the highest grades shall be selected*”. The grading items and criteria for interview (taking up 50 points, which is worth 50% of the total grade) described in the *Grading Table* are as follows (see Appendix 56):
  - a) Professional qualifications and simulated teaching techniques that account for 15 points respectively;
  - b) Content of simulated teaching and communication skills that account for 10 points respectively.
- (2) According to the information of the cases received by the CCAC (see Appendix 57), an individual filed an application for a position to MPI. On the subject of “organizing a recruitment committee”, the then head of the Personnel Office drafted a proposal no. P269/PES/09 on 4<sup>th</sup> September 2009, reading: “*to comply with the order of the Secretary General dated 1<sup>st</sup> September 2009 in response to the application letter of the applicant, we are proposing to the Board of Management on organizing a recruitment committee for assessing the capability of the applicant of undertaking teaching work at the Gaming Teaching and Research Centre*”.

- (3) However, during the interview with the said applicant on 30<sup>th</sup> October 2009, the seven members of recruitment committee did not grade simulated teaching techniques or content of simulated teaching of the applicant on the grounds that the he/she intended to apply for the position of researcher.

Later on, the recruitment committee wrote a proposal no. P323/PES/09 on 3<sup>rd</sup> November 2009, mentioning that “*propose that (...) the applicant with a PhD degree is hired to undertake teaching and research work at the Gaming Teaching and Research Centre as a Class I adjunct professor*”. The Board of Management approved the employment on 12<sup>th</sup> November.

- (4) It should be noted that the above mentioned stimulated teaching techniques and content of stimulated teaching are two of the items listed in the *Grading Table* and they take up 50% of the total interview scores, which is 25% of the total grade. While the recruitment committee exempted the applicant from performing stimulated teaching on the grounds that he/she was applying for the position of researcher, later on it suggested in the employment proposal that the applicant be hired to undertake teaching and research work. In other words, it is likely that MPI would have the said applicant undertake teaching work in accordance with the approved employment proposal, and the employment would not be affected by the lack of the grades of stimulated teaching techniques and content of stimulated teaching. This definitely called into question the legality and impartiality of relevant recruitment procedure and went against the principle of self-regulation – without a justifiable reason MPI failed to observe the grading criteria established by itself.
- (5) Therefore, **the recruitment committee could not exempt the applicant from participating in the two items of examinations aiming to assess his/her teaching skills on the grounds that the applicant intended to apply for the position of researcher, while later on suggested that the applicant be hired to undertake teaching work** (particularly, MPI is still adopting the title of professor/associate professor for the post of researcher), **which makes the recruitment procedure unfair.**
- (6) When it comes to interviews, according to case no. 020/C/2010 handled by the CCAC, the recruitment committee once exempted candidates who had phone interviews from performing simulated teaching. This caused one member of the recruitment committee to question the legality of such matter.

- (7) Given the above facts, it seems that MPI allowed the recruitment committee not to assess the candidates according to the items listed in the *Grading Table* during the recruitment procedure, which means examination of one or more of the items can be exempted. However, there is no regulation regarding how the right of exemption should be exercised and whether there is a control or supervision mechanism. For this reason, it is recommended that MPI should revise the relevant work guidelines and make them public via proper means after reviewing its practical situation and consultation with TSC (in accordance with Subparagraph e) of Paragraph 1 of Article 19 of the *Statutes*). This is to avoid that public doubts about whether the recruitment procedure has been lack of transparency or tailor-made for certain individuals.

\* \* \*

## 5. Promotion and relevant systems

According to the *Regulations for Academic Staff of Macao Polytechnic Institute* (hereinafter referred to as *Regulations for Academic Staff*) approved by the Order no. 29/SAAEJ/99 of the then Secretariat for Administration, Education and Youth Affairs amended by the Order no. 186/2008 of the Secretary for Social Affairs and Culture, the criteria for promotion of academic staff of MPI are as follows:

Category	Criteria for Promotion	Reference
Promotion to Professor	1. Associate professors who have served in their position for not less than four years and hold a PhD degree; and 2. Those who have passed the public examination.	Paragraph 1 of Article 11
Promotion to associate professor	1. Lecturers who have served in their position for not less than four years and hold a PhD degree; and 2. Those who have passed the public examination.	Paragraph 1 of Article 12
Promotion to lecturer	1. Assistant lecturers who have served in their position for not less than four years and hold a master's degree; and 2. Those who have passed the public examination.	Paragraph 1 of Article 13

**(1) Promotion procedure stipulated in *Regulations for Promotion of Academic Staff* lacks the legal step of making suggestions by school directors of academic units but creates the Qualification Evaluation Committee with decision making power**

1. To regulate the promotion of academic staff, MPI stipulated the “*Regulations for Promotion of Academic Staff of Macao Polytechnic Institute*” (hereinafter referred to as the *Regulations for Promotion of Academic Staff*), which entered into force on 1<sup>st</sup> September 2010 (see Appendix 58).
2. The promotion procedure stipulated in the *Regulations for Promotion of Academic Staff* is as follows:
  - (1) *The Academic Affairs Department announces the number of vacancies in the respective categories in July each year (Article 18);*
  - (2) *The applicant shall submit the application letter for promotion to the Academic Affairs Department between 1<sup>st</sup> and 30<sup>th</sup> September each year<sup>33</sup> (Article 19);*
  - (3) *The Qualification Evaluation Committee<sup>34</sup> (hereinafter referred to as QEC) is responsible for the evaluation of the eligibility of applicants (Article 20);*

<sup>33</sup> With regard to the provision that allows application for promotion to be only submitted between 1<sup>st</sup> and 30<sup>th</sup> September, some MPI staff believed that there would be no vacancies for internal staff for promotion in September due to the fact that MPI normally recruits academic staff to fill the vacancies immediately after the resignation/retirement of their existing academic staff is confirmed (see the second last paragraph of Appendix 60). However, with regard to the complaint by the MPI staff against the regulations about the deadline of application for promotion, since the CCAC did not have sufficient knowledge of the usual arrangement for recruitment of academic staff of MPI, there is no condition for the CCAC to assess the situation. However, the said provision has apparently violated the *Statutes* and the *Regulations for Academic Staff*. Moreover, there is no data showing that MPI has ever consulted TSC for advice on the establishment of the regulations in accordance with the *Statutes*. Therefore, the CCAC wrote a letter to MPI to demand a suspension of the implementation of the *Regulations for Promotion of Academic Staff*. MPI replied in a letter that they would accept the request (see Appendix 74).

<sup>34</sup> Article 20 of the *Regulations for Academic Staff* provides that “(...) *The Qualification Evaluation Committee is composed of the following parties: (1) The Vice President; (2) Four members and two alternate members randomly selected from the academic staff who hold the position of professor and belong to the the same professional area of the applicant (in case there is not sufficient academic staff in the same professional area, they can be selected among the academic staff who hold the position of professor in other professional areas). The Vice President acts as the Chairman of the Qualification Evaluation Committee, who presides over the meetings of the committee.*”



- (4) Application letters that are deemed to meet the requirements by QEC shall be sent to the Pedagogical Scientific Committee/Technical and Scientific Committee of relevant academic unit that the vacancies belong to for written opinions, which will be sent back to QEC for confirmation, and will be placed on the files to be submitted to the recruitment committee for assessment (Article 23);
  - (5) *The list of applicants who have passed qualification evaluation and assessment of the units that offer the vacancies should be publicized for seven days, during which **any concerns raised with regard to the qualification of the applicants shall be discussed and decided by QEC** (Article 24);*
  - (6) *Application for promotion to professor and associate professor shall be subject to the assessment by external experts – anonymous assessment of professionalism and academic attainment (Article 25);*
  - (7) *Applicants who have passed the assessment by external experts may participate in the public examination (Article 28 and Article 29). MPI staff may attend and raise questions (Article 31);*
  - (8) *The list of the applicants for the promotion approved by the recruitment committee shall be submitted to the Board of Management for approval. Once approved, the list will be publicized. (Paragraph 1 of Article 35);*
  - (9) *If there is no objection or complaint concerning the approved applicants by the end of the publicization, the Board of Management shall approve the recruitment (Paragraph 2 of Article 35).*
3. However, the step of “making suggestions” by the directors of relevant academic units was not included in the afore-mentioned procedure in accordance with the provisions of the Statutes. MPI explained that since the *Regulations for Promotion of Academic Staff* provides that the Pedagogical Scientific Committee/academic committee of relevant academic units shall assess the application for promotion and give written opinions, and since “the directors of schools or heads of academic units who act as the ex-officio members of the committees and preside over the committees shall participate in the assessment and give opinions in writing”, relevant provisions conform to

the *Statutes* (see Point 1 of Part 4 on p.3, Appendix 13).

4. According to Paragraph 1 of Article 24 of the *Statutes*, “*the director and the Pedagogical Scientific Committee are the entities of each academic unit*”, which can be understood that the director and the Pedagogical Scientific Committee are **two different entities and they, together with the Board of Management, undertake different functions in the promotion procedure; no matter whether the procedure is initiated by PSC, suggestions should be made by the directors before they are submitted to the Board of Management for discussion and making decision.**
5. Like what MPI has said, Paragraphs 2 and 3 of Article 27 of the *Statutes* provide that:

“2. *The Pedagogical Scientific Committee of each tertiary school is composed of the following parties:*

- a) *The director, who is the Chairman;*
- b) *The deputy director;*
- c) *Course coordinators of the school;*
- d) *A representative from the academic staff of relevant course or project;*”

3. *The Pedagogical Scientific Committee of the Seniors Academy is composed of the following parties:*

- a) *The director, who is the Chairman;*
- b) *An academic staff or an officer of the school appointed by the director;*
- c) *Five to nine people with recognized qualifications from the Seniors Academy appointed by the President upon the suggestion of the director.”*

Although directors/heads of academic units are chairmen of relevant committees, since the committees are collegiates and there is no regulation with regard to the approval of decisions in the Operation Regulations for PSC provided by MPI (see the previous analysis), in principle, Paragraph 1 of Article 27 of the Code of Administrative Procedure should be applied, which means the committee’s

“resolutions are decided upon the majority of votes of the members who attend the meeting”. If the director of the school holds a position which is different from that of the majority of members on issues discussed in the committee, in principle it does not prevent the committee from reaching resolutions in accordance with the *Code of Administrative Procedure*. **Therefore, it is not possible for MPI not to carry out the steps in the promotion procedure stipulated in the Statutes by the reason that “the directors of schools or heads of academic units who act as the ex-officio members of the committees and preside over the committees shall participate in the assessment and give opinions in writing”**.

6. What should be noted is that the promotion procedure stipulated in the *Regulations for Promotion of Academic Staff* lacks “directors”, a legal competent entity with powers to make suggestions that should be included in accordance with the *Statutes* of MPI, while it has created an entity not provided in the *Statutes* – **QEC, and has vested it with the following powers:**
  1. *To evaluate whether the applicants meet the requirement (see the previous part); if the applicant made the application for the same position in the previous school year but was rejected by QEC (Item 1 of Article 17 of the Regulations for Promotion of Academic Staff), his/her application for promotion will not be accepted provided he/she fails to produce any new information that proves his/her eligibility. According to the provision, QEC has the power to decide whether the applicant should be eliminated basing on whether he/she is a qualified applicant;*
  2. To confirm the opinions of Pedagogical Scientific Committee/academic committee on applications for promotion (see the previous part).
7. In fact, **there is nothing wrong that MPI** establishes an auxiliary unit or a group to assist with the assessment of qualification or work required for the application for promotion basing on its experience. **However, relevant auxiliary unit or group should not be vested with any decision making power, otherwise it will be a violation of the Statutes.**

\* \* \*

**(2) Promotion requirements stipulated in *Regulations for Promotion of Academic Staff* contravene the law**

1. According to Paragraph 1 of Article 11 of the *Regulations for Academic Staff*, associate professors who “have served in their position for not less than four years and hold a PhD degree and have passed the examination as referred to in Article 18 can be promoted to the rank of professor”, while Paragraph 2 of the same article provides that the legal qualification for “entering the rank of professor” should hold a PhD degree in the academic fields as referred to in the notice of examination recruitment and who have teaching experience in higher education for a at least four years” and pass the examination referred to in Article 18.” The content of the public examination stipulated in Article 18 is as follows:

- “a) Assessment of candidates’ attainment/performance in aspects such as academy, art, skills, teaching and professionalism;
- b) Presentation on a theme chosen by the candidate among the subject areas as required by the examination;
- c) Presentation and discussion of an individual dissertation by the candidate within the subject areas as required by the examination to demonstrate his/her capability in teaching and research and innovativeness.”

Articles 12 and 13 also stipulate relevant requirements and procedures regarding the promotion from the rank of lecturer to associate professor or the entrance into the rank of associate professor, as well as the promotion from the rank of assistant lecturers to lecturer or the entrance into the rank of lecturer.

2. According to the provisions with regard to promotion to/entrance into the rank of professor, the *Regulations for Academic Staff* does not require that associate professors must hold a PhD degree in certain academic fields. In other words, from the standpoint of the lawmaker, the requirements for recruiting the qualified candidates to “enter the rank of professor” are stricter than those for promotion to the rank of professor.

Since promotion to a higher rank is the rights of MPI personnel, in principle, promotion and recruitment should be two procedures of different natures.

Despite that the same vacancy (i.e. professor/associate professor/lecturer) can be filled through either of the two procedures, for employers, these two procedures target different people. The candidates for promotion should already be the employer's incumbent personnel, whose performance and capability should be known well, while the candidates of the recruitment procedure are usually not the personnel of the employer, which means the capability of the candidates can only be assessed through relevant examinations. Therefore, external recruitment usually includes the requirements for the academic field of the candidate to be employed. As a matter of fact, relevant analysis can be proved by Articles 11, 12 and 13 of the *Regulations for Academic Staff*.

3. **However, Article 4 of the Regulations for Promotion of Academic Staff has the following rules regarding the promotion of association professor to the rank of professor:**

- “(1) Holding a PhD degree in the academic fields considered appropriate according to the vacancies being applied for.*
- (2) Four years of work experience in the rank of associate professor in the institute.*
- (3) Meeting the quantitative requirements for the work of relevant personnel described in this section.”*

**Article 5 of the quantitative requirement is as follows:**

- “(1) Giving lectures on four subjects in the related fields.*
- (2) Over the recent four years (...), having obtained the following in the teaching performance appraisal: (1) a rating of “very good” or “good” for not less than three years; or (2) an average grade of 3.75 (with 5 being the highest) for not less than six semesters.*
- (3) Supervising graduation theses or projects for two academic years. Those who do not have the opportunity to supervise graduation theses or projects shall give lectures on a subject in the relevant field.*
- (4) During the period that the candidate serves as an associate professor, he/she shall obtain a total of 12 points from the publication of scholarly*

*treatises and research reports on academic journals and compilations of theses listed in Appendix 1. The points obtained from the publication of dissertations on the first category of the academic journals cannot be less than two thirds of the total points.*

*3 points obtained from the publication of scholarly treatises and research reports can be replaced by obtaining a patent licence or the registration of a software by the candidate as the original inventor; if the candidate is not registered as an original inventor of the patent licence or the software, his/her points will be 50% of that of the inventor ahead of him/her. A patent licence can be replaced by two patent applications.*

- (5) *During the period that the candidate serves as an associate professor, he/she should, independently or as the first author, publish a scholarly treatise with not less than 200,000 Chinese characters. (...) Such scholarly treatise can be replaced by a thesis related to science, engineering or medicine enclosed in the Science Citation Index (SCI).*
- (6) *During the period that the candidate serves as an associate professor, he/she should complete or undertake the following research projects:*
  - 1) *As the project leader, completing or undertaking a research project obtained through open tendering, or participating in a research project at provincial level and taking part in part of the writing; and*
  - 2) *As the project leader, completing or undertaking two research projects of the institute and those commissioned by bureau-level institutions or funded by foundations.*

*A research project of category (2) can be replaced by that of category (1).*

*Research projects listed in category (1) may be replaced by scholarly treatises listed in the first category of academic journals in Appendix 1 (4 points).*

*Research projects listed in category (2) may be replaced by the scholarly treatises listed in the first category of academic journals in Appendix 1 (3 points).*

- (7) *Organizing public academic seminars or delivering thematic reports or*

*speeches at domestic or overseas academic conferences twice; or, as a main person in charge, participating in organizing institution-wide, local, nation-wide or international conferences once; or participating in editing or revision of the Journal of MPI for one year; or participating in editing or revision of compilation of theses of academic conferences of MPI twice.*

- (8) *Two years' work experience in the advisory bodies of the government, professional organizations, academic organizations, committees of the institute and other non-profit institutions."*
4. With regard to the procedure of promotion of professors and associate professors, the *Regulations for Promotion of Academic Staff* contains two parts, namely "assessment by external experts" and "public examination". First the external experts "give opinions on the professional level of representative academic achievements of the applicants and if they are qualified for the ranks applied for through promotion" (Paragraph 2 of Article 25 of the *Regulations for Promotion of Academic Staff*). Those who has passed the assessment by external experts may take part in the public examination, which involves the following:
- "(1) *Applicants should give a presentation to the recruitment committee about their significant academic contributions in their professional fields, including their representative academic achievements published by them independently or as the first author, and give an introduction and an analysis on a topic in the relevant fields to demonstrate their innovative contributions to the topics being discussed (...).*
- (2) *Members of the recruitment committee give comments on the presentation of the applicants and raise questions regarding the academic issues concerned. The applicants are required to give instant responses or explanations."* (Article 29 of the *Regulations for Promotion of Academic Staff*)."
5. When putting the legal requirements for promotion and Article 4 of the *Regulations for Promotion of Academic Staff* in comparison, we can find that the requirements for promotion stipulated in *Regulations* are even stricter than the legal requirements. In fact, the the *Regulations for Academic Staff* only stipulates two requirements, namely "four years of service" and "a PhD degree", which means that associate professors are eligible to participate in the examination if they meet these two requirements.

6. However, according to Article 4 of the *Regulations for Promotion of Academic Staff*, there is a provision which requires “the applicant to meet the quantitative requirements”, which include “giving lectures on four subjects in the related fields; supervising graduation theses or projects for two academic years; publication of scholarly treatises or inventions that are worth certain points and participation in academic exchange and involvement in work that is irrelevant to his/her profession within or outside the institute”.
7. Although Article 18 of the *Regulations for Academic Staff* provides that the examination also assesses candidates’ attainment/performance in aspects such as academy, art, skills, teaching and professionalism, the institute should not have included them as part of eligibility requirements for candidates to participate in the promotion examination. Neither should it have excluded applicants who do not meet these requirements from participating in the examination, as this has simply deprived applicants of the opportunity to compete for the position. According to the *Regulations for Academic Staff*, associate professors who meet the requirements of “four year’s service” and “a PhD degree” may take part in the examination as stipulated in Article 18 and compete with other candidates.
8. It should be noted that even though associate professors who do not meet the quantitative requirements of the *Regulations for Promotion of Academic Staff* might be mediocre in the aspects of “academy, art, skills, teaching and professionalism” stipulated in Subparagraph a) of Article 18 of the *Regulations for Academic Staff*, it does not mean that they are not able to obtain good results in the two examinations stipulated in Subparagraphs b) (i.e. “*Presentation on a theme chosen by the candidate among the subject areas as required by the examination*”) and c) (i.e. “*Presentation and discussion of an individual dissertation by the candidate within the subject areas as required by the examination to demonstrate his/her capability in teaching and research and innovativeness.*”), which allows them to have the opportunity for promotion.
9. Therefore, MPI’s act of including the quantitative requirements in the “*Regulations for Promotion of Academic Staff*” **has in fact raised the requirement stipulated in the *Regulations for Academic Staff*, depriving applicants who are eligible to take the promotion examinations of the right to promotion, which is a violation of the *Regulations for Academic Staff*.**
10. In fact, to ensure the ability and teaching quality of academic staff, MPI may find it necessary to raise the promotion requirements for academic staff, but this



shall be carried out in accordance with law through amending the *Regulations for Academic Staff*<sup>35</sup>; in the meantime, the promotion requirements for other academic staff should be raised moderately to ensure that all the incumbent academic staff are treated fairly.

\* \* \*

**(3) Lack of clear standards regarding how the *Regulations for Promotion of Academic Staff* may apply to the recruitment procedure**

1. According to the second paragraph of Article 3 of the *Regulations for Promotion of Academic Staff*:

*“The external recruitment of professors, associate professors, lecturers and assistant lecturers shall be subject to relevant provisions of this Regulations.”*

According to the *Regulations for Promotion of Academic Staff*, relevant promotion procedure stipulates standards<sup>36</sup> for qualification requirements and examination, assessment by external experts as well as candidates’ performance in public examination. However, MPI has not yet had any rules regulating how the recruitment procedures are carried out with reference to the above provision of the *Regulations for Promotion of Academic Staff*.

2. According to Article 17 of the *Regulations for Promotion of Academic Staff*:

*“People who meet relevant requirements defined in Chapter two may apply for promotion in accordance with the *Regulations for Promotion of Academic Staff* except under the following circumstances:*

<sup>35</sup> Although the CCAC supports the idea that MPI has been drawing on the successful experiences of Mainland China and other regions, it believes that the institute should make adjustment according to its own system and situation, instead of following others’ experiences blindly. Otherwise, it will be a violation of law.

<sup>36</sup> See provisions of Chapter two and Chapters four to six of the *Regulations for Promotion of Academic Staff*.

- (1) *When an application for promotion to the same position has been rejected by the Qualification Evaluation Committee in the previous academic year and the applicant fails to produce new documents to prove his/her eligibility to apply in the current academic year.*
- (2) *When an application for promotion to the position of professor or associate professor has been rejected by external experts in the previous academic year and the applicant fails to present any new representative academic achievement in the current year.*
- (3) *When an application for promotion to the same position has been rejected by the recruitment committee in the previous academic year and the applicant fails to present any new representative academic achievement in the current year.*

Does this indicate that in the course of its external recruitment MPI does not allow the eliminated candidates (regardless of those who could not sit in the written examination, those who did not have the chance for interviews or those who could not pass the interviews) in the previous recruitment examination to apply for the same position again? If yes, the institute has apparently gone against a fundamental right of residents – i.e. the right to employment.

3. In addition, according to MPI's *Recruitment Procedure for Full-Time Academic Staff*, the *Guidelines for Grading and Interview Arrangement for the Recruitment of Full-Time Academic Staff* and the *Grading Table for the Recruitment of Academic Staff*, together with the case information collected by the CCAC, the Personnel Office will first carry out preliminary screening for candidates and then submit the list of candidates who hold a PhD degree and possess/do not have teaching experience to relevant academic units (see Appendix 59). The academic units then will hold an examination (including curricular vitae scoring and interview) for the shortlisted candidates. In other words, **in practice MPI sometimes did not eliminate candidates who did not meet the requirement of "no less than four years' teaching experience in tertiary education" but allowed them to sit in the examination and go through curricular vitae scoring. There is indeed a big discrepancy between this practice and the promotion requirements stipulated in Article 5 of the Regulations for Promotion of Academic Staff (in addition to the compliance with**

the statutory requirements stipulated in the *Statutes*, candidates shall meet all the quantitative requirements in order to participate in the examination procedure). It is therefore very difficult for MPI to carry out external recruitment in accordance with relevant provisions of the *Regulations for Promotion of Academic Staff*. The institute should, in accordance with the requirements for the employment of various academic staff stipulated in the *Statutes*, handle the promotion of existing academic staff and the recruitment of new academic staff fairly.

\* \* \*

#### **(4) Continual appointment**

1. According to MPI, after deciding the period of continual appointment of an academic staff by reviewing the “Taught Course and Teaching Evaluation Questionnaire”, the “Internal Assessment Report on Teaching Quality” as well as other relevant information and taking into account the staff’s own opinion about the continual appointment, the chief of the unit presents the continual appointment proposal to the Board of Management for approval. **MPI did not, however, mention that the proposal should be submitted to PSC for advice. To ensure that the relevant procedures meet the provision of the *Statutes*, MPI should stipulate a statutory procedure for continual appointment of academic staff so that all the academic staff are clear about it.**
  
2. On the other hand, according to information (see Appendix 61), in order to achieve the goal that over 70% of the full-time academic staff are PhD degree holders in six years’ time in 2002, through Resolution no. 26D/CG/2002, the Board of Management regulated that **all the incumbent academic staff must obtain a PhD degree within six years from 1<sup>st</sup> September 2003**. The provisions are as follows:
  - “(1) *Incumbent professors who do not hold a PhD degree must obtain a PhD degree in relevant fields within four years. Otherwise the institute will terminate the employment of them as professors;*
  
  - (2) (...) *Incumbent associate professors who hold a Master’s Degree must obtain a PhD degree in relevant fields within six years. Otherwise the*

*institute will terminate the employment of them as associate professors;*

(3) *Incumbent lecturers who do not hold a Master's Degree must obtain a Master's degree in relevant fields within three years. Furthermore, they must obtain a PhD degree in relevant fields within three years upon obtaining a Master's Degree. Otherwise, the institute will terminate the employment of them as lecturers;*

(4) *Incumbent lecturers who hold a Master's degree must obtain a PhD degree in relevant fields within six years. Otherwise, the institute will terminate the employment of them as lecturers;*

(...)"

3. According to Article 13<sup>37</sup> and Article 17<sup>38</sup> of the *Regulations for Academic Staff* revised in accordance with Order no. 186/2008 of the Secretary for Social Affairs and Culture of 29<sup>th</sup> December, the academic requirement for the position of lecturer (including visiting lecturers) is raised from "Bachelor's Degree" to "Master's Degree", while Article 12 provides that the academic requirement for the position of associate professors is raised from "Master's Degree" to "PhD Degree". Also, Article 2 of the said order of the Secretary for Social Affairs and Culture provides that *"the regime stipulated in the original Regulations is still applicable to the*

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<sup>37</sup> Article 13 **before amendment** in accordance with Order no. 186/2008 of 29<sup>th</sup> December of the Secretary for Social Affairs and Culture is as follows:

*"1. Assistant lecturers (...) may enter the rank of lecturer after completion of bachelor's degree programmes.  
2. Candidates who have a Bachelor's degree or equivalent academic qualifications and meet the requirements of the recruitment examination notice may directly enter the rank of lecturer after relevant documents are reviewed and approved.*

*3. Assistant lecturers shall not enjoy the renewal of employment contract if they fail the examination referred to in Article 20 or are not able to complete and pass their Bachelor's programme within six years of service in the rank of assistant lecturer."*

**The amended article** is as follows:

*"1. Assistant lecturers who hold (...), and hold a Master's degree and pass the examination referred to in Article 20 may enter the rank of lecturer.*

*2. Candidates who have a Master's degree, meet the requirements of the recruitment examination notice and pass the examination referred to in Article 20 may enter the rank of lecturer (...)."*

<sup>38</sup> Article 17 **before amendment** in accordance with Order no. 186/2008 of 29<sup>th</sup> December of the Secretary for Social Affairs and Culture is as follows:

*"Visiting lecturers are recruited by invitation among those holding a Bachelor's degree or graduates with equivalent academic qualifications in higher education, and who are with recognized academic or professional credentials in relevant subjects or fields."*

**The amended article** is as follows:

*"Visiting lecturers are recruited by invitation among those holding a Master's degree with recognized academic or professional credentials in relevant subjects or fields."*

*academic staff hired in accordance with the Regulations for Academic Staff of Macao Polytechnic Institute approved by Order no. 29/SAAEJ/99 of 23<sup>rd</sup> August on the date when this order comes into effect, except for the provisions relevant to promotion”.*

In other words, lecturers and visiting lecturers holding only a Bachelor's degree entered the service before the entry into effect of the above order shall lose the promotion opportunities but shall not be subject to termination of appointment, provided that he/she fails to obtain a Master's degree (within three years) and a PhD degree (within three years upon obtaining a Master's degree). This also applies to associate professors holding a Master's Degree who fail to obtain a PhD degree within six years' time.

4. What is worth our attention is that according to Article 13 of the *Regulations for Academic Staff* revised in accordance with the said order of the Secretary for Social Affairs and Culture, those who are not academic staff of MPI must hold a Master's degree should they apply for the position of lecturer. **However, according to the resolution of the Board of Management, incumbent lecturers who fail to, within the stated periods of time, obtain a Master's degree and a PhD degree or just a PhD degree within six years, will be subject to the "penalty" of non-renewal of their contracts. This is simply a gesture of defiance of the Board of Management against legality and justice!**
5. The above analysis does not apply to non-renewal of contract that is caused by disciplinary issues or assessment of the academic staff.
6. **In conclusion, Resolution no. 26D/CG/2002 of MPI has apparently gone against Order no. 186/2008 of the Secretary for Social Affairs and Culture. Therefore, MPI should repeal the above resolution or propose a revision of the Regulations for Academic Staff to the Secretary for Social Affairs and Culture.**

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## IV – Management problems

### 1. Unclear recusal system

1. The *Recruitment Procedure for Administrative Staff*, the *Recruitment Procedure for Full-Time Academic Staff* and the *Recruitment Procedure for Full-Time Academic Staff from Mainland China* have provisions regarding recusal of recruitment committee members. However, has MPI ever standardized relevant procedure? For instance, if a member makes a request for voluntary recusal to the chairman of the committee, should the other members be informed after the chairman decides to accept the recusal and make relevant announcement? MPI stated in a letter that “*when the recruitment committee members attend the second meeting (...), they shall look through the list of candidates and then sign a recusal statement (see Appendix 2). Should any of the committee members announces recusal, each member at the meeting shall be informed*” (see Point 2 of Part 1 on p.1, Appendix 13)
2. The “Recusal Statement of Members of Recruitment Committees/Grading Panels” (hereinafter referred to as the “Statement”. See Appendix 62) provided by MPI lists the following three situations that require recusal:
  - Having any lineal relatives or in-laws by lineal (i.e. parents...daughter in law, spouse);
  - Having collateral relatives within the third degree of consanguinity (i.e. grandparents, grandchildren and their spouses, uncles and aunts...);
  - When conflicts of interest exist.

These three categories are to be checked or not checked by the members of recruitment committees/grading panels to demonstrate whether recusal is necessary. The recusal statement also provides that it is “*carried out in accordance with Paragraph 7 of Article 54 of the Statute of Personnel of the Public Administration of Macao and Article 50 of the Code of Administrative Procedure of Law no. 57/99/M*”.

3. We must note that, however, the examples given in the recusal statement about the “collateral relatives within the third degree of consanguinity”, including grandparents, grandchildren and their spouses, **are lineal relatives or in-laws by lineal other than collateral relatives, according to Articles 1465, 1468 and 1469 of the Civil Code.**
  
4. According to Article 1 of the *Statutes of Personnel*, *“this Statutes of Personnel shall apply to the staff of Macao Polytechnic Institute (hereinafter referred to as IPM), while the special system pertaining particularly to the provision of service, external recruitment, requisition, dispatch and regular appointment defined in the Statute of Personnel of the Public Administration of Macao is also applicable.”* Paragraph 7 of Article 54 of *Statute of Personnel of the Public Administration of Macao* provides that *“if the candidate is a lineal relative or in-law by lineal or a collateral relative within the third degree of consanguinity of any of recruitment committee members, the member shall be replaced in accordance with the provision of (...)”*. Therefore, in the course of recruitment of public servants, if the candidate is a lineal relative or in-law by lineal or a collateral relative within the third degree of consanguinity of any of recruitment committee members, the recruitment committee member must announce recusal. Therefore, it is justifiable for MPI to apply the recusal system for personnel of public administration.
  
5. Also, according to Article 2 of the *Code of Administrative Procedure*, relevant provisions regarding recusation may also apply to the recruitment of personnel of MPI. Paragraph 1 of Article 46 of the *Code of Administrative Procedure* lists eight circumstances where recusation must take place, and provides that the kinship relation of **“collateral descent within the second degree of consanguinity”** [(Subparagraph b) of Paragraph 1 of Article 46] shall fall within the scope of compulsory recusal, while the kinship relation of **“collateral descent within the third degree of consanguinity”** is a typical situation fall within the scope of voluntary recusal described in the *Code of Administrative Procedure* [(Subparagraph b) of Paragraph 1 of Article 50].
  
6. According to MPI, the three listed circumstances that require recusal are *“based on Paragraph 7 of Article 54 of the Statute of Personnel of the Public Administration of Macao and Article 50 of the Code of Administrative Procedure of Law no. 57/99/M”*. **We find it hard to figure out how MPI applies both Paragraph 7 of Article 54 of the Statutes of Personnel of the Public Administration of Macao and relevant provisions of the Code of**

**Administrative Procedure altogether.** For example, if one of the candidates is a collateral descent within the third degree of consanguinity of a recruitment committee member, shall this member go on with compulsory recusal according to the *Statute of Personnel of the Public Administration of Macao*? Or is this one of the circumstances requiring voluntary recusal based on the *Code of Administrative Procedure*? (In the former case, the chairman of the recruitment committee shall announce recusal of relevant member in accordance with law, while in the latter case the chairman reserves the right to decide whether relevant member needs to announce recusal). Apparently, MPI has not provided clear and sufficient explanation for this.

7. MPI claimed that “when the recruitment committee members attend the second meeting (...), then sign a recusal statement”; “Should any of the committee members announces recusal, each member at the meeting shall be informed”; also, the recusal statement provides several spaces for signatures of members, which makes it look like that all committee members have to sign on the same recusal statement.
8. In fact, in these cases, if some committee member has announced recusal, other members should be informed of the absence of that committee member. However, this does not mean that they have the right to know the reason of the replacement for the member when it is still subject to decision of the Chairman of the committee which may require compulsory recusal or voluntary recusal. Particularly, special consideration should be given to the situation where the member might have a relationship with a candidate that he/she considers unsuitable to be made known to other members. Therefore, when MPI is considering which method its staff should adopt to apply for recusal, it should also respect the privacy of the member. Otherwise, it would go against the “principle of proportionality” and the “principle of good faith”.
9. In conclusion, when requiring its staff to notify whether they have a relationship with the candidates or there is any circumstance that necessitates recusal, MPI should not simply indicate that “it is carried out in accordance with Paragraph 7 of Article 54 of the Statute of Personnel of the Public Administration of Macao and Article 50 of the Code of Administrative Procedure of Law no. 57/99/M”. Instead, **it should explicitly stipulate which provisions about recusal to be observed in the recruitment of personnel, the methods to be adopted to apply for recusal and the procedure for handling recusal.**



10. According to the last paragraph of Article 32 of the *Regulations for Promotion of Academic Staff* (see Appendix 58) regarding the establishment of a recruitment committee for the promotion of professors and associate professors, “the thesis supervisor and those who are lineal relatives or in-laws by lineal of the applicant shall not be included in the list of relevant recruitment committee members; those who have already been included as recruitment committee members should take the initiative to announce recusal”. MPI also indicated that “the applicant for promotion shall take the initiative to report the information of the thesis supervisor. If the thesis supervisor appears on the list of experts randomly selected by the computer, the Secretariat will exclude him/her from the list” (see Point 7 of Part 3 on p.3, Appendix 13). Apparently, MPI has not established a set of procedures dealing with recusal [including defining the circumstances where the *Statute of Personnel of the Public Administration of Macao* should be applied and other circumstances requiring compulsory recusal and voluntary recusal described in Article 46 and Article 50 respectively in the *Code of Administrative Procedure*]. **Therefore, it is necessary for MPI to establish a complete mechanism for parties who are involved in the recruitment, promotion and continual appointment to observe when handling recusal and the privacy of the concerned people.**

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## 2. Lack of mechanism for internal communication and expression of opinions

1. According to the information about “opinions of MPI staff regarding the operation of MPI”, professor B from the School of Arts stated that he/she had once presented his/her enquiry to the institute via an e-mail regarding whether the part-time instructor T who was assigned to teach Typography(2) was qualified to teach the course (see ⑤ ⑥ of Appendix 63. The letter did not specify the date or who it was addressed to). However, associate professor A (a roommate of instructor T in Hong Kong according to professor B) somehow got hold of relevant document and revealed the content to other teaching staff in the institute via an e-mail on 8<sup>th</sup> May 2009 (see ⑦ of Appendix 63. Associate professor A did not directly indicate the names of professor B and instructor T in the e-mail). Moreover, associate professor A even criticized that the sender of the email should not have lodged a complaint in this way. Professor B believed that associate professor A had read his/her letter to the institute without his/her consent, so he/she made an inquiry to the coordinator to look into the matter on

21<sup>st</sup> June 2009 (see ① of Appendix 63). However, the institute did not initiate any investigation or procedure for accountability.

2. Professor B once brought up the issue concerning the course Typography(2) lectured by instructor T for a few times. One of those letters provided to the CCAC for reference did not indicate the date or who it was addressed to but the name of professor B. It means that if the institute revealed the content of the letter to other parties, the identity of the complainant would certainly be made public. However, the information provided by professor B was not sufficient to prove that associate professor A came to know, through the institute or by illegal means, that professor B was the complainant. Therefore there was no adequate evidence to affect the accountability of associate professor A.
3. The complaint handling procedures provided by MPI mainly target complaints of students, which concern classrooms, lesson time, teaching staff and the Division for Pedagogical Affairs, while there is no such procedure for handling complaints pertaining to the institute, schools and course arrangement (see Appendix 64). Therefore, there is no condition for analyzing if the handling procedure for internal complaints made by staff is appropriate or not.
4. As a matter of fact, in this case there was not sufficient evidence to show that apparent illegality and malpractice existed in the mechanism for academic staff to express dissatisfaction with the operation<sup>39</sup> of relevant academic units. Nevertheless, from the perspective of good administration, especially for the purpose of observing the principles of goodwill, being non-bureaucratic and efficiency in carrying out administrative initiatives, it is recommendable that MPI should work out which channels are to be used by its academic/non-academic staff to voice their opinions about internal operation and relevant handling mechanism, so that any misunderstanding/opinions of the personnel can be promptly clarified/replied. This will not only help foster a harmonious workplace but also optimize the general operation of the institute.

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<sup>39</sup> In fact, the CCAC once received many complaints with regard to not understanding relevant rules for internal operation of the institute. They mainly concern employment procedures, qualifications of staff who are newly employed and internal management.

### 3. System for approving absence without justification

1. According to the internal notice no. 02/PES/06 regarding the attendance system (hereinafter referred to as *Attendance System*. See Appendix 65) sent to all schools/departments by the Personnel Office of MPI, “(...) *Those who are late for work for more than 15 minutes in a day (regardless of morning or afternoon) or more than 30 minutes in a week shall be considered absent without justification. Nevertheless, after relevant staff presents a request for reasoning, the head may consider it as absence with justification. (...) The same reason for absence (i.e. “forgetting to clock in/out” or “arriving late/leaving early”) cannot be used for more than five times” each month. When the reason has been used for four times, the head of the school/department should give the staff an oral warning. If it reaches five times, the head should notify the Personnel Office to make a record of “absence without justification”* (which is carried out in accordance with Paragraph 2 of Article 58 of the *Statutes of Personnel of Macao Polytechnic Institute*).
2. According to MPI, the stipulation of relevant rule was to remind the staff of clocking in/out and to avoid that staff frequently use “forgetting to bring the card” or “forgetting to clock in/out” as excuses. MPI also emphasized that there has been no staff being considered absent without justification based on the same reason for five times since the rule was stipulated in 2002 (see Point 5 of Part 2 on p.2, Appendix 13).
3. According to Article 42 of the *Statutes of Personnel*, “when a staff member is not present at relevant department, or at the place that he/she should go to as required by work all or part of the time during the working hours of a day, he/she is considered absent”. Article 43 provides that “1. *The Board of Management has the power to accept the explanation of absence with justification of the staff of the Macao Polytechnic Institute. 2. Absence may be considered justifiable under the following circumstances: a)(...) g) causes that cannot be attributed to the staff, especially diseases, accidents, implementation of legal obligations, verdicts and force majeure that causes the inability to work; (...). 3. Other circumstances that are not stipulated in the preceding paragraph shall be considered absence without justification*”. According to the above provisions, if a personnel does not clock in/out on a working day, the Board of Management or an authorized person may require an explanation from the relevant staff. Provided that the explanation fails to provide a reason involving one of the circumstances described in Paragraph 2 of the above provisions, the absence is

regarded unjustifiable.

4. It is understandable that due to management reasons MPI accepts staff to use “forgetting to clock in/out” as an explanation for a limited number of times (no more than five times within a month). However, if the upper limit for not clocking in/out is five times within a month and an oral warning is only given when that has happened for four times, would it create a “chance” for the staff to use their forgetfulness as an excuse of not clocking in/out? **Would this mechanism be abused by staff or encourage them not to clock in/out (chances are some might fully utilized the quota of not clocking in/out at the end of each month)? The institute should review this issue.**

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#### 4. Inflexible payroll service and extra charges

1. *According to p.5 of the Staff Manual – Full-Time Academic Staff and Administrative Staff (2<sup>nd</sup> Edition – Volume 2) (hereinafter referred to as Staff Manual. See Appendix 66), “Since Banco Nacional Ultramarino (BNU) is the designated bank through which the institute realizes salary payments, it is recommended that staff members use a BNU account to receive salary payments so that they can receive payroll on time and that they do not have to pay an extra charge for the autopay service. Those who choose to receive salary payments via other banks shall bear any extra charges incurred for the autopay service and the deposit of salary will be delayed for two or three working days”.*
2. MPI explained that relevant service charge for autopay is not received by the institute but an administrative fee that might be charged by the other banks when the autopay service is provided. Therefore whether the said autopay charge is payable is not under the control of the institute. In fact, according to some staff members, the banks did not require relevant charges when they provide the autopay service (see Part 9 on p. 6, Appendix 13).
3. At present, public servants in Macao receive salary payments via their bank accounts, but there has not been regulation that salary payment can only be realized in a particular bank. Since there are representatives from the Financial Services Bureau (see Order no. 233/2008 of the Chief Executive) among the

members of the Board of Management, MPI may get information from them on this issue. It should do the best to provide accurate information for their staff and facilitate their receipt of payroll via the banks they have chosen. To avoid unnecessary disputes, the institute should make amendments to the Staff Manual accordingly once it is certain that other banks will not require service charges on the autopay service.

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## 5. Unclear calculation criteria for overtime working of staff

1. According to the information contained in the collected “opinions of MPI staff about the operation of the Institute”, a teaching staff of the School of Arts<sup>40</sup> said that associate professor X, who was the coordinator of the subject XXX, was responsible for preparing the teaching schedules for teachers. He/she was claimed to have taken advantage of his/her privilege to select teaching slots which are convenient for the academic staff he/she considered friends. Despite that the institute regulates that each teaching staff should provide a maximum of 12 hours of service per week and may be required to teach day or evening classes, associate professor X did not have to teach evening classes. Moreover, he/she only taught two days a week but was still eligible to receive overtime. In addition, associate professor X even changed the classes originally conducted in both mornings and afternoons to afternoons only (see Appendix 67).
2. According to Paragraphs 3 and 4 of Article 22 of the *Regulations for Academic Staff*, “each full-time academic staff must give lectures or carry out seminars for a certain number of hours per week, which is decided by the school director after consultation with the Pedagogical Scientific Committee. The minimum hours shall be 9 and the maximum shall be 12, (...)” and “where appropriate, the said numbers can be exceeded by no more than 4 hours per week. In this case, those who have worked for an extra number of hours should either be exempted from the same working hours later or receive overtime payment.” Full-time academic staff work for no more than 12 hours and no less than 9 hours per week. Overtime working shall not exceed 4 hours per week.

<sup>40</sup> According to the website of MPI, this person was one of the assistant course coordinators of the School of Arts. In addition, the school provides the programmes of Supplementary Bachelor of Arts in Design and Higher Diploma in Design.

3. According to the minutes of a regular meeting of school directors of MPI in February (no. 05A/2003, p.4 of Appendix 68):

*“The Board of Management has made the following decisions:*

- (1) Each full-time academic staff is, in principle, obliged to teach a maximum of 12 hours per week. Under special circumstances, the schools can reduce their hours to less than 12 but not less than 9 per week (if such situation occurs, the schools shall report it to the Board of Management);*
- (2) (...)*
- (3) Overtime must only be calculated when the actual teaching hours of the week has exceeded 12;*
- (4) Academic staff who are engaged in research work/projects may teach 9-12 hours per week.”*

Numbers of teaching hours of relevant teaching staff are listed as follows:

Position	Number of teaching hours
School directors	3-4 hours
Deputy school directors	3-4 hours
Course coordinators	6-8 hours
Assistant course coordinators	9 hours or above

4. According the above minutes, **(...) the subject coordinators were not among those whose teaching hours could be reduced. While the complainant pointed out that associate professor X** “only taught two days a week but was still eligible to receive overtime”, it is possible that one can teach more than 12 hours within two days’ time. Since the complaint did not concern the legality of reduction of teaching hours of associate professor X, it was not necessary to be followed up.
5. Moreover, taking into account of the entry into force of the *Labour Relations Law*, the Board of Management drew out a guideline on the “Regulations for Working Hours” through Resolution no. 01OS/CG/PES/2009 (see Appendix 69). The guideline, applicable to all full-time academic staff, has the following stipulations on overtime working:

With mutual consent	Way of compensation
When <b>provision of service takes place outside normal working hours</b> during weekays or normal working days, compensation shall be offered in accordance with Article 35 (Overtime Working Compensation) of the <i>Statutes of Personnel</i> .	Compensation by the deduction of working hours: Daytime x 1/ Nighttime x 1.5 Pecuniary Compensation: Daytime x 1/ Nighttime x 2
When overtime working takes place on an additional rest day or a public holiday (not mandatory), compensation shall be offered in accordance with Article 35 (Overtime Working Compensation) of the <i>Statutes of Personnel</i> .	Compensation by the deduction of working hours: x 1.5 Pecuniary Compensation: x 2

### **Overtime work during rest days** (with the letter of consent of staff)

With mutual consent	Way of compensation
Less than three hours	According to Article 43 of the <i>Labour Relations Law</i> , the employee is entitled to a rest day designated by the institute within 30 days upon the overtime work. If the compensatory rest day is not allowed, it shall be substituted by one day's remuneration.
More than three hours but less than eight hours	According to Article 43 of the <i>Labour Relations Law</i> , the employee is entitled to a rest day designated by the institute within 30 days upon the overtime work, or compensation shall be offered in accordance with Article 35 (Overtime Working Compensation) of the <i>Statutes of Personnel</i> .
More than eight hours	If the overtime work exceeds eight hours, compensation shall be offered in accordance with Article 35 (Overtime Working Compensation) of the <i>Statutes of Personnel</i> .

Since the guideline does not define “outside normal working days” (for example, Saturdays on which classes are given are listed as normal working days on the school calendar. However, we have no idea if Saturdays on which make-up classes are conducted due to force majeure are also considered normal working days), let alone the definition of “outside normal working hours”. Suppose an academic staff **is to teach an evening class, does it mean that teaching an evening class for 1 hour is equivalent to teaching a day class for 1.5 hours? If this is the case, from what time are the classes considered evening ones? 20:00 or 21:00? We cannot find answers to any of these questions in the guideline. MPI should make their calculation criteria clear to all of the academic/non-academic staff.**

\* \* \*

## 6. Legality of opening the multisport pavilion to public and fee charging

1. According to Point 1 of Report no. 30037/DGP/DACE/06 of the Financial Services Bureau, the Bureau “*granted the Macao Polytechnic Institute Multisport Pavilion to the Macao Sports Development Board on 9<sup>th</sup> December 2003 in accordance with the order of the Chief Executive issued on 2<sup>nd</sup> August 2002 regarding Proposal no. 343/DEPDPO/2002*” (see Appendix 70). However, **Proposal no. 343/DEPDPO/2002 concerns only the granting of works of the Macao Polytechnic Institute Multisport Pavilion (hereinafter referred to as the Multisport Pavilion). It does not mention that the management of the Multisport Pavilion will be undertaken by the Macao Sports Development Board (hereinafter referred to as the Board) (see Appendix 71).**
2. According to Article 1 of Decree Law no. 12/94/M of 7<sup>th</sup> February (the Organic Law of the former Macao Sports Institute revised according to Decree Law no. 21/97/M of 2<sup>nd</sup> June and repealed by Administrative Regulation no. 1/2006 effective on 24<sup>th</sup> January 2006) that were still effective at that time, “*the Board is an autonomous administrative institute that has no legal personality. It cannot own any immovable in the name of the Board*”; in addition, Articles 11 and 12 of the above decree law provide that the sports facilities granted to the Board all belong to the properties of the territory of Macao. According to law, the Board shall manage relevant sports facilities on behalf of the Macao Government only. In other words, even though Point 1 of Proposal no. 30037/DGP/DACE/06 of the Financial Services Bureau “*(...) granted the Macao Polytechnic Institute Multisport Pavilion to the Macao Sports Development Board (...) in accordance with the order of the Chief Executive (...)*”, the interpretation shall be “the Multisport Pavilion shall be managed by the Board”.
3. In fact, according to Paragraph 2 of Article 1 of Administrative Regulation no. 19/2002 of 2<sup>nd</sup> September (Utilisation of Sports Facilities Managed by the Macao Sports Development Board), “*the sports facilities listed in Appendix 1 of this administrative regulation are managed by the Board. This appendix is subject to revision in accordance with the orders of the Secretary for Social Affairs and Culture published on the Official Gazette of the Macao SAR*”. The Chief Executive has already vested the power to the Secretary for Social Affairs and Culture to decide whether the sports facilities of the SAR Government to be managed by the Board. At a later time, the Secretary for Social Affairs and Culture, through Order no. 84/2003, included the Multisport Pavilion in the list of sports facilities of Appendix 1 of the said administrative regulation (see



Appendix 72). In other words, when the above order came into effect, the Board commenced the management of the Multisport Pavilion in accordance with law and is subject to the utilization policy stipulated by the said administrative regulation.

4. On 26<sup>th</sup> December 2005, the Acting Director of the Board wrote a proposal, which states that “1. *The Macao Polytechnic Institute Multisport Pavilion (...) built within the campus of the Macao Polytechnic Institute, it not only facilitates teaching work of the institute but also enables students to participate in sports and cultural activities.* 2. *To provide local educational institutes with favourable conditions for physical education and students with suitable venues for high-level sports activities (...)*”. The proposal suggested that the **occupancy right** and **legal responsibility** of the Multisport Pavilion be transferred to the Macao Polytechnic Institute. The Secretary for Social Affairs and Culture showed his approval in an order on 30<sup>th</sup> December of the same year. The Board handed over relevant issues to the Financial Services Bureau for follow-up. The Bureau only transferred the right of management of the Multisport Pavilion to the public entity MPI on the day (24<sup>th</sup> January 2006) when Administrative Regulation no. 1/2006 of 23<sup>rd</sup> January (*Organization and Operation of the Macao Sports Development Board*) came into effect<sup>41</sup> (see Appendix 73).
5. Later, the Board of Management, through Resolution no. 24R/CG/DAAG/2009, established “*Regulations for Management of Public Rental Service of the Macao Polytechnic Institute Multisport Pavilion*” (hereinafter referred to as *Regulations for Rental Service of the Multisport Pavilion*, see Appendix 74), **which stipulates the management rules of the Multisport Pavilion and rates for the public rental service.**

<sup>41</sup> According to Paragraph 3 of Article 12 of Decree Law no. 12/94/M of 7<sup>th</sup> February, “*The right of management of sports facilities can be transferred from the Macao Sports Institute to local sports organizations only through protocols entered between the Macao Sports Institute and those sports organizations, which must be ratified by the Governor*”. In other words, after the ratification of the Chief Executive (or the Secretary for Social Affairs and Culture through accreditation), the Macao Sports Development Board may transfer its right of management of the sports facilities to other local sports organizations. However, in principle, these organizations do not include public higher education institutes. Later, the decree law was repealed through Administrative Regulation no. 1/2006 of 23<sup>rd</sup> January (*Organization and Operation of the Macao Sports Development Board*). Paragraph 2 of Article 16 of this administrative regulation stipulates that after the ratification of the Secretary for Social Affairs and Culture, the Macao Sports Development Board may transfer its right of management of the sports facilities to other public entities for management. In view of this, the Financial Services Bureau did not implement the order of the Secretary for Social Affairs and Culture issued in December 2005 about transferring the right of management of the Multisports Pavilion to MPI until the administrative regulation came into effect.

6. According to the content of the proposal of the Macao Sports Development Board, to “*enable students to participate in sports and cultural activities*” and “*to provide students with suitable venues for high-level sports activities*”, the government transferred the right of management of the Multisport Pavilion to MPI to “optimize conditions for physical education”. Since the Multisport Pavilion aims to “*provide students with suitable venues for high-level sports activities*”, it should not be open for public use and charge fees. Therefore, if MPI opens the Multisport Pavilion to the public, it already goes beyond the scope of activities approved by the Secretary. It must get the approval of the Secretary in advance.
  
7. According to Article 7 of Decree Law no. 49/91/M of 16<sup>th</sup> September upon that the establishment of MPI was based, the incomes of MPI are “*incomes generated from activities or revenues of the institute; appropriation provided by the territory through the Macao Foundation; donations, legacies and bequests received as a beneficiary*”. According to Article 1 of the *Statutes*, MPI is a legal person and possesses the autonomy of regulations, academy, pedagogy, administration, property and finance, and its incomes include “*incomes generated from its property or revenues if there is any, fees, fines and other legal incomes*”. MPI **must observe the existing management principles in property management** [Paragraph 1 and Subparagraphs d) and i) of Paragraph 5 of Article 36 of the *Statutes*].
  
8. Since the Multisport Pavilion is not the property of MPI but a public property of the territory, the incomes of the Multisport Pavilion cannot be considered as “*incomes generated from its property or revenues if there is any*” as described in Subparagraph b) of Paragraph 5 of Article 36 of the *Statutes*. In addition, since the activities of MPI should be of a pedagogical nature, the fees resulted from renting the venues of the Multisport Pavilion cannot be categorized as “*incomes generated from activities*” referred to in Article 7 of Decree Law no. 49/91/M of 16<sup>th</sup> September.
  
9. Therefore, even though MPI believed that opening the Multisport Pavilion to the public and charging them fees so as to subsidize the administration expenditure would benefit the management and the use of resources, the issues such as charging fees from the public and setting rental rates **are not internal affairs of MPI** and are beyond the jurisdiction of all the entities of MPI. Therefore, they should not merely be decided by the Board of Management. It must **report to Secretary for Social Affairs and Culture to get approval** in accordance with

Subparagraph e) of Paragraph 1 of Article 10 of the Statutes (to report it to the supervisory body those matters that MPI cannot make decisions on due to the fact that they do not fall into the jurisdiction of MPI).

10. In addition, according to Paragraph 4 of Article 2 of the *Code of Administrative Procedure*, “the general principles governing administrative activities prescribed in the Code are applicable to all activities carried out by the administrative authority, even if they are merely technical or managed by private entities”. In other words, MPI shall manage the Multisport Pavilion perform in accordance with the general principles of the code. According to the “principle of gratuitousness”, one of the general principles of the code, “administrative procedure is gratuitous, except when the law imposes fee or costs incurred by the administration” (Paragraph 1 of Article 13 of the *Code of Administrative Procedure*). Therefore, there should be a legal basis for MPI to open the Multisport Pavilion to the public and receive fees from them.
  
11. In 2003, the authority transferred the right of management of the Multisport Pavilion to the Macao Sports Development Board through an external regulatory order (Order no. 84/2003 of the Secretary for Social Affairs and Culture). Since the right of management has been transferred to MPI, it means that amendments have to be made to the afore-mentioned external regulatory order, which could not be considered an internal affair merely. According to Item 5) of Article 3 of Law no. 3/1999 “the following must be published on Series I of the Official Gazette of the Macao SAR, otherwise there is no legal effect: (...) external regulatory orders of principal officials of the Macao SAR”, they must be published on the Official Gazette of the Macao SAR, otherwise it is not effective.
  
12. In conclusion, if MPI has the intention to open the Multisport Pavilion for public use and charge fees, they should leave it to be decided by the Board of Management, and then present the proposal of public rental service and relevant rates to the supervisory body for approval through external regulatory orders. Afterwards, they should be published on the *Official Gazette of the Macao SAR*. When it comes to the facts and the fees resulted from the opening of the facilities to the public, since they were carried out without any legal basis, they should be presented to the supervisory body for ratification.

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## 7. Regulatory acts in various forms

When reviewing the documents presented by MPI we found that the institute tended to use many different forms to exercise the “power of establishment of rules and regulations”.

In fact, the lawmaker recognizes that MPI may establish new regulations to meet its operational needs. However, the establishment of regulations must be carried out in compliance with the legal framework.

Therefore, we can often find that the *Statutes of Macao Polytechnic Institute* vests the power of establishing regulations to the management or relevant units.

However, there are various terms used by the Board of Management and relevant units when exercising the power of establishing regulations, as below:

- (...) Resolution;
- (...) Provision;
- (...) Code;
- (...) Order;
- (...) Agreement;
- (...) Mechanism;
- (...) Rule;
- (...) Regulation;
- (...) Act;
- (...) Principle;
- (...) Guidance;
- (...) Solution;
- (...) Directive;
- (...)

Is the management of MPI clear about the meaning of each term and their application? Which ones should be treated with priority when conflicts occur? Are

there any criteria for when these terms should be used?

It must be always born in mind that in law (in the broad sense), the form of each act has its special role and meaning, thus they cannot be used at will.

To better understand the problems mentioned above, one can just refer to the *Staff Manual*.

For a large-scale institute like this, the lack of a sound system standardizing various acts will inevitably undermine the operation and efficiency.

**Frankly speaking, the CCAC also felt confused when reviewing and dealing with problems regarding the organization and operation of MPI.**

It must be noted that the *Statutes* is always the “fundamental law” of any autonomous institute on which all its activities should be based.

Despite that MPI has set a good example by referring to many advanced experiences and effective measures of other regions, it should have also taken the systems and the law of Macao into account. Blindly following the experiences of others might just create the opposite effect.

\* \* \*

**We believe that MPI is under the process of studying and reviewing some of the problems covered in this report.**

## Summary:

## Violation of the Statutes

Item	Background	Violated Law(s) and Regulation(s)	Recommendations
1.	Subparagraph 1) of Paragraph 1 of Article 14 of the <i>Statutes of Macao Polytechnic Institute</i> (hereinafter referred to as the <i>Statutes</i> ) approved by Ordinance no. 469/99/M of 6 <sup>th</sup> December is not the appropriate legal basis for the establishment of the Teaching Quality Committee, the Teaching Materials Development Committee and the Teaching and Research Evaluation Committee under the Board of Management, and the English Language Teaching & Research Committee (ELTRC), the Computer Teaching and Research Committee and the Gaming Academic Committee (GAC) under the Technical and Scientific Committee (TSC).	Subparagraph 1) of Paragraph 1 and Paragraph 2 of Article 14 and Paragraph 2 of Article 34 of the <i>Statutes</i>	If the administrative authority considered the acts that would go against the <i>Statutes</i> must take place for the sake of better operation, it should immediately amend the provisions (especially with regard to the composition, scopes of activities of TSC and PSC, as well as the work distribution between them and other entities of MPI) in accordance with legal procedures. It should also consider the necessity to amend Decree Law no.49/91/M on which the establishment of MPI was based (especially the provisions with respect to the aspects necessitating approval or ratification by the supervisory body must be clearly defined).
	The committees created under the Board of Management and TSC are actually responsible for supervising and coordinating teaching, research work and teaching materials of MPI, as well as general guidelines regarding education and research of the institute. However, there is no information showing their consultation with TSC regarding the establishment (except ELTRC).	Subparagraph a) of Paragraph 1 and Paragraph 2 of Article 14, Paragraph 1 of Article 18 and Paragraphs 1 and 2 of Article 19 of the <i>Statutes</i>	Anyhow, the administrative authority is liable to end their illegal practices as soon as possible.
	The Board of Management established different committees to “share” the powers of TSC and PSC. This has actually altered the decision making mechanism of MPI stipulated by the <i>Statutes</i> (under which TSC gives opinions to the Board of Management who then makes decisions; PSC gives opinions to the directors who then make suggestions to the Board of Management. The Board of Management then makes decisions) without following relevant legal procedure.	Subparagraph c) of Paragraph 2 of Article 14, Paragraph 1 of Article 18, Article 19, Paragraph 1 of Article 27 and Article 28 of the <i>Statutes</i> ; Subparagraph a) of Paragraph 2 of Article 6 of Decree Law no. 49/91/M of 16 <sup>th</sup> September	

2.	The <i>Regulations for TSC</i> established by MPI has illegally changed the provisions with respect to the composition of TSC in the <i>Statutes</i> (including increasing and limiting the numbers of members of particular categories).	Subparagraph c) of Paragraph 2 of Article 14, Subparagraphs e) to g) of Paragraph 2 of Article 18 of the <i>Statutes</i> ; Subparagraph a) of Paragraph 2 of Article 6 of Decree Law no. 49/91/M of 16 <sup>th</sup> September	
3.	The procedure of setting up academic units did not conform to the <i>Statutes</i> . Some of the academic units were established without prior consultation with TSC (such as the Centre of Sino-Western Cultural Studies, the Social, Economic and Public Policy Research Centre, MPI-Bell Centre of English and the “One Country, Two Systems” Research Centre), and some were set up without the ratification of the supervisory body (such as the Gaming Teaching and Research Centre, the Centre of Sino-Western Cultural Studies and the History Research Centre on Macau History).	Subparagraph a) of Paragraph 2 of Article 14, Paragraph 1 of Article 18 and Paragraphs 1 and 2 of Article 19, and Article 30 of the <i>Statutes</i> ; Subparagraph b) of Paragraph 2 of Article 6 of Decree Law no. 49/91/M of 16 <sup>th</sup> September.	
4.	The appointment of two deputy directors at the History Research Centre on Macau History violates the provision of the <i>Statutes</i> which provides that each academic unit shall only have one deputy director.	Paragraph 2 of Article 24 of the <i>Statutes</i>	
5.	Consultation with the TSC should have been made in accordance with the <i>Statutes</i> with respect to the establishment of collaborative institutes of academic nature (including the MPI-Melco Gaming and Entertainment Information Technology Research and Development Centre, the MPI-BMM Testing Centre for Gaming Devices, the MPI-QMUL Information Systems Research Centre and the Portuguese Countries Research Centre).	Subparagraph a) of Paragraph 1 and Paragraph 2 of Article 14, Paragraph 1 of Article 18 and Paragraphs 1 and 2 of Article 19 of the <i>Statutes</i>	
6.	The establishment of the subunit of the School of Languages and Translation (the Chinese-English and Cross-Cultural Communication Centre) should have taken place after consultation with TSC and ratification by the supervisory body.	Article 30 of the <i>Statutes</i> ; Subparagraph b) of Paragraph 2 of Article 6 of Decree Law no. 49/91/M	

7.	MPI has failed to make sure that there is a PSC operating in each of the academic units (including the School of Languages and Translation, the School of Public Administration and the Seniors Academy listed in the <i>Statutes</i> , and additional units including the Centre of Sino-Western Cultural Studies, the Social, Economic and Public Policy Research Centre and the Centre of Continuing Education and Special Projects established by the institute)	Paragraph 1 of Article 24, Paragraph 1 of Article 27 and Paragraph 2 of Article 28 of the <i>Statutes</i>	
8.	The composition of PSC of the School of Business, the School of Arts and the School of Health Sciences does not fully comply with the <i>Statutes</i> .	Paragraph 2 of Article 27 of the <i>Statutes</i>	
9.	Functions of some subunits of the technical-administrative departments (the Division for Research and Publication under the Academic Affairs Department and the Personnel Office under the General Administration Department) do not conform to the <i>Statutes</i> .	Paragraphs 2 to 4 of Article 32 of the <i>Statutes</i>	It is necessary to modify the organizational structure that causes confusion about scopes of activities of academic/research entities and non-academic research entities.
10.	MPI put the Academic Affairs Department under the supervision of the Vice President and the Gaming Teaching and Research Centre under the supervision of the Secretary General. Such arrangements went against the legal powers of the Vice President and the Secretary General as stipulated in the <i>Statutes</i> .	Paragraphs 2 of Article 16 and Paragraph 1 of Article 32 of the <i>Statutes</i>	
11.	MPI did not publish the order of the then Secretariat for Administration, Education and Youth Affairs issued on 17 <sup>th</sup> December 1999 regarding "any change in the total numbers of positions for the groups of non-academic staff no longer has to be submitted to the supervisory body for approval" in accordance with law. This is actually a substantial amendment to the <i>Statutes of Personnel</i> approved by Order no. 29/SAAEJ/99 of the then Secretariat for Administration, Education and Youth Affairs.	Paragraph 3 of Article 9 of the <i>Statutes of Personnel</i> ; Paragraph 2 of Article 4 of Decree Law no.11/91/M of 4 <sup>th</sup> February; Subparagraph a) of Paragraph 2 of Article 6 of Decree Law no.49/91/M of 16 <sup>th</sup> September	MPI should examine whether supervision is still lacking. Anyhow it should take necessary steps to make sure the previous procedures are legal.



12.	<p>The procedure for promotion stipulated by the <i>Regulations for Promotion of Academic Staff of Macao Polytechnic Institute</i> (hereinafter referred to as <i>Regulations for Promotion of Academic Staff</i>) lacks the step of “making suggestions” by the directors of relevant academic units, but QEC was set up and vested with decision making powers; also, the additional quantitative requirements for the promotion of academic staff has in fact changed the legal requirements for promotion as stipulated in the <i>Regulations for Academic Staff of Macao Polytechnic Institute</i> (hereinafter referred to as <i>Regulations for Academic Staff</i>) approved by Order no. 29/SAAEJ/99 revised in accordance with Order no. 186/2008 of the Secretary for Social Affairs and Culture, which could cause eligible candidates to lose the opportunity for promotion.</p>	<p>Subparagraph h) of Paragraph 1 of Article 14, Subparagraph d) of Article 25, Subparagraph i) of Paragraph 1 of Article 28 of the <i>Statutes</i>; Paragraph 1 of Article 11, Paragraph 1 of Article 12, Paragraph 1 of Article 13, Paragraph 1 of Article 18, Paragraph 1 of Article 19 and Paragraph 1 of Article 20 of the <i>Regulations for Academic Staff</i></p>	<p>MPI should revise relevant content and resolutions of the Board of Management in accordance with legal procedures (i.e. consulting TSC).</p>
13.	<p>Through Resolution no.26D/CG/2002 MPI required the incumbent academic staff (professors, associate professors and lecturers) to obtain a PhD degree within six years from 1<sup>st</sup> September 2003, otherwise the institute will terminate the employment of them in the original positions. This went against Order no.186/2008 of the Secretary for Social Affairs and Culture (which provides that incumbent academic staff would only lose the opportunities for promotion even though they do not meet the stricter requirements for academic qualifications approved by the order). Lecturers were even required to obtain a PhD degree while the order of the Secretary requires only a Master’s degree.</p>	<p>Article 2 of Order no.186/2008 of the Secretary for Social Affairs and Culture</p>	<p>MPI should repeal Resolution no.26D/CG/2002 immediately or propose a revision of <i>Regulations for Academic Staff</i> to the Secretary.</p>

14.	Order no. 84/2003 of the Secretary for Social Affairs and Culture (transferring the right of management of the Multisport Pavilion to the Macao Sports Development Board) is an external regulatory order. Later on, the right of management of the Multisport Pavilion was transferred to MPI, which means that amendments had to be made to the external regulatory order. However, this was not published on the <i>Official Gazette</i> in accordance with law.	Item 5) of Article 3 of Law no.3/1999	MPI should immediately regulate the issues regarding the public use of the Multisport Pavilion and fee charging through orders of the Secretary and then publish them on the <i>Official Gazette</i> .
15.	The Secretary for Social Affairs and Culture transferred the right of management of the Multisport Pavilion to MPI and regulated that the facility is for the use of students. However, MPI opened the Multisport Pavilion to the public and charged fees. The acts went beyond their scope of management.	Paragraph 4 of Article 2 and Paragraph 1 of Article 13 of the <i>Code of Administrative Procedure</i> ; Subparagraph e) of Paragraph 1 of Article 10 of the <i>Statutes</i>	

## Violation related to management

Item	Background	Violated Laws and Regulations	Recommendations
1.	Collaborative institutes jointly set up between MPI and local institutes/academic and research institutes outside the territory were considered their “subunits” by MPI. However, the composition of the management (operation) entities, daily operation and funding of these institutes reflect that they are not completely subordinated to MPI.		MPI should clarify its relation with its collaborative institutes, which must be specified in its organization chart for the sake of greater transparency.
2.	The two-year term of cooperation between MPI and BMM has expired already. If relevant agreement is not auto-renewable, MPI should follow legal procedure to renew the agreement.	Paragraph 2 of Article 10, Paragraph 1 of Article 18 and Paragraph 2 of Article 19 of the <i>Statutes</i>	If MPI continues the cooperation with BMM, it should first consult TSC and then get ratification by the Secretary.
3.	MPI has given the same Chinese titles (中心主任 / 副主任) (directors/ deputy directors, and centre coordinators/deputy centre coordinators) to all heads/ deputy heads of the centres of different levels (centres equivalent to academic units, subunits under academic units or non-academic independent units). This may easily lead to confusion and dispute.	Subparagraphs c) to e) of Paragraph 2 of Article 18, Paragraph 1 of Article 23, Article 24 and Article 30 of the <i>Statutes</i>	MPI should give appropriate Chinese titles to heads or deputy heads of centres of different types of nature or levels, so as to ensure that the titles accord with their responsibilities when handling personnel appointment and work distribution. This is to avoid doubts concerning the creation of unnecessary centres and appointment of unnecessary people in charge.
4.	The legal procedure of cancellation of the Welfare and Recreation Department is yet to be finished, but MPI did not list the department on the organization chart by the reason that the department was no longer in operation (and relevant functions were already delegated to other technical-administrative departments).	Subparagraph d) of Paragraph 1 and Paragraph 5 of Article 32 of the <i>Statutes</i>	MPI should list the Welfare and Recreation Department in its organization chart unless the department is abolished in accordance with the legal procedure.

5.	MPI failed to clearly define the scopes of services of the additional subunits (the Treasury, the Student Management Office, the Division for Research and Publication and the Division for Pedagogical Affairs), and the work distribution between these units and the other subunits under the same departments. This will arouse a feeling that some department was established only for the sake of hiring some people and was anything but a waste of administration resource.	Articles 32 and 34 of the <i>Statutes</i>	To avoid the doubts that the institute has set up unnecessary units, MPI should clearly define the functions of each subunit and the work distribution between them.
6.	The "leadership and management" category was not found in the table of establishment of non-academic staff submitted to the supervisory body by MPI.	Paragraphs 2 and 3 of Article 9 of the <i>Statutes of Personnel</i>	MPI should draft a table of staff establishment that contains the category of "leadership and management". It should then submit it to the supervisory body for approval and make it public. This is to demonstrate its support for the government's policy to realize sound governance and transparent administration, and the willingness to be supervised by the government and the public.
7.	MPI did not stipulate the total number of the position of academic staff and submit it to the supervisory body for approval in accordance with the <i>Regulations for Academic Staff</i> and the <i>Statutes of Personnel</i> .	Article 34 of the <i>Regulations for Academic Staff</i> and Paragraph 3 of Article 9 of the <i>Statutes of Personnel</i> .	MPI should stipulate the total number of the position of academic staff and submit it to the supervisory body for approval.
8.	MPI recruited researchers based on the criteria for employing professors, associate professors and lecturers to hire researchers as no relevant requirement could be found in the <i>Statutes</i> , the <i>Statutes of Personnel</i> or the <i>Regulations for Academic Staff</i> . However, the powers and functions (including whether they are eligible TSC members), nature of work and content of recruitment examinations for researchers and academic staff are different. This would cause confusion easily.	Subparagraph d) of Paragraph 3 of Article 18 of the <i>Statutes</i>	If MPI has the need to hire research specialists, it should standardize the career grades of researchers or give appropriate titles that correspond to the functions of different researchers when revising relevant statutes and regulations.

9.	MPI included “submitting to the Tertiary Education Services Office (GAES) for advice” as a step of the recruitment procedure, but the GAES did not think this was within its jurisdiction. In addition, neither the <i>Statutes</i> , the <i>Statutes of Personnel</i> nor the <i>Regulations for Academic Staff</i> has the stipulation that MPI shall consult other administrative departments in the process of personnel recruitment.	Subparagraph i) of Paragraph 1 of Article 2 of Decree Law no. 11/98/M ( <i>Statutes of Tertiary Education Services Office</i> )	MPI should review if it is an indispensable step in relevant procedures. Amendments should be made in relevant statutes and regulations once the step is deemed necessary.
10.	The <i>Recruitment Procedure for Full-Time Academic Staff</i> , the <i>Recruitment Procedure for Part-Time Academic Staff</i> and the <i>Recruitment Procedure for Full-Time Academic Staff from Mainland China</i> do not indicate the step of consulting PSC for advice that has to be taken before proposals are made.	Subparagraph d) of Article 25 and Subparagraph i) of Paragraph 1 of Article 28 of the <i>Statutes</i>	The step should be indicated in the relevant flow charts so that the steps shown in the flow chart conform to the provisions of the <i>Statutes</i> .
11.	MPI allowed the recruitment committee not to assess the candidates according to the items listed in the <i>Grading Table</i> during the recruitment procedure, which means examination of one or more of the items can be exempted. However, there is no regulation regarding how the right of exemption should be exercised and whether there is a control or supervision mechanism. This will cause public doubts about whether the recruitment procedure has been lack of transparency or tailor-made for certain individuals.		It is recommended that MPI should revise the relevant work guidelines and make them public via proper means after reviewing its practical situation and consultation with TSC.
12.	The <i>Regulations for Promotion of Academic Staff</i> stipulates that the recruitment of academic staff shall be based on the <i>Regulations</i> . However, there is no clear standard regulating how this should be worked out. Since promotion and recruitment should be two procedures of different natures, and some of the provisions of the <i>Regulations</i> cannot apply to the recruitment procedure, it is hardly possible to apply the <i>Regulations for Promotion of Academic Staff</i> to relevant procedure.	Articles 11-13 of the <i>Regulations for Academic Staff</i>	MPI should handle the promotion and public recruitment in a fair way in accordance with the required qualifications for different academic staff as stipulated by the <i>Statutes</i> .

13.	The examples given in the recusal statement about the “collateral relatives within the third degree of consanguinity”, including grandparents, grandchildren and their spouses, are lineal relatives or in-laws by lineal other than collateral relatives.	Articles 1465, 1468 and 1469 of the <i>Civil Code</i>	It is necessary for MPI to establish a complete mechanism for parties who are involved in the recruitment, promotion and continual appointment to observe when handling recusal and the privacy of the concerned person.
14.	Although MPI has stipulated provisions regarding recusal in the guidelines for the procedure of recruitment of different categories of personnel, MPI has not standardized relevant procedure. It has also required all the recruitment committee members to declare whether they need/do not need to announce recusal on the same statement and the reasons of recusal (if any). The practice has disregarded one’s privacy.	Paragraph 7 of Article 54 of the <i>Statute of Personnel of the Public Administration of Macao</i> ; Articles 46 and 50 of the <i>Code of Administrative Procedure</i>	MPI should work out which channels are to be used by its academic/non-academic staff to voice their opinions about internal operation and relevant handling mechanism, so that any misunderstanding/opinions of the personnel can be promptly clarified/replied. This will not only help foster a harmonious workplace but also optimize the general operation of the institute.
15.	The existing complaint handling mechanism of MPI mainly deals with the external complaints while there is a lack of mechanism for internal complaints and expression of opinions for staff.		MPI should review and improve the relevant practice.
16.	In response to the use of reasons (i.e. “forgetting to clock in/out” or “arriving late/ leaving early”) for not making attendance records, MPI just gave an oral warning when that happened for four times and even set the upper limit for not clocking in/out to be five times within a month. The practice will create a “chance” for the staff to use their forgetfulness as an excuse of not clocking in/out, or even encourage them not to clock in/out.	Articles 42 and 43 of the <i>Statutes of Personnel</i>	

17.	According to the internal information of MPI, if staff do not receive salary payments via an account at a designated bank, they shall bear any extra charges incurred for autopay service provided by other banks. However, at present, public servants in Macao receive salary payments via their bank accounts, but there has not been regulation that salary payment can only be realized via a particular bank.		MPI should understand the situation by proper means. It should do the best to provide accurate information for their staff and facilitate their receipt of payroll via the banks they have chosen. To avoid unnecessary disputes, the institute should make amendments to its internal information once it is certain that other banks will not require service charges on the autopay service.
18.	The Guideline “Regulations for Working Hours” established by MPI stipulates the ways of compensation for overtime working. However, it does not clearly define the calculation criteria for the amount of time “outside normal working days” and “outside normal working hours”.		MPI should make their calculation criteria clear to all of the academic/non-academic staff to ensure that interest of the personnel is protected.

\* \* \*

### Part III: Conclusion

1. The management of MPI failed to draw a clear line between public administration and private administration (principles of administration of private enterprises). MPI is a public higher education institutes and must observe a set of general principles of law.
2. As a public department that enjoys administrative and financial autonomy, it does not mean that it may modify the structure and the operation stipulated by the *Statutes* at will. The principle of legality must be observed.
3. Establishing additional units and deciding the functions of these units/committees without prior amendment of relevant regulations, which apparently goes against the principle of public administration and the principle of legality.
4. Similarly, failing to operate in accordance with the existing law but establishing another set of rules without going through necessary procedure not only contravenes the above principles but also goes against the principle of legal authority.
5. It is hard to imagine that the Macao Polytechnic Institute established new units without the authorization of supervisory body and these units have already been in operation for a couple of years.
6. Management of the institute did not fully comply with the rule of law or follow legal mechanisms.
7. Even if just a single problem occurred, the institute set up a unit or an organization to cope with it instead of looking for other solutions. This has gone against the principle of slimming down organizational structures and has hampered administrative efficiency.
8. There is room for improvement in the level of management. Since the staff have been continuously lodging complaints to other authorities, there have definitely been problems relating to the management methods. Upholding legality and sensibility is essential in management. The management of the institute should have a comprehensive study on their problems and seek improvement.
9. MPI showed a lack of knowledge about its relationship with the Tertiary



Education Services Office and its supervisory body (i.e. which behaviour must be authorized? Which behaviours must be approved?). This is the reason why it was difficult for the management of the institute to find solutions to problems.

10. Without a clear understanding of its present structure and units, the institute established other new bodies (e.g. the Teaching Quality Committee), which has led to overlapping functions in the structure and has incurred extra remuneration. This is an inappropriate practice in public administration.

\* \* \*

## **Part IV: Recommendations**

According to Item 12 of Article 4 of Law no. 10/2000 of 14<sup>th</sup> August (*the Organic Law of the Commission Against Corruption*), the CCAC rendered the following recommendations to MPI:

### **I – In relation to statutory regimes:**

1. The management of the Macao Polytechnic Institute should have a comprehensive review on the existing statutory regimes especially with regard to the organizational structure, the establishment of the committees and the mode of operation so as to ensure that they comply with the stipulations of the Statutes, and that illegal operation and establishments of committees will be rectified;
2. The institute should have a comprehensive review on the defects in the establishment of all the bodies and units and make corrections.
3. The institute should stipulate explicit and legal internal regulations for its operation and repeal the illegal rules in accordance with the existing applicable law;
4. The institute should have a comprehensive review on all its regulations and rules (internal and external regulatory documents) especially with regard to standardizing designations and numbering.

\* \* \*

## **II – In relation to personnel management:**

1. The Macao Polytechnic Institute should have a comprehensive review on the current personnel management system. It should carry out appointment and dismissal in accordance with the *Regulations*;
2. The institute should build a channel for communication with its staff. Staff promotion should be carried out in accordance with law and the *Statutes*. A fair and open recruitment and promotion system should also be developed;
3. The organization's structure needs to be slimmed down. A constant mechanism for solving problems should be developed in order to eliminate resentment and complaints of staff and factors that may undermine the operation of the departments.

\* \* \*

## **III – In relation to operation:**

1. The Macao Polytechnic Institute should have an in-depth study to find out if it is necessary to slim down its current organizational structure in order to improve operational efficiency;
2. The institute should make efforts to increase the law-abiding and law enforcement awareness of the management team (particularly by strengthening the legal support);
3. The institute must sort out various problems pertaining to its operation, otherwise they will undermine its academic development;
4. The institute is expected to study the problems and relevant recommendations listed in the conclusion of this report, lest relevant problems fail to be solved promptly and affect the operational efficiency.

\* \* \*

I hereby make the following orders:

1. **Notifying the Macao Polytechnic Institute of the content of this report;**
2. **Notifying the Chief Executive (the original supervisory body) of the content of this report;**
3. **Archiving this case after executing the aforementioned measures and assisting relevant department to improve its statutory regimes in compliance with the law.**

Commission Against Corruption, 5<sup>th</sup> May 2011.

Commissioner Against Corruption  
Fong Man Chong

\* \* \*

### **Conclusion:**

Inspiration of the case:

- (1) A body that enjoys administrative and financial autonomy does not mean it can go beyond its statutes or even invent a set of rules for its operation and structure. It must observe the fundamental rules and principles enshrined in the administrative law;
- (2) Like hardware, rules and regulations must be reviewed and revised when there are illegalities. Administrative legality must be maintained;
- (3) Grievance of public workers will persist if poor personnel management carries on and unfair measures and procedures are adopted;
- (4) Given that even its own rules and regulations are not strictly observed, mistakes and defects will undoubtedly spring up.



## **Case II – Personnel Management of Maritime Administration**

### **Key Points:**

- For any government department that has to arrange shift work for staff, it is necessary to clearly define the rank of officials that have the right to set the roster and approve relevant changes
- The legitimacy to post the sick leave application form that contains personal data on the bulletin board
- It is indeed illegal for functionary supervisor to take up concurrent teaching duties without permission from authorized officials

\* \* \*

### **An investigation and analysis report on complaints regarding personnel management of units subordinate to Maritime Administration**

#### **Part I: Background**

1. On 28<sup>th</sup> October 2010, the Commission Against Corruption (hereafter CCAC) received a complaint from a public servant, claiming that there were various illegalities and irregularities existing in the department he served (Maritime Services Team of the Maritime Administration), including:
  - (1) During the complainant's sick leaves, his/her functionary supervisor modified the "shift roster". Without prior notification, the shift of the complainant was alternated with the shift of other staff (letting others to fill up the absent period of the complainant). Meanwhile, the complainant was notified to resume shift work straight after the sick leave so as to compensate

- the shift period of the person who substituted the complainant's shift;
- (2) The above alterations of the "shift roster" resulted in a record of full attendance of the complainant, but with sick leaves of two days;
  - (3) The photocopy of the complainant's "medical certificate" (commonly called "doctor's certificate") was posted on the bulletin board of the respective department, thus leaking his/her private information, which caused psychological and emotional disturbance to the complainant;
  - (4) The functionary supervisor was receiving a shift allowance amounting to 17.5% of his/her salary without working on shifts;
  - (5) During the shift period, the functionary supervisor went to give classes at the "Maritime Training School" after punching in, suspecting that he/she was receiving the shift allowance by fraudulent means;
  - (6) The complainant alleged that the functionary supervisor always brought a camera to work in order to record the behaviour of the subordinates, this practice infringed upon the dignity of individuals;
  - (7) Lastly, the complainant requested the CCAC to look into the matters and find out the truth, so as to rectify the illegal conditions.
2. The CCAC sent a letter to the Maritime Administration on 29<sup>th</sup> October 2010, requesting the latter to provide materials in relation to the complaint.
  3. The CCAC received a reply from the Maritime Administration on 9<sup>th</sup> November 2010, with attachments of relevant documents, including:
    - Registration of service and attendance records of the functionary supervisor of Airport Maritime Services Team stationing at the Macau International Airport;
    - Registration of service and attendance records of the staff of the Airport Maritime Services Team;
    - Work arrangements for staff of the Airport Maritime Services Team; and

- Information related to the holidays and shift changes of staff of the Airport Maritime Services Team.
4. After preliminary analysis, it was found that the information submitted by the Maritime Administration was incomplete and insufficient. Therefore, the CCAC sent another letter to the Maritime Administration on 9<sup>th</sup> November 2010 to request for supplementary information.
  5. The Maritime Administration sent a reply letter to the CCAC on 3<sup>rd</sup> December, with the related materials as attachments (7 annexes in total):
    - (1) Annex 1 – Administrative Order appointing Z (name) as functionary supervisor (Proposal No. 295/DAF/DA/SP dated 09.07.2007);
    - (2) Annex 2 – Authorization for Z to give classes at the Maritime Training School during July, August and September of 2010 and the timetable of lectures, as well as the information of the actual teaching time;
    - (3) Annex 3 – Clock-in and Clock-out (punching card) records of Z during July, August and September 2010 in the subunit where he served;
    - (4) Annex 4 – Information related to the approval of exchange of shifts (shifts alternation) referred to by item 4 of point 2 of attachment 4 of official letter no. 094/DAM/2010 of the Maritime Administration;
    - (5) Annex 5 – Photocopies of all documents on file at the office site of the Airport Maritime Services Team during the month of August 2010;
    - (6) Annex 6 – Explanation of the column “No. of identification document” contained in the medical certificate of X being blackened-out, which was given in attachment 4 of the official letter no. 094/DAM/2010 of the Maritime Administration;
    - (7) Annex 7 – The Order approving the entire staff of the Airport Maritime Services Team to receive shift allowance.
  6. Given that the materials submitted to the CCAC were insufficient to find out the truth of the case, the CCAC further requested the Maritime Administration to provide information on 13<sup>th</sup> January 2011.

7. The Maritime Administration sent reply letters to the CCAC on 10<sup>th</sup> January, 19<sup>th</sup> January and 7<sup>th</sup> March 2011, attached with related documents as follows:
- Day off chart of the complainant in 2010;
  - Note explaining the lack of documentation of functionary supervisor Z applying for taking up of concurrent public offices;
  - Information related to the flow of the recruitment of teaching staff in the Maritime Training School and the relevant meeting minutes, as well as the information related to the approval of the course by the Secretary;
  - The proposal submitted to the Secretary for Transport and Public Works and the Order of the Secretary (approving the outside appointment of functionary supervisor Z and with retroactive effect).

\* \* \*

## Part II: Analysis and grounds

Based on the complaint received, the content of complaint not only concerned the rights and interests of the complainant, it also involved the legality of the operation of the department concerned. From either perspective, the CCAC has the competence to intervene, since it is stipulated in Paragraphs 4) and 12) of Article 4 of Law no. 10/2000 of 14<sup>th</sup> August (*Organic Law of the Commission Against Corruption of Macao Special Administrative Region*):

*“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 analyze by items the issues involved in this complaint.

### **1. It is necessary to apply for advanced annual leave in order to change shifts**

The complainant claimed that his/her immediate superior had requested him/her to enjoy in advance the annual leave in the next calendar year so that the request of shift change by the complainant could be approved, or it would be turned down.

Let us first analyse if there was a legal ground for functionary supervisor Z to schedule the shifts of staff. Paragraphs 8 and 9 of Article 201 of Decree Law No. 87/89/M of 21<sup>st</sup> December *Statute of Personnel of the Public Administration of Macao* (hereafter “the *Statute*”) stipulate:

“8. The leadership of service has the authority to set the starting and finishing time of the approved shifts as well as the respective roster;

9. *The leadership of service is prohibited to make any changes to the number of shifts approved without compliance with the provisions of the preceding paragraph.*”

According to Article 2 of Law no. 15/2009 of 3<sup>rd</sup> August, leadership refers to the Director or Deputy Director of a bureau. Therefore, the Director (or Deputy Director, when obtained authorization) has the authority to set the starting and finishing time of shifts as well as approve the respective roster.

In fact, Paragraph 12 of Article 1 of the Order of the Secretary for Transport and Public Works No. 63/2009 of 23<sup>rd</sup> December (Order of delegated authority) stipulates:

“1. *To delegate the Director of the Maritime Administration, Wong Soi Man, the authority to practice the following acts:*

(...)

(12) To approve services provided by means of overtime or shifts based on the extent provided by law;

(...)”

According to Subparagraph 7) of Paragraph 1 of Article 6<sup>42</sup> of Administrative Regulation No. 4/2005 (*Organization and Operation of the Maritime Administration*), the Director of the Maritime Administration can delegate the aforementioned authority prescribed in Paragraph 8 of Article 201 of the *Statute* to its management staff.

Hence, when it comes to whether Z, the functionary supervisor of the Airport Maritime Services Team at the airport, has the competence to change shifts, it depends on the existence of the respective delegation of powers.

According to the materials submitted by the Maritime Administration, we believe that the Director has not delegated the power (on the shifts arrangements) to the level of functionary supervisor. It was because on the application form for shifts alternation, there is a column for the signature of the functionary supervisor (to confirm that his/her subordinate's application for changing shifts is true), then the application will be submitted to a high level for approval. Besides, the functionary supervisor also needs to work on shifts, thus, it does not make sense for him/her to approve his/her own shifts alternation. Therefore, the power has not been delegated to the functionary supervisor Z<sup>43</sup>.

\* \* \*

On the other hand, according to Article 278 of the *Statute*, public servants have the right to enjoy annual leave and be absent in duty in accordance with the legislation in force. Furthermore, Article 80 of the *Statute* stipulates that staff of public administration are entitled to 22 working days of annual leave in each calendar year.

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<sup>42</sup> In the original text, it was mistakenly written as "Subparagraph 1) of Paragraph 7 of Article 6".

<sup>43</sup> According to Order No. 13/CP/2000 of 16<sup>th</sup> August, the power was only sub-delegated to the Deputy Director.

In fact, whenever there is application for shifts alternation, public interest should be taken as the top priority before any decision is made, that is, the premise is to maintain the normal operation of the department. Meanwhile the fundamental rights of public servants should also be observed.

Based on the information that the CCAC had mastered, it could not prove that functionary supervisor Z was being partial in the issue of shifts alternation. Also it could not prove that Z had requested his/her subordinates to enjoy the annual leave of the following year in advance as a condition for approving the application for change of shifts.

However, the key of the issue is whether or not the functionary supervisor was authorized to handle matters concerning shifts alternation.

\* \* \*

Regarding the change of shifts, it is not difficult to find in their written records that the Maritime Administration had adopted different approaches in handling matters of the same nature.

Let us take a look at the documents submitted by the Maritime Administration.

“(…)

2. *In August, there were five cases of shift alternations involving members of the Airport Maritime Services Team, with details as below:*
  1. *A<sup>44</sup> and B exchanged their shifts (A: 03/08 and B: 04/08). Since A had to go to the Health Services for a medical consultation, for the convenience of attending the consultation, A obtained the agreement of B by him/herself and submitted the application for exchange of shifts;*
  2. *C and D swapped their shifts (C: 07/08 and D: 06/08). C had to deal*

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<sup>44</sup> The names of staff were expressed in A, B, C, D, E, F, G, H, M and N.

*with certain urgent domestic issues (disclosure of the content was not suitable due to privacy reason) and got the agreement of D, then submitted the application for shifts swapping;*

3. *E and F swapped their shifts (E: 15/08 and F: 14/08) due to demand of work. For this purpose, the respective functionary supervisor got the agreement of E and F and proceeded exchange;*
4. *G and H swapped their shifts (G: 21/08 and H: 22/08). G was on sick leave on 21/08, and therefore his/her shift was substituted by H, whom was scheduled to work on the next shift. On 22/08, G's right of "reasonable absence" ended and G immediately exercised his/her obligation of "shift work" and resumed his/her shift duty that day;*
5. *M and N swapped their shifts (M: 23/08 and N: 22/08). The reason was M went to see the doctor (acquire medical consultation), after getting the consent from N, the application for shifts swapping was submitted.*

(...) ”

The point 4 mentioned above was actually the case of irregular shifts scheduling alleged by the complainant. It is clear that the other shift changes were done by means of agreement of the parties involved. However, concerning the work arrangement of the complainant, it was made in a way that is similar to an order. Occasionally, due to the necessity of work, as well as taking care of the situation as a whole, it is inevitable to issue orders in compelling way or in imperative mode. Nevertheless, the below regulations of law should be observed:

- (1) The change of shifts must be approved by the superior with respective authority;
- (2) Under the provisions of Paragraph 7 of Article 201 of the Statute, "The change of shift can only take place after the day off, except in exceptional cases where the recognition from the leadership of the service is obtained."

Whether the change of shifts of the complainant was the best option, it is difficult to ascertain based on the information available. Since the incident has already occurred and the Director could ratify the respective shift changing arrangements, it

would be meaningless to carry out further investigation on the matter at this stage.

\* \* \*

Concerning the change of shifts of the complainant, the documents submitted by the Maritime Administration (Annex 4) recorded the following contents:

“ (...) ”

*On 17<sup>th</sup> August, X (the complainant), due to personal reasons, raised the request of shift swapping to the Head of the Centre. The Head of the Centre immediately replied that according to the established procedure, X should first consult and discuss with other team members, under the conditions that they agreed to willingly swap shifts with X, then X could submit the application, and if there was any problems, X could consult the Head of the Centre. The shifts swapping could only be considered if the timing, the circumstances and the reason for the request were reasonable and no inconvenience would be caused to the service. At that time, X was dissatisfied with the response and abruptly ended the conversation with the superior.*

*Later, on 20<sup>th</sup> August at noon, the Head of the Centre received unexpectedly a “doctor’s certificate” submitted by X, stating that the sickness started at 10:40 on 20/08/2010 and lasted for two days, thus the sick leave was expected to end on 21/08/2010. According to the medical instructions, X needed to stay home and rest. **Because of the urgency, the Head of the Centre adopted the “emergency measures”** and rescheduled the shifts. Another staff Y, who was scheduled to work on the next shift (originally on shift on 22/08), was assigned to substitute X on 21/08 since X took a sick leave on 21/08. On 22/08, X’s “reasonable absence” ended and immediately he/she had to resume duty and carried out standby “shift work”.*

(...) ”

It is not difficult to find that the changes of shifts in the cases described above were performed with the consensus or agreement reached among the team members. However, the arrangement for changing of shifts for the complainant was obviously different – he/she was imposed on the exercise of shift work straight after the sick leave.

Besides, regarding the above attachment, the CCAC has certain queries, namely:

- (1) These so called “attachments” do not contain any signatures. However, one thing is certain: the above quoted document was drawn up afterwards, possibly for explaining the incident to the CCAC. Who drafted the documents? No one knows!
- (2) Who authorized the change of shifts of the complainant? There was no explanation or clarification from the Maritime Administration.
- (3) Is it the case that the leadership of the Maritime Administration allow the staff not to sign on any written documents prepared by them?

At the present stage, to clarify the above queries may not mean a lot to the case itself; as a result, it is not suitable for the CCAC to spend too much time on these side issues. Nevertheless, the above queries serve as the purpose of alerting the department concerned.

\* \* \*

## **2. Complaint about the deduction of two days of sick leave on the records while the attendance was one hundred percent**

Article 88 of the *Statute* defines the concept of absence from work as: “*Absence from work refers to staff of public administration, during their daily obligatory working period, fail to present themselves in all or part of the time, or not showing up at the location they should go to because of work*”. According to Subparagraph b) of Paragraph 1 of Article 278, absence from work due to sickness is deemed as a right for staff of the public administration.

From the macro analysis on the system of staff of public administration entitled to take sick leaves, it appears that the intention for legislation is: to exempt the sick personnel from work is not to let him/her enjoy one or more days of vacation in extra due to illness, but rest at home to avoid aggravation of his/her medical condition by going to work (In accordance with the provisions of Articles 101 to 105 of the *Statute* concerning screening of medical condition).

Thus, in this case, during the complainant’s sick leave, the functionary supervisor

has made provisional adjustment to the roster in accordance with Paragraph 8 of Article 201 of the *Statute* to assure the normal operation of the department as well as to ensure the right to rest of the complainant/patient. When considering the case based on the above mentioned legislation purpose of absence from work due to sickness, we could not deem that such action of the functionary supervisor has hampered the right of the complainant to take sick leave due to illness. The reason is: indeed, the complainant is excused from work on the day of sick leave which conforms to the aforementioned legislation purpose of the right of staff of public administration to be absent from work due to sickness.

In this case, the following questions should be taken into consideration:

- (1) The complainant submitted the medical certificate so that his/her absence could be classified as justified absence. In this regard, the one who was competent to made decision is the Director of the Maritime Administration (or the authorized person) – see the aforementioned Order of the Secretary concerning the delegation of powers (Order no. 63/2009 of 23<sup>rd</sup> December).
- (2) Due to the complainant's absence, it is necessary to arrange other staff to substitute the service of that period, thus two possible situations would arise:
  - a) It would cause changes to the original arrangement of the roster (since it is drawn up every month);
  - b) It would not cause changes to the original arrangement of the roster (for example, if there is another staff who was willing to be on duty for an extra shift and not affecting the set roster). Nevertheless, the question that the decision should be made by competent authority was still existed. If the functionary supervisor has already been sub-delegated the power, he/she could have made that decision. However, we believe that there is no sub-delegation of power in this area, or at least, the Maritime Administration did not provide information in this aspect.
- (3) In handling the above issue, the following factors should be taken into consideration thoroughly:
  - a) The regime stipulated by law concerning the above situations;

- b) Choosing a solution that seeks best the public interest.

Thus, the right of the complainant to take sick leaves was not infringed upon, but the below consequences were produced:

- (1) Two days of sick leave were being deducted (see Paragraph 6 of Article 97 of the *Statute*);
- (2) Deduction of complainant's in-service salary because of sickness (though the complainant might apply for the recovery of the deducted in-service salary, the recovery was not inevitable; certain legal requirements had to be fulfilled).

Therefore, the Maritime Administration should be very cautious in scheduling or changing shifts.

In the above mentioned situations, there was no indication that the respective handling method has evidently violated any law.

\* \* \*

**3. Posting up the medical certificate, which contained personal data such as identification and residential address of the complainant, on the bulletin board for public display**

The complainant alleged that his/her supervisor had disclosed his/her personal data by posting up the medical certificate submitted by the complainant on the bulletin board in the department.

According to the documents provided by the Maritime Administration to the CCAC (Annex 4), although there was no resident address stated on the medical certificate as claimed by the complainant, it contained personal data such as the complainant's identification card number. According to Paragraph 1 of Article 4 of Law no. 8/2005 of 22<sup>nd</sup> August (*Personal Data Protection Act*), this type of data can be defined as "personal data" that is protected by law. Therefore, the public display of the complainant's medical certificate is in fact a violation of Article 18 of Law no. 8/2005 of 22<sup>nd</sup> August (*Personal Data Protection Act*), the stipulation of professional



secrecy and may lead to the result of taking upon the consequences as stated in Article 41 of the same law.

In the photocopy of the medical certificate submitted by the Maritime Administration, the column “No. of identification document” was blackened-out, this was sufficient enough to allow us to believe that the information had been made public, otherwise there would be no need for such omission. Since a medical certificate should be filed in the respective personal profile once it was being checked and approved by the superior, normally there was no need to delete or cross-out any parts of the certificate. In strict terms, the Maritime Administration has no jurisdiction to make erasion on an official document issued by a doctor.

Besides, on Annex 6 delivered by the Maritime Administration to the CCAC, there was a note written on it and the purpose was difficult to understand.

“Annex 6

***Explanation of the column of identification card number being blackened-out on the photocopy of the medical certificate of X, Annex 4 of the official letter no. 094/DAM/2010 of our bureau”***

Then, the below paragraph is written on the document:

***“In order to prevent disclosure of the identification document number of X (complainant), the identification document number on the photocopy of X’s medical certificate was blackened-out.”***

The CCAC has the following queries:

- (1) Like the other documents, there was no signature on this document; the date of preparation and the writer were also unknown.
- (2) The so-called “disclosure” claimed by the Maritime Administration referred to the avoidance of disclosing the complainant’s identification document number to the CCAC, thus it blackened-out the relevant field before delivering the photocopy of the document? It is worth noting that such doing is pointless since the CCAC, if necessary, has other means to find out the identification card number of the complainant, not mentioning that both the Maritime Administration and the CCAC know that their staff

are bound by the obligation to keep confidential the facts that came to their knowledge during the process of handling complaints.

- (3) More so, the CCAC did not understand why “explanation” was needed when submitting the documents? What was the subject of explanation? To be exact, there was no substance of explanation.
- (4) Likewise, since there was no signature on this document, who made the explanation? Whom were they explaining to?

The CCAC did not intend to look into this issue any further; however, it is worth reflection for the Maritime Administration.

On the other hand, according to the provisions of the above mentioned *Personal Data Protection Act*, the Office for Personal Data Protection is the public institution responsible for the execution and supervision of the respective legislation. It is not our intention to cite directly the respective law and intervene into this issue, but to point out the related problems from the angles of the operation of public administrative institution as well as the management and efficiency of administration. Since a medical certificate is not meant for disclosure purpose, but a type of proofs for public servant’s absence from work, it is up to the superior to make judgment and execute the respective legislation. It is unnecessary and will constitute a violation of the respect on personal data as well as a breach of confidentiality to make public the above mentioned personal data. Hence it is considered that the methods applied did not match up with the purposes intended to achieve and a violation of the principle of appropriateness as well.

Thus, the CCAC will transfer the contents of this particular section of the complaint to the Office for Personal Data Protection for more in-depth follow-up.

\* \* \*

#### **4. Complaint about functionary supervisor Z receiving a shift allowance without taking part in any shift work**

Article 199 of the *Statute* stipulates:

*“Shift work means to require staff to work on variable working hours and the*

*variation of working hours will cause the change of life patterns of the staff as well as the devotion of extra effort when carrying out the duties.”*

Article 202 of the *Statute* stipulates:

*“1. The shift allowance is tagged on to the basic salary only, and the amount is calculated according to the following percentages:*

- a) 17.5% -- providing three or more than three shifts of work, and all or part of the shifts falls on the weekly days of rest or the supplementary days of rest ;*
- b) 12.5% -- when under the conditions specified in the preceding paragraph, but only within the weekly normal working hours;*
- c) 7.5% -- when providing two shifts of work, and all or part of the shifts falls on the weekly days of rest or the supplementary days of rest.*

*2. There will be no payment of shift allowance in the state of absence, annual holiday, leave, as well as absence from work because of disciplinary reason.*

*3. The shift allowance will not be added in the holiday subsidy and Christmas subsidy.”*

By viewing of the document (Annex 1) submitted by the Maritime Administration to the CCAC, it was observed that the arrangement and alteration of functionary supervisor Z's working hours fell in daytime or at night, basically it met with the concept of shift work described by law.

Also, according to the records in the aforementioned document, Z had provided service more than three shifts, and partly on the weekly days of rest, therefore he/she was entitled to receive a shift allowance amounting to 17.5% of his/her salary in accordance with Article 202 of the *Statute*. As a result, there was no finding of the situation alleged by the complainant that the functionary supervisor Z had received a shift allowance of 17.5% of his/her salary, but without taking part in any shift work.

Given the above, the reasoning for the complaint is not sound with regards to this issue.

## **5. Back then, functionary supervisor Z had not obtained the approval to take up concurrent teaching post**

According to the stipulation of Paragraphs 3 and 4 of Article 5 of Administration Regulation No. 4/2005 of 9<sup>th</sup> May (*Organization and Operation of the Maritime Administration*):

“(…)

*3. The Maritime Administration also consists of the following subordinate bodies which are equivalent to departmental level and are governed and regulated by their own regulations approved by the Chief Executive :*

*1) The Maritime Training School;*

*2) The Maritime Museum;*

*3) The Shipyard.*

*4. The regulations referred to in the preceding Paragraph shall specify the respective responsibilities, structure and operation.”*

Let us first look at the approval procedures for staff of the public administration to take up concurrent teaching post in the Maritime Training School.

According to Paragraph 1 of Administrative Order no. 13/2007<sup>45</sup>, the Chief Executive, in accordance with Article 15 of Law no. 2/1999 and Article 3 of Decree Law no. 85/84/M of 11<sup>th</sup> August, delegated all the executive powers in relation to all matter relating to the areas of governance and services as described in Article 6 of Administrative Regulation no. 6/1999 to the Secretary for Transport and Public Works. According to Paragraph 5 of the same Order, the authorized party may sub-delegate the authorities that are beneficial to the good operation of the service to the leadership of the bureau, entity or cabinet of the Secretary as indicated in Paragraph 1.

Based on the above mentioned facts, the Secretary for Transport and Public

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<sup>45</sup> The said Administrative Order was replaced by Administrative Order no. 124/2009 which took effect on 20<sup>th</sup> December 2009.

Works sub-delegated a series of powers to the Director of the Maritime Administration through Order no. 63/2009 of 23<sup>rd</sup> December. **However, the power of approving staff of the Maritime Administration to take up outside practice is not included.** Therefore, concerning the issue of functionary supervisor Z taking up concurrent teaching duties, **it has to obtain the approval from the Secretary for Transport and Public Works.**

According to the provisions of Paragraph 2 of Article 10 of the *Charter of the Maritime Training School*, approved by Administrative Order of the Chief Executive no. 135/2005, "... *The recruitment of teaching staff for various courses should be by qualification and is approved by the Director of the Maritime Administration according to the proposal of the Principal of the Maritime Training School and prior consultation of opinion from the Pedagogical Council.*" However, under the same statute, the Director of the Maritime Administration only has the competence to evaluate and consider from the angles of appropriateness and whether it meets with the required qualifications and decide whether or not appoint the respective teaching staff. In case the person, who is about to be appointed, is currently a public servant (e.g. staff of other public institution), the question of whether the respective person can take up concurrent position is separated from the issue of whether that person is capable for the teaching duties. Regarding the issue of taking up concurrent duties, from the above analysis, the Director of the Maritime Administration does not have the competence to make such decision. The public department, to which the respective personnel belong, should raise the request for the approval to the Secretary of the respective jurisdiction.

The entire flow can be concluded as below:

- (1) The Director of the Maritime Administration shall submit for the approval of the Secretary for Transport and Public Works regarding the teaching activities of the Maritime Training School.
- (2) According to Paragraph 2 of Article 10 of the *Charter of the Maritime Training School*, the Maritime Training School and the Maritime Administration scout for qualified teaching personnel.
- (3) If the person selected is currently a staff of the public administration, in regard to the issue of the respective person taking up concurrent teaching post, the public department should raise the request for the approval of the Secretary for Transport and Public Works by each specific course (rather

than submitting application in a rough and general way).

The CCAC sent letters to the Maritime Administration on 21<sup>st</sup> December 2010 and 4<sup>th</sup> January 2011 respectively requesting the submission of the authorization allowing functionary supervisor Z to take up concurrent teaching duties. However, the Maritime Administration delivered to the CCAC the Order of the Secretary for Transport and Public Works authorizing the activities programme of the Maritime Training School from September 2009 to December 2010, no authorization document concerning functionary supervisor Z taking up concurrent teaching duties was found.

Based on the reply document from the Maritime Administration to the CCAC dated 6<sup>th</sup> January 2011, we can see that in the proposal of the Maritime Administration for approval of activities programme of the Maritime Training School, it is raised that the relevant teaching personnel can be recruited within the staff of the bureau and needs to be approved by the Secretary. However, that does not mean that the Maritime Administration or the Maritime Training School, under this circumstance, can decide by themselves who can take up the teaching duties because it involves the issue of taking up concurrent posts.

Taking into account the nature and the specificity of the courses, the Secretary approved to select teachers from the existing personnel of the Maritime Administration, so as to guarantee that the individuals selected were with suitable qualifications and proven experience to exercise the teaching duties. However, in deciding which staff of the Maritime Administration can take up the teaching duties, the main criteria for consideration should be different. To decide whether to allow a specific staff in the Maritime Administration to take up concurrent duties, the main considerations should be: first, is the respective personnel conform to the prerequisite of taking up concurrent position stipulated in the *Statute*; and, secondly, is the knowledge standard of the respective personnel suitable to the teaching duties? According to Paragraph 2 of Article 10 of the *Charter of the Maritime Training School*, it is the job of the Maritime Training School and the Maritime Administration.

The Maritime Administration, after selecting the appropriate personnel, shall submit a request for the approval of the Secretary for Transport and Public Works. In other words, although it is authorized by the Secretary that the Maritime Administration may recruit teachers from the existing personnel within the bureau, if the person intended to be recruited is staff of the public administration as described in Article 2 of the *Statute*, based on the above analysis, only the Secretary has the competence to make the approval.

The CCAC received a reply letter from the Maritime Administration on 7<sup>th</sup> March 2011 with contents as below:

*“With regard to the issues stated in the official letter no. 399/GCCAC/2011 from your Commission, please find the following reply:*

*According to the order made by the Secretary for Transport and Public Works which was recorded on the Report/Proposal no. 26/DAF/DA/SP of the Maritime Administration dated 4<sup>th</sup> March 2011, **Z was granted the authorization to be the teacher of training course in the Maritime Training School during the period of July to September 2010, and the authorization is vested with retroactive effect.**”*

In the opinion letter submitted to the Secretary, the Director of the Maritime Administration indicated that:

- “4. Considering that Z has joined the Maritime Administration since 1<sup>st</sup> April 1984 and currently serving as functionary supervisor of the Fleet Centre under the Maritime Services Division of the Maritime Activities Department. With over 20 years of service in the Maritime Administration, Z always achieves good work performance. Starting from 1997, Z has been the functionary supervisor of four different duty centres one after another, thus acquired extensive experience in the field of maritime activities. **Moreover, the remuneration received for being the teacher of training course in the Maritime Training School was subject to proper declaration and taxation in accordance with the regulations stipulated by law. Therefore, there are reasons for the Maritime Administration to believe that the taking up of concurrent teaching duties in the Maritime Training School of Z without prior approval of the competent authority, is due to the inadequate knowledge of the existing legal requirements and does not involve a intentional violation of the professional ethics and conduct of public servants, thus the case is pardonable.**
5. Given the above, I hereby would like to request your Excellency the Secretary to approve the followings:
  - 5.1 To authorize the application of Z to take up teaching post of related vocational training courses as attached in he/her proposal in accordance with the stipulation in Paragraph 4 of Article 17 of the Statute of

*Personnel of the Public Administration of Macao;*

5.2. *To vest the authorization with retroactive effect in accordance with the provisions of Subparagraph a) of Paragraph 2 of Article 118 of the Code of Administrative Procedure.”*

*Whereupon, the Secretary made an order and wrote “Agree” on the document on 4<sup>th</sup> March 2011.”*

It is not difficult to notice that in the proposal submitted to the Secretary, the Maritime Administration tried to emphasize deliberately that: there is no act of violation against the standards of professional ethics and conduct throughout the entire process.

Given the above, the CCAC would like to reaffirm that: the complaint received did not attempt to accuse that there is circumstances of corruption existing, but rather an accusation of alleged existence of administrative illegality.

This particular section is sufficient enough to raise certain issues that deserved special consideration:

- (1) At that time, when the functionary supervisor Z left his post at the airport and went to the Maritime Training School to give out classes without prior authorization (regarding this issue, a separate analysis is conducted in the following point), is this behaviour a justified or unjustified absence? In fact, the taking up of concurrent teaching duties was approved (ratified) by order of the Secretary afterwards, but the necessary legal procedures were initiated only when the CCAC requested the Maritime Administration to submit the relevant documents. **The functionary supervisor Z only submitted application for the concurrent duties at a later stage too (18<sup>th</sup> January 2011)**, however, the header of the application was the Director of the bureau, and according to the aforementioned analysis, the application should be addressed to the Secretary instead of the Director of the service.
- (2) Why were the leadership of the Maritime Administration and the Maritime Training School not aware of the problem all this time and only completed the formalities after the intervention of the CCAC? In fact, the Maritime Training School is established for a long period of time, the opening of



courses and recruitment of teaching staff has been considered an important part of its daily operation; therefore, it should be extensively experienced in handling matters regarding the applications of teaching duties!

- (3) As for the heads of departments responsible for fiscal expenditure (including staff who make the payment of remuneration to personnel taking up concurrent duties), why did they not to conduct document screening to ensure the respective teachers has already obtained the approval to take up teaching duties from the supervisor? That is, the payment of the salary can only be processed when all conditions are in accordance with the legal provisions.
- (4) Moreover, there is another point worthy to emphasize: the CCAC does not oppose the taking up of concurrent teaching duties by public servants. As a matter of fact, in certain specific fields, staffs in the Maritime Administration who possess extensive knowledge and experiences should be encouraged to take up teaching or training jobs so as to elevate the knowledge level of the personnel within the bureau. However, the prerequisite is that all procedures must be carried out under the legal framework.
- (5) The case itself may not be of much significance, however, it has revealed the problems existing in the procedures (including fiscal expenditure) of processing personnel taking up concurrent teaching duties in the Maritime Administration and the Maritime Training School. The respective authorities should conduct thorough review and make necessary improvements.

\* \* \*

Besides, it is worth pointing out here another issue arose – **the conflict of teaching hours**.

The information provided by the Maritime Administration on 29<sup>th</sup> November 2010 indicated that the functionary supervisor Z truly worked on shift on 17<sup>th</sup> August 2010 (Tuesday) at the Airport Maritime Services Team, **the time was from 10am to 4pm (a total of 6 hours)**.

According to the attendance registration of the Maritime Training School submitted to the CCAC by the Maritime Administration, **functionary supervisor Z was giving lessons at the School from 2:30pm to 4:30pm on 17<sup>th</sup> August 2010.**

On the staff attendance registration of the Maritime Administration that day, it was recorded that functionary supervisor Z got off duty at 5:48pm.

Can this type of conflict of time be avoided? Serving the duties in shifts at the airport is of great importance, which is why shift work is adopted so that there will be staff on duty 24 hours a day to respond to any emergency situation. As the management personnel, Z should try best to station at the workplace during the shift period.

Functionary supervisor Z has the obligation to know that since there was conflict of time between the hours of classes and the hours of shift duties, therefore, certain prior adjustment measures should be adopted (perhaps adjustment has already been made but no documents was found to prove it). Even though he/she thought that the hour of lecture was very short and it would not hamper the normal functioning of services (the duties at the airport), he/she should still inform the superior about the situation beforehand. If Z has indeed notified his/her superior, then the relevant responsibility would be on the superior. The latter should at least request functionary supervisor Z to produce the approval for authorization of concurrent teaching duties, thus it could facilitate the supervisor to know whether such condition of concurrent teaching conformed to the law.

Concerning this section, is there any room for improvement? The department should give some deep thought on the issue. The CCAC hereby reaffirms that:

- (1) The functions at the service should always come first, the concurrent duty comes after;
- (2) The authority should try best to avoid the conflict of time and in situation when it is unavoidable, other appropriate measures should be adopted and recorded accordingly.

\* \* \*

Another issue that deserves noting: the taking up of concurrent duties by other staff members.

According to the stipulation in Article 10 of the *Charter of the Maritime Training School*, approved by Administrative Order of the Chief Executive no. 135/2005 of 9<sup>th</sup> May:

***“1. The teaching staff of the Maritime Training School is formed by trainers and instructors who have undergone the necessary and appropriate trainings.***

***2. The recruitment of teaching staff for various courses should be by qualification and is approved by the Director of the Maritime Administration according to the proposal of the Principal of the Maritime Training School and prior consultation of opinion from the Pedagogical Council.***

***3. The payment of the teaching staff of the Maritime Training School is calculated in accordance with the legislation applicable to the training of public servants.”***

According to the information supplied by the Maritime Administration, the Maritime Training School organized a number of courses in August 2010, including:

- Summer Activity 2010 - Nautical Knowledge
- Summer Activity 2010 - Seamanship Techniques
- Aquatic Sport Preparation Course – The 51<sup>st</sup> Seaman Course
- Summer Activity 2010 - Seamanship Techniques (another class)
- Summer Activity 2010 - Nautical Knowledge (another class)
- Seamanship Course
- Aquatic Sport Preparation Course - The 52<sup>nd</sup> Seaman Course
- Aquatic Sport Preparation Course - The 47<sup>th</sup> Coastal Pilot Course

Based on the same information document, **there were approximately 10 staff members who took up the teaching duties and all of them were staff of the Maritime Administration.**

If the complainee (functionary supervisor Z) did not apply for permit to take up concurrent duties beforehand (in fact, the complainee only proceed with the formalities after the intervention of the CCAC. If the application was raised before that, the result could only be that the application was approved by the authority incompetent, but even so, the documents could be retrieved now and submitted to

the competent entity for retroactive approval and ratification, rather than submitting a new application now). A reasonable doubt aroused: Did the other staff of the Maritime Administration who were also taking up concurrent teaching posts obtained the timely and legal approval? If so, why is it that only the complainee of this case was missed out? However, if this is not the case, it means that about 10 teaching staff were performing the teaching duties without the prior permission of the Secretary, which reveals the existence of loopholes in the management of the relevant department.

As mentioned above, this case itself may not be of great significance; however, it has revealed the problems of the department in areas of operation and law abidingness which contradicts the concept of “administration by law”.

Finally, it is worth pointing out that: after the incident, the Maritime Administration did not carry out any investigative procedures (not necessarily targeting the staff, it would launch an internal investigation on the operation of the department). Moreover, the purpose of the investigation is not to punish certain personnel, but to identify the causes of the malfunctioning of the department and adopt measures for improvement.

\* \* \*

**6. Complaint against the functionary supervisor Z always brings a camera to capture the various behaviour of the subordinates:**

If the content of the complaint is valid, the complainee may violate the offence as stipulated in Article 191 of the *Penal Code* of Macao. In order to have an in-depth understanding of the truth about the facts, the CCAC will handle it in a separate case.

\* \* \*

### Part III: Conclusion

According to the aforementioned facts, the CCAC concluded that part of the reason of the complaint is tenable, especially in the followings:

1. A lack of clarification of the scope and origin of the powers, the scale of adjustment and the standards adopted by the leadership when the roster needed to be alternated due to various reasons;
2. The respective functionary supervisor is taking up concurrent teaching duties at the Maritime Training School without prior authorization from the superior;
3. The overlapping of shift hours and tuition hours and at the same time the shift allowance was given;
4. The management staff of the Maritime Administration should not make public or display (whatever the form of display is) the medical certificate of the complainant, otherwise it may violate the legal provisions in force concerning the protection of personal data.

\* \* \*

### Part IV: Recommendations

According to Paragraph 12) of Article 4 of Law No. 10/2000 of 14<sup>th</sup> August (*Organic Law of the Commission Against Corruption*), the CCAC rendered the following recommendations to the Maritime Administration:

1. Review comprehensively the rotation system of the Airport Maritime Services Team and ensure the staff on each shift stays at the post during the working hours.
2. Formulate clear regulations to stipulate the formalities and procedures to abide by when the staff who are on shift have to be excused from the post during the shift hours.

3. Within the legal framework, regulate in certain and clear way the method, procedure and responsibility in modifying the shifts.
4. Improve the procedures for recruitment of teaching staff of the Maritime Training School, especially in ensuring that authorization to take up concurrent duties is granted by the competent superior before assuming the teaching duty.
5. Strengthen internal supervision to ensure the legality of all procedures (administrative and financial supervision).
6. Adopt effective measures to improve the way and flow in assessing the documents of the bureau as well as to enhance the sensitivity and the level of law abidingness of staff in handling certain information.

\* \* \*

To notify the Director of the Maritime Administration of the content of this report in accordance with law.

\* \* \*

To transfer the part concerning the alleged disclosure of personal data to the Office for Personal Data Protection for follow-up.

\* \* \*

To notify the complainant of the content of this report.

\* \* \*

Commission Against Corruption, 6<sup>th</sup> May 2011.

The Commissioner Against Corruption  
Fong Man Chong

**Conclusion:**

Inspiration of the case:

- (1) The scope and source of authority of supervisory personnel should be clearly defined;
- (2) Public servants shall not engage in any concurrent duties without obtaining authorization from their superior;
- (3) It is not appropriate for the respective personnel to have shift hours overlapped with the teaching hours and still receive shift allowance;
- (4) Medical certificate of public servants should not be displayed publicly.





### **Case III – About Graveyards**

**Key Points:**

- Position of municipal bodies before the establishment of Macao SAR and relevant legal regime
- Powers and responsibilities of Municipal Assembly members and the Municipal Chamber
- The transitional problem concerning former *Legal Regime of Municipalities* and its relation with the *Reunification Law*
- Regulations for graveyards
- Legality of resolutions related to the issues of graveyards passed by the executive council
- Illegality of *Internal Regulation for Perpetual Lease of Grave*
- Defects in assessment and approval of application for graveyard made by President of the Municipal Chamber
- Role and responsibilities of supervisory bodies in the case

\* \* \*

**An investigation report on the grant of 10 graves by former Temporary Municipal Council of Macao**

## **Key points**

### **Part I: Background**

### **Part II: Investigation and evidence collection**

### **Part III: Complaint by a citizen**

### **Part IV: Analysis and grounds**

#### **A- Case 1 – Grant of ten perpetual graves**

1. Introduction to the structure and organization of the former Temporary Municipal Council
2. Regulations for graveyards
3. Internal Regulation passed by the Standing Committee for Administration and Finance and the problems incurred
4. “Rapid” resolution made by the Municipal Chamber
5. The powers processed by of the President of the Municipal Chamber
6. The application and approval process mentioned in the complaint
7. The role of supervisory body in the case
8. Whether circumstances requiring recusal existed
9. Whether power abuse existed; extinction of the right to prosecute due to lapse of time
10. Other criminal investigative procedures arising from the case

#### **B- Case 2 - Complaint by a citizen**

1. Cause of the complaint
2. Analysis and summary

### **Part V: Conclusion**

## **An investigation report on the grant of 10 graves by former Temporary Municipal Council of Macao**

### **Part I: Background**

1. According to a report by local press on 10<sup>th</sup> August 2010, the former Temporary Municipal Council of Macao (hereinafter designated as “the former Council”) granted ten “perpetual graves”<sup>46</sup> illegally in mid-December 2001. Moreover, it was reported that “the leadership of the former Council was suspected of power abuse in other peoples’ interests”. The report considered that this act was illegal and had breached the principle of fairness.
2. According to one of the local newspapers;

*“Some sources pointed out that the Public Prosecutions Office (MP) is investigating into a case alleging that a former temporary municipal entity formulated an internal regulation in a hurry in mid-December 2001, around ten days before it was terminated, and granted ten graves at the Cemetery of São Miguel Arcanjo (Cemitério São Miguel Arcanjo) at a price of MOP38,000 for each on a perpetual basis. It is suspected some senior government officials have abused their power and breached Article 7 of the Macao Basic Law, which stipulates that the land and natural resources within the Macao SAR shall be State property. At the same time, the management of the entity did not publicize the grant, which was thus suspected to be an undercover activity. Some insider told that one of the beneficiaries is a relative of an advisor surnamed Cheang of the Secretary for Administration and Justice, Florinda Chan, who has been working for Chan for many years. Being asked by the media about this case yesterday, Chan immediately denied that she knew the case. However, facing more questions from the media, she gave an explanation.*

*According to some insider, the temporary municipal entity, which was under the Secretary for Administration and Justice, formulated an internal regulation on 14<sup>th</sup> December 2001, which stipulated that ten perpetual graves shall be*

<sup>46</sup> Does it refer to “perpetual graves” or “graves on perpetual lease”? There is an analysis in the following. In this part we use the term “perpetual grave” adopted by the media. Strictly speaking, this expression is imprudent and ambiguous.

*granted every year. On 21<sup>st</sup> December, ten perpetual graves were granted at a price of MOP38,000 for each. However, on 14<sup>th</sup> December, the Legislative Assembly passed the law regarding establishment of the Civic and Municipal Affairs Bureau (IACM) on 1<sup>st</sup> January 2002 and the stipulation that the operation of temporary municipal entities would be terminated on 31<sup>st</sup> December 2001. Meanwhile, the new law does not empower the IACM to grant perpetual grave. Therefore, the internal regulation could only be exercised within the days before it was terminated. However, the entity publicized neither the internal regulation nor the details about application for perpetual grave.*

*The source said that some interest parties had already filed complaint to the MP, which has commenced follow-up. Yesterday, direct elected legislator Pereira Coutinho admitted that his office had received a request for help, proving that the case was true. 'Two months ago, I received a complaint involving a principal government official who is in charge of the affairs of administration and justice and it is about land transaction. Due to complexity and severity of the case, the MP has commenced an investigation, which is still ongoing...' said he.*

*Last month the plaintiff sent a letter to the Chief Executive and the case has been referred to the Office of the Secretary for Administration and Justice, which then referred it to the IACM for follow-up early this month...."<sup>47</sup>*

3. On 10<sup>th</sup> August 2010, the Office of the Secretary for Administration and Justice made an explanation and clarification about the report on a press release publicized via the Government Information Bureau. The content is as the following:

*"Concerning the report about alleged power abuse involving the grant of graves, it is necessary for the Macao SAR Government to make the below explanation:*

1. *Article 7 of the Macao Basic Law states, 'The land and natural resources within the Macao Special Administrative Region shall be State property, except for the private land recognized as such according to the laws in force before the establishment of the Macao Special Administrative Region. The Government of the Macao Special Administrative Region*

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<sup>47</sup> See *Jornal Va Kio*, 10<sup>th</sup> August 2010, page 1.1

*shall be responsible for their management, use and development and for their lease or grant to individuals or legal persons for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the region.'*

2. *On 13<sup>th</sup> December 2001, the "Standing Committee for Administration, Finance and Property of the former Temporary Municipal Council of Macao"<sup>48</sup> composed of members of the former Temporary Municipal Assembly had a meeting, during which issues about grant of grave on perpetual lease was discussed and the Internal Regulation for Perpetual Lease of Grave was passed.*
3. *According to Subparagraph c of Paragraph 6 of Article 29 of the then effective Law no. 24/88/M, Legal Regime of Municipalities, "the Municipal Chamber has the power to grant the lots within municipal cemeteries as coffin chambers and perpetual graves".*
4. *The Regulation of Municipal Cemeteries, which was approved by the Municipal Assembly on 5<sup>th</sup> July 1961 and promulgated via Ordinance No. 6780 on 5<sup>th</sup> August 1961, was also effective at that time<sup>49</sup>.*
5. *On 21<sup>st</sup> December 2001, the President of the Municipal Chamber of the former Temporary Municipal Council of Macao exercised its statutory power under the aforementioned Regulation of Municipal Cemeteries and the criteria provided by the internal regulation to approve ten applications for perpetual lease of grave<sup>50</sup>.*
6. *Later, one of the applicants gave up the grave on perpetual lease s/he was granted through a written statement.*
7. *On 14<sup>th</sup> December 2001, the Legislative Assembly passed the Law no. 17/2001, Establishment of the IACM, which was published in the Official Gazette of Macao SAR on 17<sup>th</sup> December 2001 and entered into force on*

<sup>48</sup> The establishment and scope of power of this committee is also an issue, which will be analysed in this report later.

<sup>49</sup> Can the regulations mentioned in 3 and 4 be adopted as the ones of the Macao SAR without any modification and adjustment? This issue is worth consideration, so we will analyse it later.

<sup>50</sup> Were what the applicants requested for consistent with that of the approval? This will be discussed in the report.

*1<sup>st</sup> January 2002. Paragraph 1 of Article 8 states that “the IACM does not possess the power to formulate external regulation”. Paragraph 2 of the same article states that “The municipal regulations and rules which are still effective when this law is promulgated are still applicable to related geographical areas before they are repealed by relevant normative acts.”*

- 8. In fact, even after the IACM was established on 1<sup>st</sup> January 2002 and before Administrative Regulation no. 37/2003, Regulation of Management, Operation and Supervision of Cemeteries, entered into force on 1<sup>st</sup> January 2004, due to the transitional provision under Article 8 of Law no. 17/2001, Regulation of Municipal Cemeteries and Internal Regulation for Perpetual Lease of Grave were effective until 31<sup>st</sup> December 2003. In other words, the regulations were effective for over two years instead of 14 days as mentioned in the report.*
- 9. Moreover, Article 26 (“Entitled rights”) of Administrative Regulation no. 37/2003, Regulation of Management, Operation and Supervision of Cemeteries, which entered into force on 1<sup>st</sup> January 2004, states that “The rights bestowed upon individuals to possess the traditionally named ‘perpetual graves’ can be remained according to the content and terms of the acquisition of the rights.”*
- 10. Finally, all applications for long-term lease of grave were assessed under Article 14 Administrative Regulation no. 37/2003, Regulation of Management, Operation and Supervision of Cemeteries, which entered into force on 1<sup>st</sup> January 2004. It states that “the Chief Executive can entrust specific persons with the right to use the graves on long-term basis based on the facts he considers significant, such as personal achievements, contribution to the society, services provided to the Macao SAR, or the fact that they lost their lives for protection of public interests.”*
- 11. Since 2007, the government has been following up an application for the right of long-term usage of a certain grave (the interest party has submitted a total of 22 application documents and supplementary materials). According to Administrative Regulation no. 37/2003, Regulation of Management, Operation and Supervision of Cemeteries, the 2<sup>nd</sup> term government rejected the application twice and so did the 3<sup>rd</sup> term government. After that, the interest party notified the Cabinet of the Chief Executive and the Office of the Secretary for Administration and Justice*

*that the case would be referred to the Public Prosecutions Office (MP) for handling.*

*Office of the Secretary for Administration and Justice  
10<sup>th</sup> August 2010”*

4. On 10<sup>th</sup> August 2010, the MP publicized a press release revealing that it did receive criminal reports about illegal grant of perpetual grave. The details are as follows:

*“From the Public Prosecutions Office: Regarding the reports about ten graves in the Cemetery of São Miguel Arcanjo handled by the administrative authorities, the Public Prosecutions Office has received some criminal reports and complaints over administrative illegalities since the early days in this year. Regarding the criminal reports, we are gathering materials for follow-up, while **there was no statutory condition of opening a criminal investigation for the time being.** However, it does not affect related administrative handling. The complaints over administrative illegalities shall be followed up by the competent entity under the law.”<sup>51</sup>*

5. The MP told the media that the information they had for the time being was not sufficient to commence a criminal investigation.

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<sup>51</sup> See *Macao Daily News*, 11<sup>th</sup> August 2010, P. A02.

## Part II: Investigation and evidence collection

1. Since the case and what the media has revealed are related to public administrative authorities' operation and exercise of public powers<sup>52</sup>, to verify whether the related assessment procedures and the criteria adopted are legal and rational is within the scope of the CCAC's supervisory duties. Therefore, the CCAC decided to investigate the case. Meanwhile, the CCAC has also received a complaint letter about the same case, of which the details will be shown below.
2. On 11<sup>th</sup> August 2010, the CCAC sent a letter to the President of the Administrative Committee of the IACM to request for all documents related to the case.
3. On 19<sup>th</sup> August 2010, the CCAC received a response from the President of the Administrative Committee of the IACM, which was enclosed with a total of 881 pages of documents. At the same time, the CCAC also sought 98 pages of related documents from other government departments based on its scope of competence.
4. It was discovered in the process of analysing the written information that the materials provided by the IACM were insufficient and incomplete. Therefore, on 25<sup>th</sup> March 2011, the CCAC requested the IACM for supplementary materials.
5. On 28<sup>th</sup> March 2011, the CCAC requested the IACM for the original copies of the following documents:  
  
"The information about the applicants of the 11 graves<sup>53</sup>, including application documents, internal commentary reports, orders and final resolutions/decisions, and all notifications to the applicants."
6. On 1<sup>st</sup> April 2011, the CCAC received 891 pages of documents from the IACM.
7. On 4<sup>th</sup> April 2011, the CCAC invited two staffs who worked for the former Council and are still serving the IACM to provide information and explain the

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<sup>52</sup> Sup-paragraph 4) of Paragraph 1 of Article 3 of Law no. 10/2000 of 14<sup>th</sup> August (*Organic Law of the CCAC*) states, "*The Commission Against Corruption aims, within its scope of activity, at: ... 4) promoting the protection of rights, freedoms, safeguards and legitimate interests of the individuals, and ensuring, through the means referred to under Article 4 and other informal means, that the exercise of public powers abides by criteria of justice, legality and efficiency.*"

<sup>53</sup> In order to know the ins and outs of the case and the criteria adopted by the former Council to handle the applications, the CCAC requested the IACM for extra information about another grave.



contents of some documents and the procedure and criteria of assessment and approval of application for grant of graves.

8. On 7<sup>th</sup> April 2011, the CCAC sent a letter to the IACM to request for supplementary documents and the soft copies of the missing documents extracted from the SGD computer mailing system if necessary.
9. On 26<sup>th</sup> April 2011, the CCAC invited the President of the Administrative Committee of the former Council, Mr. José Luís de Sales Marques, to provide information and explain the process of handling the applications, the criteria for assessment and approval and the reasons for granting the perpetual graves.
10. Since the IACM stated in its letter dated 1<sup>st</sup> April 2011 that the original copies of the relevant documents had been transferred to the MP, the CCAC sent a letter to the latter on 4<sup>th</sup> April 2011 to borrow them for the purpose of investigation and verification.
11. On 11<sup>th</sup> April 2011, the CCAC received the requested documents from the MP.
12. According to the information, regarding the problems concerning the graves, the MP has already commenced criminal investigation into some facts about the crime of “refusal to cooperate” (Article 346 of the *Penal Code*) (because of delay of submission of documents by the relevant agencies) and a case about the graves respectively. The investigation is ongoing.
13. The Office of Secretary for Administration and Justice passed supplementary information to the CCAC in early July 2011.

\* \* \*

### Part III: Complaint by a citizen

1. Moreover, on 13<sup>th</sup> August 2010, the CCAC received a complaint letter from a citizen Ms. Al(...) enclosed with eight pages of documents, alleging that the grant of perpetual grave by the former Council was illegal. Therefore, she requested the CCAC to probe the case.
2. One of the documents from Ms. Al(...) indicated that:

*“Para os fins convenientes, junto por via fax uma cópia de uma carta datada de 27 de Fevereiro de 2010, com entrada no Gabinete da S.A.J no dia 01/Março/2010, cuja cópia também enviei na mesma data ao Ministério Público.*

*A Sra. Secretária Dra. Florinda Chan disse na televisão que não sabia, ela sabia como pode comprovar através da carta acima referida.*

*Julgo que tenho o dever de informar V. Exa. deste facto.*

*RAEM, aos 13 de Agosto de 2010.”*

[English meaning]

*13<sup>th</sup> August 2010  
Macao SAR*

*For appropriate effect, this document is faxed together with a copy of a letter dated 27<sup>th</sup> February 2010, which was sent to the Office of the Secretary for Administration and Justice on 1<sup>st</sup> March 2010. Also, another copy was sent to the MP on the same day.*

*The Secretary for Administration and Justice, Florinda Chan, said on TV that she knew nothing about the case, but, in fact, she does. The letter mentioned above can prove this.*

*I think that I am under obligation to report this fact to Your Excellency, the Commissioner Against Corruption.*

\* \* \*

3. Information shows that Ms. Al(...)’s sister submitted an application to the IACM for purchase of perpetual grave (29<sup>th</sup> November 2007), but the application was rejected (by the Chief Executive on 10<sup>th</sup> June 2008).
4. Moreover, one of the documents submitted by Ms. Al(...) indicates the following content (submitted to the Chief Executive on 15<sup>th</sup> April 2010):

*“(...) atendendo que a investigação do Ministério Público, em curso, não obsta ao meu novo pedido porque a violação da Lei Básica da R.A.E.M. relativamente aos 10 casos de arrendamento perpétuo de sepulturas no ano de 2001 é matéria distinta deste novo pedido e porque possuo neste momento informações e provas para poder requerer de novo e com novas fundamentações, o que agora faço com base no seguinte:*

1. *A minha irmã, (nome), **requereu em 2007 e 2009, por duas vezes, a compra da sepultura n.º (...) do cemitério de S. Miguel Arcanjo, onde está sepultado o nosso falecido irmão, (...), tais pedidos foram incorrectamente transformados em pedido para uso prolongado sem que de tal tenha sido dado conhecimento à requerente, prejudicando-a e constituindo, no entender da signatária, falsificação da qual já foi feita participação ao Ministério Público.** O I.A.C.M., com a concordância da tutela, vem invocar o disposto no n.º 2 do art.º 78.º do CPA para tal alteração, porém esta disposição legal serve precisamente para evitar que os interessados venham a sofrer prejuízos e o resultado foi exactamente o oposto e a requerente nunca foi convocada para suprir eventuais deficiências no pedido.*

*A invocação do n.º 1 da alínea c) do art.º 76.º do CPA feita pelo I.A.C.M. para transformação do pedido de compra, formulado pela minha irmã, em pedido de direito ao uso prolongado apenas vem confirmar a intenção de prejudicar a interessada, deveria ter ter-lhe sido comunicado a impossibilidade de compra por falta de fundamento legal, não alterando, sem seu conhecimento, o teor do seu requerimento. Se tal não foi feito só pode tirar-se uma conclusão: evitar que a requerente, ou seja a minha irmã (...), levantasse a comparação dos méritos dos 10 casos cujo arrendamento*

*perpétuo fora autorizado no ano de 2001, porque tais autorizações violaram o art.º 7.º da Lei Básica, incluindo também a autorização do arrendamento perpétuo da sepultura do falecido pai da sra. Secretária Dra. Florinda Chan, porque tal autorização carece, obviamente, de fundamentação considerando-se caso excepcional, apenas para quem em vida teve mérito ou contributo à sociedade.*

*Desde 1970, o antigo Leal Senado deixara de conceder sepulturas perpétuas por alegada falta de espaço nos cemitérios, apenas foi aberta uma excepção em 1983, para o sr. Ho Yin, cidadão com possuidor de indiscutível mérito e que muito contribuiu para a sociedade. Se posteriormente houve mais autorizações estes casos terão que ser também considerados casos excepcionais.*

2. *Das 10 sepulturas concedidas a título perpétuo em Dezembro de 2001, uma, a sepultura n.º (...) do cemitério de S. Miguel, foi destinada à sra. (...), mãe da amiga de longa data e assessora da sra. Secretária para a Administração e Justiça, sra. (...), requerida pelo sr. (...), pai da sra. (...).*

*Ora, fora publicado no Boletim Oficial de Macau, de 17 de Dezembro de 2001 a Lei n.º 17/2001, que criou o Instituto para os Assuntos Cívicos e Municipais, revogando a Lei n.º 24/88/M, de 3 de Outubro, e publicando em anexo os Estatutos do Instituto para os Assuntos Cívicos e Municipais.*

*Com a publicação desta lei em 17 de Dezembro de 2001 para entrar em vigor em 01 de Janeiro de 2002, o Município de Macau Provisório, tutelado pela sra. Secretária dra. Florinda Chan, ficou perfeitamente ciente das novas competências do futuro I.A.C.M., da revogação da Lei n.º 24/88/M e também não podia ignorar a Lei n.º 1/1999, que entrou em vigor em 20 de Dezembro de 1999, revogando todas as disposições legais que a contrariem e consequentemente que o arrendamento perpétuo violaria frontalmente o art.º 7.º da Lei Básica, mesmo assim a proposta n.º 136/SAZV/2001, datada de 19 de Dezembro de 2001, vem propor a concessão de 10 sepulturas a título perpétuo, com base num novo Regulamento Interno de Arrendamento Perpétuo, aprovado por deliberação camarária de 14 de Dezembro de 2001, no mesmo dia em que é aprovada a Lei n.º 17/2001. Assim temos:*

*em 14 de Dezembro de 2001, no mesmo dia em que é aprovada a Lei n.º 7/2001, o Município de Macau Provisório, tutelado pela sra. Secretária dra. Florinda Chan, aprova um Regulamento interno para arrendamento perpétuo de sepulturas;*

*em 17 de Dezembro de 2001 é publicada no B.O. a Lei n.º 17/2001;*

*em 19 de Dezembro de 2001 é feita uma proposta para arrendamento perpétuo de 10 sepulturas;*

*em 21 de Dezembro de 2001 são autorizados os 10 arrendamentos perpétuos e*

*em 1 de Janeiro de 2002 entra em vigor o estatuto do IACM conforme a Lei n.º 17/2001.*

*Então compreende-se o porquê da transformação do pedido de compra, formulado pela minha irmã (...), em pedido para o direito ao uso prolongado, tal só serviu para propor o indeferimento, porque se tivesse sido comunicado à requerente que a compra não era possível por ser ilegal, certamente que o pedido seria reformulado tendo em vista o disposto no art.º 14.º do Regulamento Administrativo n.º 37/2003 e os casos acima citados seriam chamados à colação.*

*(...)”*

[English meaning]

*“(...) The fact that the MP is conducting an investigation does not hinder me from raising another request, because the breach of the Macao Basic Law by the grant of ten graves in 2001 is different from my new request. Moreover, I have information and proofs which enable me to apply again with new basis:*

1. *In 2007 and 2009, my sister (name) submitted applications for purchase of grave no. (...) at the Cemetery of São Miguel Arcanjo, where our deceased brother was buried (...) The request was irregularly modified as application for long-term lease without notifying the applicant, whose interests were therefore infringed upon. I thought that fraudulent*

***behaviour existed and therefore filed a report to the MP**<sup>54</sup>. Upon the approval of its supervisory entity, the IACM modified the aforementioned request under Paragraph 2 of Article 78 of the Code of Administrative Procedure, of which the aim is to protect interest parties from infringement upon rights and interest while now the outcome is the opposite. The applicant was never summoned to make up for the possible omissions that might exist in her request.*

*The IACM cited Subparagraph c) of Paragraph 1 of Article 76 of the Code of Administrative Procedure as the basis for modifying my sister's request for purchase to be one for long-term lease, which was a proof to the intention to infringe upon interest party's interests. In fact, the IACM should have informed the applicant that the request for purchase of grave lacked legal basis and thus it was not feasible instead of modifying the application without any notification. If the IACM did not do this, we can only make a conclusion – The IACM intended to prevent the applicant, my sister, from comparing her request to the grant of the ten graves in 2001, because it has violated Article 7 of the Macao Basic Law, and so does the approval of perpetual lease of grave for the late father of Florinda Chan, which was also lacking basis obviously because only those who had merits and contribution to the society were accepted and handled as special cases.*

*Since 1970, the former Municipal Council no longer granted any perpetual graves due to lack of space in cemeteries. There was only one exceptional approval for Mr. Ho Yin in 1983 out of his undoubted merits and countless contributions to the society.*

2. *Among the ten graves granted in December 2001, grave no. (...) at the Cemetery of São Miguel Arcanjo was for the mother of Florinda Chan's friend, Ms. (...), who was also Chan's advisor, while the application was filed by Ms. (...)’s father, Mr. (...).*

*Moreover, Law no. 17/2001 about the establishment of the IACM, which was publicized in the Official Gazette dated 17<sup>th</sup> December 2001, has repealed Law no. 24/88/M of 3<sup>rd</sup> October and promulgated the Statute of the IACM in its appendix.*

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<sup>54</sup> The underline is inserted by the CCAC.

*The law mentioned above was publicized on 17<sup>th</sup> December 2001 and entered into force on 1<sup>st</sup> January 2002. The temporary municipal entity, which was under supervision by Florinda Chan, was clear about the duties and powers of the new IACM and the fact that Law no. 24/88/M was going to be repealed. At the same time, Law no. 1/1999, which entered into force on 20<sup>th</sup> December 1999, should not be neglected because it has repealed all provisions which contradicted it. Therefore, perpetual lease totally contradicts Article 7 of the Macao Basic Law. However, Proposal no. 136/SAZV/2001 dated 19<sup>th</sup> December 2001 still suggested granting the ten graves on a perpetual basis based on the new Internal Regulation for Perpetual Lease of Grave passed by the Municipal Assembly on 14<sup>th</sup> December 2001. Moreover, Law no. 17/2001 was passed on 14<sup>th</sup> December 2001. The case is summarized in chronological order as follows:*

***On 14<sup>th</sup> December 2001, when Law no. 17/2001 was passed, the temporary municipal entity, under the supervision by the Secretary for Administration and Justice, Florinda Chan, passed the Internal Regulation for Perpetual Lease of Grave.***

***On 17<sup>th</sup> December 2001, Law no. 17/2001 was published in the Official Gazette;***

***On 19<sup>th</sup> December 2001, the proposal for perpetual lease of the ten graves was made;***

***On 21<sup>st</sup> December 2001, the applications for perpetual lease of the ten graves were approved, and***

***On 1<sup>st</sup> January 2002, the Statute of the IACM entered into force according to Law no. 17/2001.***

*In this sense, the reason why my sister's request for purchase of grave was modified as application for long-term lease can be understood. The purpose is to reject her request, because, if the applicant has been notified that her request for purchase of grave would not be approved due to illegality in advance, she would have submitted another application under Article 14 of Administrative Regulation no. 37/2003 and compared it to*

*the aforementioned approved cases.*

*(...)”*

5. On 15<sup>th</sup> December 2009, the IACM made the following proposal when handling Ms Al(...)’s second application for long-term use of grave (Proposal no. 148/SAL/2009 raised by the Acting Head of the Department of Environmental Protection and Greening):

- “1. There were cases of approval of long-term use of graves when former Municipal Council still existed and even after the Temporary Municipal Council of Macao was establish upon the handover (For details, please see Proposal no. 125/SAZV/98 - Pedido de compra de sepultura perpétua, no. 114/SAZV/99 - Pedido de concessão de área para sepultura perpétua, and no. 131/SAZV/2001 - Proposta para aquisição de sepulturas perpétuas. For the last approval by the former Temporary Municipal Council for long-term lease of the ten graves (arrendamento perpétuo) in December 2001, see Proposal no. 163/SAZV/2001 - Proposta para arrendamento perpétuo de campas alugadas). Since then, no decision on application for long-term use of grave has been made up to 1<sup>st</sup> January 2004.*
- 2. On 1<sup>st</sup> January 2004, Administrative Regulation no. 37/2003, Regulation of Management, Operation and Supervision of Cemeteries, entered into force. According to Article 14, the power to grant certain people the right to use graves on long-term basis (direito de uso prolongado de sepultura) is possessed by the Chief Executive. In other words, since 2004, the IACM, which was founded on 1<sup>st</sup> January 2002, no longer has the power to approve or disapprove application for long-term use of grave.*
- 3. On 29<sup>th</sup> November 2007, Ms. Al(...) sent a letter to the Chief Executive to apply for purchase (pagar o preço da venda) of grave no. (...). According to Paragraph 2 of Article 78 of the Code of Administrative Procedure, **the IACM considered the request as one for the right of long-term use of grave at that time. Therefore, we notified the superior via Report no. 58/SAL/2008, “Reply about Application for Long-term use of Grave”, on 15<sup>th</sup> April 2008**<sup>55</sup>. On 28<sup>th</sup> May, our Administrative Committee referred the request to the Secretary for Administration and Justice via Proposal no.*

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<sup>55</sup> The underline is inserted by the CCAC.



*13/ADMN/2008, “About Application for Long-term Use of Grave”, which was then referred by the latter to the Chief Executive for decision with her opinion inserted. On 10<sup>th</sup> June, the Chief Executive issued an order to reject Ms. Al(...)’s application.*

4. *On 1<sup>st</sup> December 2009, Ms. Al(...) sent another letter to Chief Executive, pointing out that although the power to approve long-term use of grave was exclusively possessed by the Chief Executive, the IACM exercised the power by selling (vender) ten graves in December 2002.*
5. *The basis mentioned in point 4 is, in fact, useless for the application. Under Sub-paragraph c) of Paragraph 1 of Article 17 and Paragraph 2 of Article 78 of the Code of Administrative Procedure, the application by interest party shall contain the factual basis for the request, while the request mentioned in the letter shall be considered as the one for the right of long-term use of grave, which shall be based on the important facts mentioned in Article 14 of Administrative Regulation no. 37/2003.*
6. *Ms. Al(...) pointed out in her letters in 2007 and 2009 that the contribution of the deceased (her brother) to the society was the basis for the application. However, for the reason that the basis for the application in 2007 did not meet the requirements under Article 14 of the administrative regulation mentioned above, the Chief Executive rejected the application through an order according to his proposal no. 125/FC/GSAJ/2004 to the Secretary for Administration and Justice – Proposal about Grant of Grave on Long-term Lease. Moreover, since the so-called new rationale mentioned in the letter from the interest party in 2009 did not lead to the outcome prescribed by Article 14, it was, indeed, not different from that of the application in 2007.*
7. *According to Paragraph 2 of Article 11 of the Code of Administrative Procedure, the Chief Executive, who possesses the power to approve request for the right of long-term use of grave, carried out an administrative act against Ms. Al(...) – to reject her application. On 1<sup>st</sup> December 2009, Ms. Al(...) made the same request to the Chief Executive within two years after the decision of disapproval was made on 10<sup>th</sup> June 2008. For this reason, the Chief Executive did not have the responsibility to make any decision about this.*

8. *Therefore, we suggest the Chief Executive to remain the decision made on 10<sup>th</sup> June 2008.*
6. On 17<sup>th</sup> December 2009, the Secretary for Administration and Justice submitted a proposal, *which suggested rejecting the relevant request.*
7. On 17<sup>th</sup> December 2009, the Chief Executive made a decision to reject Ms. Al(...)'s application.

\* \* \*

#### **Part IV: Analysis and grounds**

1. The information above shows that we are facing two cases which occurred at different times but are related to each other in terms of content.
  - (1) The first case is about the suspected legality and rationality of the grant of ten “perpetual graves” by the former Council, which took place in December 2001 (and earlier).
  - (2) In the second case, the IACM modified Ms. Al(...)'s sister's application for purchase of perpetual grave to be one for “perpetual lease grave”. Ms. Al(...) considered that what the IACM had done was against the law and had infringed upon the applicant's rights and interests.

In these two cases, were the handling methods adopted by the administrative authorities legal? Was there any substantial difference between the criteria adopted? Did unfairness exist? These are the problems this investigation should solve.

2. Before we start to analyse the relevant facts, it is worth clarifying the followings:
  - (1) Only after evidence search and analysis can we confirm whether criminal investigation, administrative complaint investigation or both can be commenced.

- (2) In this regard, Paragraph 1 of Article 4 of Law no. 10/2000 (*Organic Law of CCAC of Macao*) states that:

*“The Commission Against Corruption is entitled to:*

*1) investigate any evidence or news about facts, which may give rise to justified suspicion regarding the corruption or fraud, of crimes against public property, of **abusive exercise of public functions**, of **acts damaging to public interests**, or of any acts under Subparagraph 3) of Paragraph 1 of the Article above; (...)*”

- (3) In the case, what the CCAC wants to investigate is whether any “abusive exercise of public functions” or “acts damaging to public interests” existed.
- (4) Moreover, Paragraph 4 of Article 4 of the *Organic Law of the CCAC of Macao SAR* states that:

*“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;”.*

Therefore, it is also the CCAC’s duty to investigate into whether the whole administrative procedure was legal or not.

- (5) Since the case involves the former Temporary Municipal Council, the Secretary for Administration and Justice and an advisor of her Office, the CCAC, without doubt, shall comply with Paragraph 8 of Article 4 of its organic law, which states that:

*“8) report the results of its main inquiries to the Chief Executive and inform him of any acts carried out by **principal officials** and by other officials as referred to under Subparagraph a) of Paragraph 2 of Article 336 of the Penal Code and which may be **subsumed in its scope of activity**;”*

- (6) Although the law provides specific handling procedures according to some special cases, it is necessary to comply with the principle of fairness - equality under the law. Article 25 of the *Basic Law* states that:

*“All Macao residents shall be equal before the law, and shall be free from discrimination, irrespective of their nationality descent, race, sex, language, religion, political persuasion or ideological belief, educational level, economic status or social conditions.”*

- (7) It is worth emphasizing that the CCAC’s supervision focuses on legality and rationality (timeliness and appropriateness) – which are of typical concepts of administrative law. **Political issues are beyond the scope of the CCAC’s consideration. In other words, what the CCAC investigates is about legal responsibility instead of political one.**

What the CCAC supervises is administrative activity or the act itself (the positions of the people who initiate the act is certainly one of the concerns, which is not, however, the core of the problem). The CCAC has the power to supervise all administrative activities because:

- a) – **The Commission Against Corruption functions independently and the Commissioner Against Corruption is accountable to the Chief Executive. (Article 59 of the *Basic Law*);**
- b) – Subparagraph 4 of Paragraph 1 of Article 3 of the *Organic Law of the CCAC of Macao SAR* states that:

*“1. The Commission Against Corruption aims, within its scope of activity, at:*

*(...)*

*4) Promoting the protection of rights, freedoms, safeguards and legitimate interests of the individuals, and **ensuring**, through the means referred to under Article 4 and other informal means, that **the exercise of public powers abides by criteria of justice, legality and efficiency.**”*

- (8) In this sense, political appointment (e.g. principal officials, bureau directors and persons-in-charge of municipal bodies) or legal appointment are not the reasons for evading supervision. At least the law does not provide any exemption from supervision.
- (9) In the case, involvement of relatives of staff of the Office of the Secretary should not be a factor which needs to be specially considered. Regarding the supervisory relationship between the Secretary and municipal bodies (to be analysed later), we have to make it clear: the relationship between the supervisory and the supervised bodies is a legal relationship instead of political one. Their own responsibilities and competences shall be judged based on legal provisions instead of political decisions, otherwise, it will be unlawful.

\* \* \*

Let us have a look at the first case. Since it occurred in 2001, we have to trace back to 2001 to see the organization and operation style of the former Temporary Municipal Council as well as the related laws and decrees effective at that time.

## A – Case 1 – Grant of ten perpetual graves

### 1. Introduction to the structure and organization of the former Temporary Municipal Council

- (1) First of all, let us view the law effective at that time.

Prior to the establishment of the Macao SAR, the legal system of the two municipal bodies were provided by Law no. 24/88/M of 3<sup>rd</sup> October (*Legal Regime of Municipalities*).

Law no. 4/93/M of 5<sup>th</sup> June later on had made amendment to the abovementioned law *Legal Regime of Municipalities*.

*Article 1 of the Legal Regime of Municipalities* states:

*“1. The local Administration of Macao consists of two municipalities:*

- a) The Municipality of Macao, (...);*
- b) The Municipality of the Islands, (...).*
- 2. The Municipalities are legal persons that possess public power and have their own administrative entities for the purpose to pursue the interests related to themselves and the citizens.*
- 3. The Municipalities possess their own properties and enjoy administrative and financial autonomy under the law.”*

Article 5 states that:

*“The Municipal Assembly and the Municipal Chamber are municipal bodies.”*

This shows that there were two statutory entities within the municipal structure:

**(a) Municipal Assembly<sup>56</sup>;**

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<sup>56</sup> The portuguese name is *Assembleia Municipal*.

**(b) Municipal Chamber<sup>57</sup>.**

The characteristic difference between these two bodies is that: the **Municipal Assembly** is a decision making body mainly responsible for formulating municipal policies and measures and possess financial and supervisory powers. Its competence was clearly defined by Article 17 of Law no. 24/88/M of 3<sup>rd</sup> October, which states that:

*“1. The Municipal Assembly, in terms of its internal structure and operation, is entitled to:*

- a) Elect a secretary by anonymous voting;*
  - b) Formulate and pass its own bylaw, which can provide the establishment of standing and temporary committees<sup>58</sup>.*
- 2. The Municipal Assembly has the power to **resolve the following issues** within a month since the day the Municipal Chamber submits relevant proposals or applications:*
- a) **Plan of activities and relevant revisions;***
  - b) **Municipal budget and supplementary budget;***
  - c) **Report of activities and management accounts of the municipalities;***
  - d) Approval of the organizational structure of its services and the establishment of permanent staff and related revisions;*
  - e) Loan.*
- 3. The **Municipal Assembly** is also entitled to:*
- a) **Ensure compliance to legality**<sup>59</sup>;*

<sup>57</sup> The portuguese name is *Câmara Municipal*.

<sup>58</sup> Amended by Law no. 4/93/M of 5<sup>th</sup> July.

<sup>59</sup> The correct Chinese translation of the Portuguese original term "Zelar" (corresponds to "Ensure") is “**致力**於” instead of “**注視**”.

- b) **Monitor implementation of resolutions**<sup>60</sup>;
- c) *Request for information, report and analysis of the relevant acts carried out by the Municipal Chamber;*
- d) *Actively or upon request by the Municipal Chamber, give comments about any issues related to the municipalities.*
- 4. *The Municipal Assembly deliberates the report of municipal activities made by the President of the Municipal Council at every regular meeting.”*

The **Municipal Chamber** was mainly responsible for implementation of the plans and policies passed by the Municipal Assembly. Therefore, it enjoyed an extensive executive power, but it still had decision-making power under certain circumstances. The Municipal Chamber comprised five members (a President, a Vice-President and three councillors, one of who is on full-time basis) (see Paragraph 1 of Article 24 of the above mentioned law). Its competence was defined by Article 29, of which Paragraph 1 states that:

- “1. *Regarding the organization and functioning of the services and routine management, **the Municipal Chamber is entitled to:***
- a) **Execute and ensure the execution of the resolutions passed by the Municipal Assembly**<sup>61</sup>;
  - b) *Appoint and employ the staff necessary for effective operation of the services;*
  - c) **Supervise the management and leadership of the staff of the municipal services;**
  - d) *Approve the contracts necessary for operation of the services according to current regulations regarding related issues;*
  - e) *Sign insurance contracts regarding municipal activities;*
  - f) *File a lawsuit and present defence during litigation; concede defeat,*

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<sup>60</sup> The underline is inserted by the CCAC.

<sup>61</sup> Same as above.



*withdraw a lawsuit or make a concession without infringement upon the third party's rights and interests;*

- g) *Record the absence of its members and the reasons;*
- h) *Carry out all measures necessary for daily management and maintenance of public properties;*
- i) *Compile the registration of the movable and immovable properties of the municipalities and keep updating the information;*
- j) *Acquire movable and immovable properties and services necessary for normal operation of the Municipal Council and, upon approval by the Municipal Assembly, dispose of or create encumbrance over immovable properties;*
- l) *Accept donations, legacies, inheritances and the benefits under the inventory;*
- m) *Manage the registration within the scope of municipal competence;*
- n) *Determine the tariff on the services provided by municipal or municipalized departments for the public;*
- o) *Deliberate the methods to support the legal or natural persons who provide services for public interests in the municipalities;*
- p) *Approve the norms and regulations (normas e regulamentos)<sup>62</sup> necessary for the operation of municipal services;*
- q) *Formulate other internal regulations (regulamentos internos)<sup>63</sup> within the scope of municipal duties;*
- r) *Formulate municipal regulations;*

<sup>62</sup> Rephrased by the CCAC.

<sup>63</sup> Same as above.

- s) *Issue licenses and inspect compliance with related regulations according to the law and municipal provisions;*
  - t) *Modify or revoke the acts carried out by municipal staff or public servants.”*
- (2) The Municipal Assembly was a decision-making collegial body which was also responsible for supervising the execution of duties of the Municipal Chamber, of which the scope of duties was wider. Therefore, the former decided to establish a number of standing committees under the latter to carry out different duties respectively.

For the details about dividing the duties and the establishment of the standing committees, we will analyse them later.

\* \* \*

- (3) Moreover, we have to notice that before the Macao SAR was established, on 31<sup>st</sup> October 1999, the Standing Committee of the National People’s Congress (NPC) of the People’s Republic of China passed a resolution, “the decision made by the NPC Standing Committee about handling the laws already in force in Macao” (passed at the 12<sup>th</sup> session of the 9<sup>th</sup> NPC Standing Committee on 31<sup>st</sup> October 1999).

The decision indicated that:

*“Article 145 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China (hereinafter designated as the “Basic Law”) states that, ‘Upon the establishment of the Macao Special Administrative Region, the laws previously in force in Macao shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the provisions of this Law and legal procedure.’*

(...)

*The 12<sup>th</sup> session of the 9<sup>th</sup> NPC Standing Committee deliberated the proposal made by the Preparatory Committee of Macao SAR of the NPC regarding the*

laws previously in force in Macao according to the above stipulation and made the following decision:

1. *The laws, decrees, administrative regulations and other normative acts already effective in Macao will be adopted as laws of the Macao SAR in exception of those contradict the Basic Law.*
2. *The laws already in force listed in Annex 1 of the decision contradict the Basic Law and thus will not be adopted by Macao SAR.*
3. *The laws already in force listed in Annex 2 of the decision contradict the Basic Law and thus will not be adopted as laws of Macao SAR. However, before the new laws are formulated, the relevant issues can be handled based on the principles under the Basic Law with reference to past practices.*
4. **The laws already in force listed in Annex 3 of the decision are contradictory to some articles of the Basic Law and thus will not be adopted as laws of Macao SAR.**
5. *The laws already in force which will be adopted by Macao SAR, when applied starting from 20<sup>th</sup> December 1999, shall undergo necessary modification, adaptation, restriction or exception in order to match up with the position of Macao when the People's Republic of China exercises sovereignty over it and the relevant provisions under the Basic Law.*

(...)

### ANNEX III

*Some articles of the following the laws and statutes in force in Macao are contradictory to the Basis Law and thus will not be adopted as laws of Macao SAR:*

(...)

*3. The Articles of Legal Regime of Municipalities (Law no. 24/88/M) which reflects political characteristics of municipal bodies;*

(...)”

- (4) The above stipulations are included in the *Reunification Law* (Law no. 1/1999) *passed in the Macao SAR on 20<sup>th</sup> December 1999*. The above decision made by the NPC Standing Committee does not define the concept of “political characteristics”. Moreover, Articles 95 and 96 of the *Basic Law* also stipulate that:

*“Municipal organizations which are not organs of political power may be established in the Macao Special Administrative Region. Entrusted by the government of the Region, they shall provide services in such fields as culture, recreation and environmental sanitation, and shall be consulted by the government of the Region on the above mentioned affairs.” (Article 95)*

*“The functions, powers and structure of the municipal organizations shall be prescribed by law.” (Article 96)*

Therefore, the correct application of Law no. 24/88/M only depends on the clear understanding of this concept by those who interpret and apply this law.

In fact, it is not easy to define “political power” or “political duty”. Some scholars suggest adopting a formal criterion, while some suggest practical one. During a certain historical period (e.g. the 19<sup>th</sup> century), there was a suggestion that “ad hoc criterion” can be adopted in some cases (suggested by some French scholars). The proponents considered that the relationship between the executive power and the parliament or with other countries is embodiment of execution of political power and political duties.

However, the mainstream theories suggest that a practical criterion shall be adopted to define “political act”, which is, the acts carried out for exercise of political duties are “acts that exercise of political power”, such as:

- Diplomacy;
- National defence;
- National security;
- Institutional act<sup>64</sup> [e.g. promulgation of law, election, appointment of cabinet members of the government (in a narrow sense)];
- Oblivion, pardon<sup>65</sup> or commutation under the law;
- etc.

According to the above analysis, upon the establishment of the Macao SAR, the scope of power of municipal bodies shall not cover the followings:

- (1) Decision-making power regarding election (without affecting the assistance of municipal bodies in the process of elections, since this is merely the embodiment of execution instead of making decision on electoral affairs);
- (2) Formulation of regulations with external effect;
- (3) Formulation of regulations regarding change of positions, natures and structure of power of municipal bodies;
- (4) External relations which involve political matters (e.g. establishment of agreement or collaborative project);

<sup>64</sup> The examples presented here (national defence, diplomacy and national security, etc.) are acts that exercise political power, but they are still subject to the law. Various aspects of such behaviours are subject to relevant regulations.

<sup>65</sup> Subparagraph 17 of Article 50 of the *Basic Law* states, “*The Chief Executive of the Macao Special Administrative Region shall exercise the following powers and functions: (...); (17) To pardon persons convicted of criminal offences or commute their penalties in accordance with law; (...)*” The competent body still has not legislated for this provision, therefore, the Chief Executive is not able to exercise this duty.

- (5) The matters managed by or the powers possessed by other institutions as expressly prescribed by the *Basic Law* (e.g. ownership, usage and the right to receive advantage of land), in exception of the cases where other laws are applicable (on condition that the *Basic Law* is not violated).

**Therefore, upon the establishment of Macao SAR, the *Basic Law* and the *Reunification Law* shall also be applied in the cases where Law no. 24/88/M is applied.**

Let us see another example.

Article 6 of the aforementioned law states that:

“Article 6

*(Principle of Independence)*

*Municipal bodies are independent within their own scopes of competence. Their resolutions can only be suspended, modified, revoked or annulled by statutory means.”*

Basically, this article originated from the municipal legal regime of Portugal:

- a) For example, Article 75 of Decree Law no. 100/84 of 29<sup>th</sup> March (of Portugal) is exactly the same as Law no. 24/88/M.
- b) The article is kept in a newer law - Article 81 of Law no. 169/99 of 18<sup>th</sup> September (Portugal)<sup>66</sup>.

It is necessary to note that:

- (1) In Portugal, the autonomy of municipal bodies is guaranteed at constitutional level in compliance with the principle of decentralization of power;

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<sup>66</sup> Here we only quote some municipal laws effective in Portugal between 1999 and 2001.

- (2) Therefore, the lawmaker also emphasizes the guarantee for independence of municipal bodies in execution of their power at the level of common law;
- (3) After the establishment of Macao SAR, the principle of independence of competence has little practical effect because the principle of statutory competence and the principle of legality under administrative law have ensured the same outcome: the power and responsibility of the officeholders of administrative bodies are determined by laws and regulations and thus shall not be altered by individual will.

Therefore, Article 31 of the *Code of Administrative Procedure* states that:

- “1. *Competence is defined by law or regulation and shall not be renounced and transferred, without prejudice to application of provisions of relevant delegation and substitution.*
  2. *All acts or contract aiming at withdrawal of possession or execution of competence entrusted to administrative bodies are void without affecting delegation of power and similar situations.*”
- (4) On the other hand, both Law no. 17/2001 of 17<sup>th</sup> December, which regulates the establishment of the IACM, and Administrative Regulation no. 32/2001 of 18<sup>th</sup> December, which is about its structure and operation, do not indicate the “principle of independence of competence” mentioned above. This shows that the legal regime of Macao is not exactly the same as that of Portugal in the aspect of development and position of municipal system mainly because of difference in their constitutional systems.

\* \* \*

The principle of independence of competence here refers to:

- (1) Internal independence: The Municipal Assembly and the Municipal Chamber are independent from each other. No subordinate relationship exists between them, without prejudice to the supervisory relationship between them determined by law.
- (2) External independence: This stems from the nature of the principle of legality. The two municipal bodies exercise their functions according to their responsibilities and competences subject to the supervisory mechanism determined by the legislators, such as establishing a supervisory body and entrusting it with relevant competence.

Articles 46 and 47 of Law no. 24/88/M of 3<sup>rd</sup> October determine the power to supervise municipal bodies possessed by supervisory bodies (this point will be analysed later). Therefore, this principle of independence does not mean that the two municipal bodies are not subject to any supervision.

- (3) Moreover, Article 95 of the *Basic Law* states that:

*“Municipal organizations which are not organs of political power may be established in the Macao Special Administrative Region. Entrusted by the government of the Region, they shall provide services in such fields as culture, recreation and environmental sanitation, and shall be consulted by the government of the Region on the above mentioned affairs.”*

This shows that under the legal regime of Macao, the power of municipal bodies has been narrowed down, contrary to that in Portugal, where the extensive autonomous power possessed by municipal bodies is established at constitutional level. Therefore, the “independence” prescribed by Law no. 24/88/M should be, strictly speaking, “autonomy”. According to the article above, municipal bodies execute their duties entrusted by the government since the Macao SAR has been established.

\* \* \*



## **2. Regulations for graveyards**

1. In the past, municipal cemeteries and graveyards were regulated by some old municipal regulations and decrees for a long time, including:

- (1) *Regulation of Municipal Cemeteries* passed by the Municipal Assembly on 5<sup>th</sup> July 1961, and
- (2) Instruction no. 6780 of 5<sup>th</sup> August 1961.

The aforementioned regulation was effective until 31<sup>st</sup> December 2003 because Administrative Regulation no. 37/2003, *Regulation of Management, Operation and Supervision of Cemeteries*, entered into force on 1<sup>st</sup> January 2004 (publicized on the *Official Gazette of Macao SAR* on 24<sup>th</sup> November 2003). The regulation was repealed since then.

2. Regarding management of grave, Paragraph 6 of Article 29 of Law no. 24/88/M of 3<sup>rd</sup> October states that:

**“6. The Municipal Chamber is also entitled to:**

- a) *Issue license for vehicle circulation, carry out vehicle inspection and issue driving license,*
- b) *Carry out maintenance and maintain horizontal and vertical signalling systems and urban facilities;*
- c) **Grant the lands within municipal cemeteries for setting up coffin chamber and perpetual grave<sup>67</sup>;**
- d) *Declare that coffin chambers, mausoleums or other facilities within municipal cemeteries to go to the public in case the owners are unknown after relevant notice is published in compliance with ordinary provisions and time limit under the law, or in case the owners clearly state that they will never take care of the maintenance after they receive the judicial summons;*

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<sup>67</sup> The underline is inserted by the CCAC.

- e) Establish and manage municipal cemeteries and public incineration plants;
- f) Inspect private cemeteries;
- g) Examine and inspect the measures;
- h) Issue other licenses under the law;
- i) Exercise the powers provided by the law or the resolutions by the Municipal Assembly.”

Article 30 states that:

- “1. The Municipal Chamber will delegate part of its power to its President in exception of the matters prescribed by the first part of Subparagraph j), Subparagraphs n), p), q) and r) and Paragraph 2 of the preceding article<sup>68</sup>.
2. The competence delegated to the President based on proposal by the President and approved by the Municipal Chamber can be sub-delegated to the Vice President, anyone of the councillors<sup>69</sup> or the leadership and supervisory staff of the Municipal Council<sup>70</sup>.
3. The Municipal Chamber can terminate the delegation or reclaim the delegated powers anytime<sup>71</sup>.
4. The acts carried out by means of delegation or sub-delegation can be revoked by the authorizer according to the legal provisions regarding revocation by the authorizer.
5. Appeal against the decisions made by the President, the Vice President, the councillors or the leadership and supervisory staff of the Municipal Council or anybody that was delegated or sub-delegated the power can be filed to the plenary assembly of the relevant body without hindering judicial appeal.

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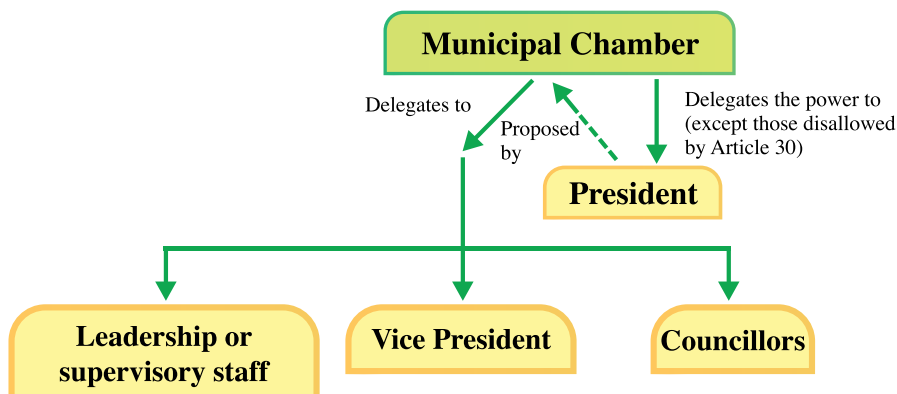
<sup>68</sup> Paragraphs 1 and 2 of this article were modified by Decree no. 4/93/M of 5<sup>th</sup> July.

<sup>69</sup> The “councillors”, which refers to the members of the Chamber, is originally *vereadores* in Portuguese.

<sup>70</sup> The underline is inserted by the CCAC.

<sup>71</sup> Same as above.

6. *The reason for filing appeal to the plenary assembly of the Municipal Chamber can be illegality, irrelevancy or inconvenience of the decision. The Municipal Chamber will assess the complaint no later than the second meeting upon receipt of the complaint.”*
3. According to the article above, the Municipal Chamber can sub-delegate its powers as shown by the following graph:



4. In fact, according to documentary records, the Municipal Chamber decided to **delegate the competence prescribed by Article 29 of Law 24/88/M of 3<sup>rd</sup> October to its President** during the meeting on 1<sup>st</sup> August 1997 (except the matters prescribed by Paragraph 1 of Article 30).

This shows that a majority of the powers possessed by the Chamber had already been delegated to the President, including the power to grant graves.

We will thoroughly analyse the relationship between such delegation and the Standing Committee for Administration, Finance and Property and the Municipal Chamber and the problems incurred.

\* \* \*

### **3. Internal Regulation passed by the Standing Committee for Administration, Finance and Property and the problems incurred**

- (1) When the Macao SAR was established, the members of the Municipal Assembly who intended to continue to take up the same position, according to the arrangement, had to sign a statement for the Chief Executive's approval. Therefore, the Chief Executive promulgated Administrative Order no. 6/1999 to confirm the mandate for all members of the Municipal Assembly. It states that:

#### *"Article 1*

#### *Nomination of the Members of the Temporary Municipal Assembly of Macao*

1. *José Luís Sales Marques, Lau Si Io and António Manuel dos Santos are nominated the members of the Temporary Municipal Assembly of Macao.*
2. *José Luís Sales Marques and António Manuel dos Santos are nominated the President and the full-time councillor of the Temporary Municipal Council respectively.*

( ... )

#### *Article 3*

#### *Confirmation*

***The elected members of the former Municipal Assembly and the elected councillors of the former Municipal Chamber are confirmed to be the members of the counterparts under the temporary municipal body of Macao SAR through a written reply to the Chief Executive.***

#### *1) Members of the Temporary Municipal Assembly of Macao:*

*Wan Chun, Leong Heng Kao, Chao Iek Keong, Au Kam San, Vong Su Sam; Lei Hong, Iu Iu Cheong and Sin Chi Yiu (representatives for charities, cultural, educational and sporting interests); Ho Ioc Tong and Tong Kin Mao*

*(representatives for capital, labour and professional interests); Wan Chun and Lei Hong are nominated part-time members of the Temporary Municipal Chamber of Macao.*

*( ... )*

#### *Article 4*

##### *Term of Office*

***The term of office of the aforementioned members of temporary municipal bodies shall not run through 31<sup>st</sup> December 2001.***

*( ... )”*

- (2) According to the above name list, the Municipal Assembly under the former Temporary Municipal Council comprised 13 members.
- (3) The information shows that after former Temporary Municipal Council was established, the structure and operation of the Municipal Assembly basically remained unchanged, that is, the duties were divided among different committees. Minutes no. 6/97 (regular session) of the Municipal Assembly of Macao indicated that:

*“Minutes no. 6/97 of the Municipal Assembly of Macao*

*(Regular session)*

*Venue: Hall of Municipal Council of Macao*

***Date: 5<sup>th</sup> August 1997***

*Starting time: 10:00am*

*Dismissal time: 12:00pm*

*Attendants: President: José Luís de Sales Marques*

*Secretary: Iu Iu Cheong*

*Members: António Sio  
Ho Iok Tong  
Leong Heng Kao  
Au Kam San  
Chao Iek Keong  
Lei Hong  
Sin Chi Yiu  
Wong Su Sam*

*( ... )*

*Point 2 – Standing Committees*

*The President proposed establishing eight standing committees, whose functions would be useful and important to proper execution of the objectives of the Municipal Council.*

**Committee for Administration, Real Estates and Finance**<sup>72</sup>

*Coordinator: Iu Iu Cheong  
Members: Lei Hong  
Sin Chi Yiu  
Au Kam San*

**Committee for Urbanization and Construction**

*Coordinator: Wong Su Sam  
Members: Lei Hong  
Leong Heng Kao  
Ho Ioc Tong*

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<sup>72</sup> The original name of the committee is in portuguese, so the correct Chinese translation should be “行政、財產暨財政委員會” (Committee for Administration, Finance and Property) instead of “行政、物業暨財政委員會” (Committee for Administration, Real Estates and Finance) mentioned in the minutes.

**Committee for Markets and Ambulant Vending**

*Coordinator:* Tong Kin Mao  
*Members:* Wan Chun  
Sin Chi Yiu  
Chao Iek Keong

**Committee for Urban Salubrity and Sanitation**

*Coordinator:* Leong Heng Kao  
*Members:* Wan Chun  
Tong Kin Mǎo  
Au Kam San

**Committee for Environmental Protection and Greening**

*Coordinator:* Chao Iek Keong  
*Members:* Lei Hong  
Tong Kin Mao  
Iu Iu Cheong

**Committee for Culture and Art**

*Coordinator:* Ho Ioc Tong  
*Members:* Wan Chun  
Wong Su Sam  
Chao Iec Keong

**Committee for Recreation and Sport**

*Coordinator:* Au Kam San  
*Members:* Lei Hong  
Ho Ioc Tong  
Wong Su Sam

### Committee for Traffic and Transportation

Coordinator: Sin Chi Yiu

Members: Wan Chun

Leong Heng Kao

Iu Iu Cheong

These committees will start operating upon approval of their establishment by the Municipal Assembly. Every member of the Assembly, except the part-time ones, will be the coordinator of each of the committees and a member of other committees. Although part-time members of the Chamber are not coordinators, they will become members of four of the committees.

The proposal was unanimously passed (10 votes).

(...)”

4. Later, the Municipal Assembly renamed the “Committee for Administration, Real Estates and Finance” as the **“Standing Committee for Administration, Finance and Property”**, but it did not clearly define the competence of the committee during the meeting mentioned above<sup>73</sup>.
5. During another session on 25<sup>th</sup> August 1997, a document named *Regulation for Municipal Assembly* was passed. Article 9 of the *Regulation* states that:

“Artigo 9.º

(Competências e apoio administrativo)

1. As Comissões da Assembleia Municipal, no âmbito das áreas por que sejam responsáveis, podem desenvolver todas as acções necessárias ao seu bom funcionamento, sem prejuízo do disposto no artigo seguinte.
2. *Compete ao Coordenador de cada Comissão:*
  - a) *convocar e dirigir as respectivas reuniões, coordenando o trabalho dos restantes membros;*

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<sup>73</sup> Therefore, the scope of its activities can only be roughly figured out based on its name.



- b) *Providenciar pela apresentação de um Relatório trimestral à Assembleia Municipal, dando conta da actividade desenvolvida.*
- 3. *O suporte administrativo às Comissões é feito pelo Gabinete de Apoio aos Órgãos Municipais, sem prejuízo da colaboração devida pelos restantes Serviços Municipais.”*

[English meaning]

### Article 9

(Competence and Administrative Support)

1. *The committees under the Municipal Assembly, within the scopes of their responsibilities, can carry out any activities necessary for their proper operation, without prejudice to the next article.*
2. *The coordinators of the committees are entitled to:*
  - a) *Convene and host relevant meetings and coordinate the members’ works;*
  - b) *Ensure submission of quarterly report to the Municipal Assembly in order to introduce the works they have carried out.*
3. *The administrative support to the committees is provided by the Office of Support for Municipal Bodies without prejudice to other cooperation with other municipal services. ”*

Also, the article above does not clearly define the competence of every committee, but it only generally indicates that the committees could carry out necessary works.

**Even the President of the former Municipal Chamber stated to the CCAC’s staff on 26<sup>th</sup> April 2011 that:**

*“A ‘Comissão Permanente Administrativa, Financeira e Patrimonial’ é uma Comissão ad hoc, e constituída com inspiração na Assembleia Geral, criando Comissões para diferentes áreas, como organizações para consultas e apoio à decisão relativo a sua área.*

*Na apreciação dos pedidos nunca chegou a receber ordens ou sugestões externas, porque a Câmara é uma entidade autónoma e as decisões são homologadas pela Tutela com apoio dos SAFP."*

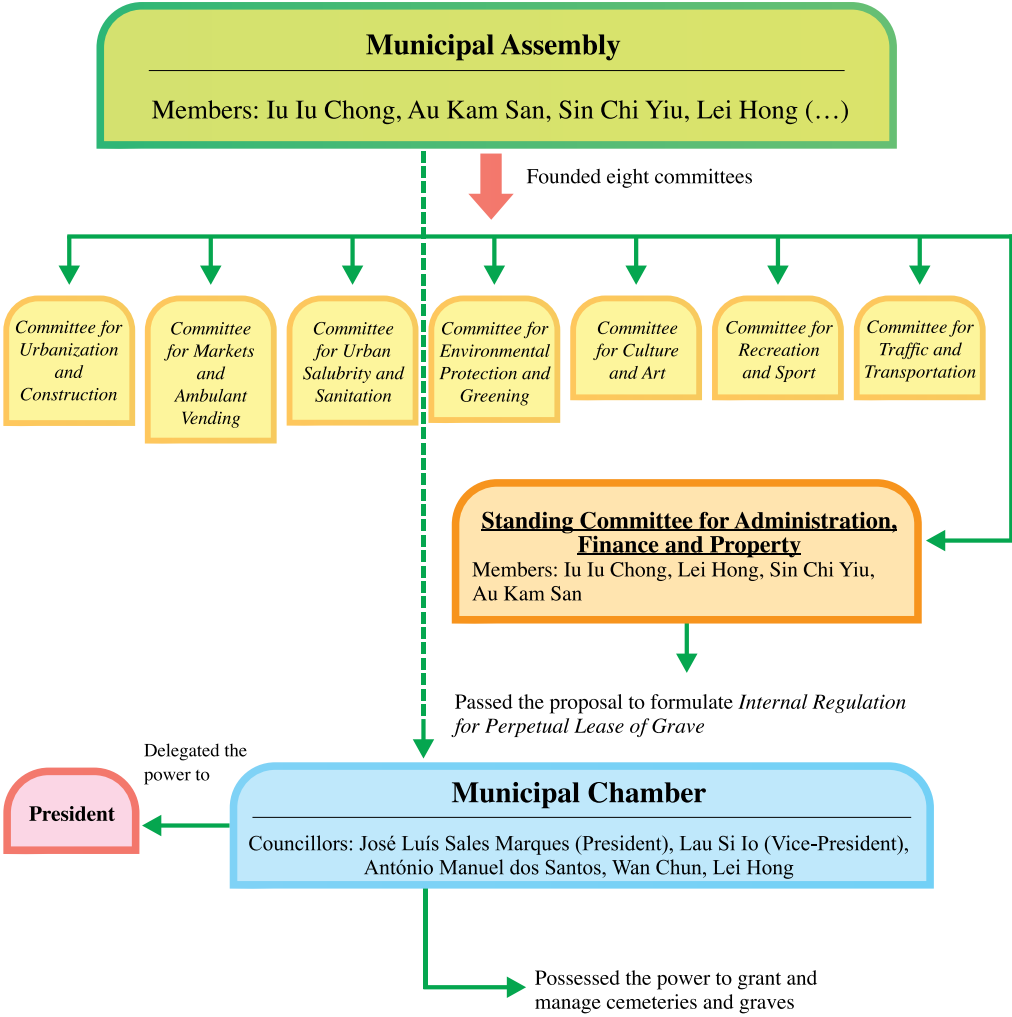
[English meaning]

*The Standing Committee for Administration, Finance and Property was an ad hoc committee which was established based on the suggestion by the Municipal Assembly, that committees in different fields should be established as organizations for consultation and assistance in making decisions on the matters in relevant areas.*

*The Municipal Council never received any external instruction or suggestion when assessing the requests because it was an autonomous body whose decisions were homologated by its supervisory body with the assistance of the Public Administration and Civil Service Bureau (SAFP).*

**Was this standing committee subordinate to the Municipal Assembly or the Municipal Chamber? The documents show that it was under the former.**

The following diagram summarizes the relationship among the entities and members:



It is worth emphasizing that **the members of the Standing Committee for Administration, Finance and Property were not those of the Municipal Chamber except one of them.**

6. Therefore, our conclusion is that the documents or resolutions discussed and passed by these committees only served as suggestions because:

- (1) **They were not discussed and passed by all members of the Municipal Assembly (they were passed by only four members instead of the proportion stipulated by the law, a majority)<sup>74</sup>.**
  - (2) **The Municipal Chamber had already delegated most of its powers to the President, so the resolutions passed by the Standing Committee of Administration, Finance and Property only served as reference for the President of the Municipal Chamber.**
  - (3) It is impossible to delegate the same power to both the President of the Municipal Chamber and the Standing Committee of Administration, Finance and Property, as this is illogical and illegal.
7. The Standing Committee of Administration, Finance and Property had a meeting at 12:00pm on 13<sup>th</sup> December 2001 (Thursday). The members present at the meeting included Iu Iu Cheong, Sin Chi Yiu, Au Kam San and Lei Hong. The guests who sat in the meeting included António Manuel dos Santos (engineer), and Marcelo Inácio dos Remédios (engineer), the Vice-President of the former Temporary Municipal Council.
8. The minutes of the meeting indicated that:

*“Resolution:*

- 1. Ten requests for perpetual lease of grave will be accepted every year.*
- 2. The applicants shall be lineal relative of the deceased, while the requested lots shall be where the deceased are buried.*

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<sup>74</sup> Article 9 of Law no. 24/88/M of 3<sup>rd</sup> October states:

*“1. The general meetings of municipal bodies cannot take place in case where a majority of the members in office are not present at the meeting one hour after the time the meeting is scheduled to start.*

*2. In case a quorum fails to appear at the general meeting, the president shall designate the date and time of the next meeting.*

*3. In case a quorum still fails to appear at the second meeting, the members present will have the meeting in order to make decision on the matters of regular management.*

*4. For the meetings called off due to lack of quorum, the record of attendance and absence and the minutes shall be taken.”*

3. *The usage right shall be exercised only once. In other words, the right shall return to the Council after the deceased's remains are exhumated.*
4. *The charge of perpetual lease is MOP50,000. The remains of deceased's spouse can also be interred in the same grave without any additional charge*<sup>75</sup>.
5. *These conditions are not applied to the perpetual graves granted previously.*
6. *According to (1), at the end of a year, in case the number of applicants exceeds the maximum under the first condition, approved applications will be determined by ballot*<sup>76</sup>.
7. *After the ballot, the unsuccessful applicants can apply more than once again within the five-year burial period. The applications which are still unsuccessful will be considered rejected when the period expires. In this case, the unsuccessful applicants shall apply for exhumation within 60 days according to the regulations of municipal cemeteries.*

*Signatures of the four members (see the original text)."*

9. The former Temporary Municipal Council named this document as ***Internal Regulation for Perpetual Lease of Grave***.
10. Let us see some general concepts about regulation. It refers to written, general and abstract norm issued by administrative authorities which is generally subject to and formulated based on law.

General and abstract regulations mean that they are applicable to general people and or specific situations instead of a specific person.

11. In fact, internal regulation is controversial concept, as it is difficult to determine whether an internal regulation is "genuine" or "apparent". Nevertheless, according to mainstream theories, internal regulation, which only applies to agency within an administrative authority and has binding effect on only the internal relation of the authority, regulates its operation and the scope of duties

<sup>75</sup> The underline is inserted by the CCAC.

<sup>76</sup> Same as above.

of its personnel. From another perspective, internal regulation<sup>77</sup> should mainly regulate “special relations of power (*relações especiais de poder*)” instead of “general relations of power (*relações gerais de poder*)<sup>78</sup>”.

12. “Special relations of power” refers to special relations between an individual and an administrative authority due to certain reasons (e.g. an individual is employed by or allowed to join an official organization). In this case, the individual, in spite of enjoying some rights and interests, shall fulfil a series of special obligations (e.g. public servants, users of public services and students of public schools, etc.).
13. “General relations of power” refers to the relations generally established between an administrative authority and the general public. The latter does not have any special position, so the former does not enjoy any special powers and cannot impose any special obligations on the latter<sup>79</sup>.
14. According to the point of view above and the *Internal Regulation for Perpetual Lease of Grave*, it is not difficult to discover that its content has little to do with the structure and operation of municipal bodies, but it is related to some of their duties and their general relations with the citizens. Therefore, what the *Internal Regulation* is about is largely beyond “internal relations”.
15. As mentioned above, the Standing Committee of Administration, Finance and Property was only an internal institution subordinate to the Municipal Assembly (founded due to division of duties). Under normal circumstances it could neither completely represent the Municipal Assembly nor carry out duties on behalf of the Municipal Chamber (because it was in charge of the matters about grave). At least, they differed from each other in number of members. The Municipal Assembly comprised 13 members, while the Standing Committee of Administration, Finance and Property had only 4 members.

\* \* \*

<sup>77</sup> About administrative regulation, please refer to Jorge Abreu, Almedina, *On Administrative Regulation and the Principle of Legality*, 1987, page 95-.

<sup>78</sup> Please refer to the book mentioned above (page 111).

<sup>79</sup> About this issue, please also refer to *On Administrative Law*, Faculty of Law, University of Macau, 2008, page 214.

#### 4. “Rapid” resolution made by the Municipal Chamber

- (1) As mentioned above, after the meeting of the Standing Committee of Administration, Finance and Property on 13<sup>th</sup> December 2001, the Municipal Chamber held another meeting on the following day, 14<sup>th</sup> December, with members present including: José Luís Sales Marques (President), Lau Si Io (Vice-president), António Manuel dos Santos (councillor), Wan Chun (councillor) and Lei Hong (councillor). The minutes (Minutes no. 49/2001) indicated that:

***“II. Proposta de Regulamento interno de arrendamento perpétuo de campas.***

*De acordo com os pedidos de concessão de área para sepulturas perpétuas para as campas SM-2-XXXX, SM-1-XXXX, SM-1-XXXX, SM-1-XXXX, SM-1-XXXX, SM-1-XXXX, SM-1-XXXX e SM-2-XXXX durante os anos de 2000 e 2001.*

*O art.º 25.º do Regulamento dos Cemitérios, de 1961, consagra a possibilidade de venda de área para sepulturas perpétuas. Refere-se, no entanto, que as 1,662 campas existentes, para aluguer, no Cemitério S. Miguel, satisfazem a procura de enterramento com uma margem reduzida.*

*Depois de ouvida a Comissão Permanente de Administração, Património e Finanças (Reunião n.º 006/CPAPF/2001), a Câmara Municipal de Macau Provisória deliberou aprovar as seguintes condições para valer como regulamento interno, a fim de regular o Arrendamento Perpétuo das campas alugadas nos Cemitérios Municipais de Macau:*

- 1. Consoante a disponibilidade dos cemitérios, e mediante aprovação da Instituição, serão admitidos anualmente 10 (dez) pedidos de arrendamento perpétuo de sepulturas;*
- 2. Os pedidos mencionados no ponto anterior só serão autorizados a requerentes que sejam familiares do defunto enterrado na sepultura que se quer alugar perpetuamente;*
- 3. A autorização supracitada cessa automaticamente logo que se verificar a exumação e transferência das ossadas a pedido do familiar representante legítimo, com reversão incondicional da sepultura à Instituição;*

4. *O valor da renda perpétua é fixado em MOP\$38,000.00, com direito de juntar as ossadas do cônjuge do defunto na mesma cova, com um encargo adicional de MOP\$18,000.00.*
5. *As condições do ponto anterior não são aplicáveis às sepulturas perpétuas adquiridas até à data da entrada em vigor desta deliberação;*
6. *A verificação da admissibilidade máxima dos pedidos referidos no ponto 1, cuja entrada se verifique ao longo do ano, só é efectuada no último mês de cada ano, procedendo-se a sorteio em caso de o total do número dos pedidos exceder o máximo estabelecido;*
7. *Após o sorteio supramencionado, todos os familiares cujos pedidos não foram atendidos, poderão candidatar-se, nos anos seguintes, durante a vigência do prazo do enterro de 5 anos. Após este prazo, se ainda não tiverem conseguido arrendar as campas pretendidas, são automaticamente dados como indeferidos e, em prazo de 60 dias, deverão os familiares requerer as respectivas exumações, conforme as posturas municipais em vigor.”*

[English meaning]

**“11. Draft of the Internal Regulation for Perpetual Lease of Grave**

*The applications for grant of perpetual grave received in 2000 and 2001 include SM-2-XXXX, SM-1-XXXX, SM-1-XXXX, SM-1-XXXX, SM-1-XXXX, SM-1-XXXX, SM-1-XXXX and SM-2-XXXX.*

**Article 25 of the Regulation of Cemeteries of 1961 stipulates the possibility to sell perpetual grave**<sup>80</sup>. *It is necessary to note that there are a total of 1662 graves at the Cemetery of São Miguel Arcanjo (Cemitério São Miguel Arcanjo) for lease. The supply is limited when all needs are satisfied.*

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<sup>80</sup> The underline is inserted by the CCAC.



***After obtaining opinions from the Standing Committee for Administration, Finance and Property (Session no. 006/CPAPF/2001), the Temporary Municipal Council of Macao passed the following terms as content of the Internal Regulation<sup>81</sup>, in order to regulate the matters about perpetual lease of the graves which have already been leased out at municipal cemeteries in Macao:***

1. *Ten applications for perpetual lease of grave will be accepted every year based on the availability and approval of the Council;*
2. *The applications will only be approved when the applicants are relatives of the deceased to be buried in the perpetually leased grave.*
3. *The aforementioned approval ceases automatically and the relevant grave will return to the Council unconditionally once the relative who has the right to be the legal representative requests for exhumation of the remains.*
4. ***The charge of perpetual lease is MOP38,000. The remains of the deceased's spouse can also be interred in the same grave on condition that an additional charge of MOP18,000 is paid<sup>82</sup>.***
5. *The preceding provision is not applicable to the perpetual graves granted before the resolution enters into effect.*
6. ***For the applications mentioned in (1) received every year, whether the number of applications has reached the maximum shall be verified in the last month of every year<sup>83</sup>. If the total exceeds the maximum, the approved applications will be determined by ballot.***
7. *Following the ballot mentioned above, the unsuccessful applicants can apply again every year within the 5-year burial period. The applications which are still unsuccessful will be considered rejected when the period expires. The relatives of the relevant deceased shall apply for exhumation within 60 days under effective municipal regulations."*

<sup>81</sup> The underline is inserted by the CCAC.

<sup>82</sup> Same as above.

<sup>83</sup> Same as above.

The *Internal Regulation for Perpetual Lease of Grave* was formulated according to the above resolution with the following contents:

1. *Ten applications for perpetual lease of grave will be accepted every year according to the availability and approval of the Council.*
2. *The applications will only be approved when the applicants are relatives of the deceased to be buried in the perpetually leased grave.*
3. *The aforementioned approval ceases automatically and the relevant grave will return to the Council unconditionally once the relative who has the right to be the legal representative requested for exhumation of the remains.*
4. *The charge of perpetual lease is MOP38,000. The remains of the deceased's spouse can also be interred in the same grave on condition that an additional charge of MOP18,000 is paid.*
5. *The preceding provision is not applicable to the perpetual graves granted before the resolution enters into effect.*
6. *For the applications mentioned in (1) received every year, whether the numbers of applications has reached the maximum shall be verified in the last month of every year. If the total exceeds the maximum, the approved applications will be determined by ballot.*
7. *Following the ballot mentioned above, the unsuccessful applicants can apply again every year within the 5-year burial period. The applications which are still unsuccessful will be considered rejected when the period expires. The relatives of the relevant deceased shall apply for exhumation within 60 days under effective municipal regulations.*

(2) **What is the legal nature of the *Internal Regulation for Perpetual Lease of Grave*?**

- (1) First of all, **its name** was absolutely misleading. As mentioned above, **it was not an internal norm, but a “regulation” with external effect** (if it is possible to apply the concept of “regulation”) since it was related to the rights and interests of applicants in general, who were only ordinary citizens without any structural connections<sup>84</sup> with municipal bodies.
- (2) The *Internal Regulation for Perpetual Lease of Grave* stipulated the charging standard as well as time limit for usage, showing that what it regulated was beyond internal matters and that **it was a genuine “independent regulation” of which the effect was completely beyond the scope of general internal relations of municipal bodies.**
- (3) It is not difficult to discover the difference between the *Internal Regulation for Perpetual Lease of Grave* passed by the Municipal Chamber and the draft proposed by the Standing Committee for Administration, Finance and Property:
  - a) In the draft<sup>85</sup>, the fee for perpetual lease of grave was MOP50,000 (point 4), while the Municipal Chamber changed it as MOP38,000 and stipulated that the remains of the deceased’s spouse could also be interred in the same grave on condition that an additional charge of MOP18,000 was paid.
  - b) Point 6 of the draft was also modified: “the end of the year” was revised as “the last month of each year”. Although it was modified, from a rational point of view, both “the end of the year” and “the last month of each year” should refer to the end of December instead of the middle of December.
- (4) At the same time, since it was a **regulation with external effect** approved by the Municipal Chamber, it should have been **publicized** under Law no. 24/88/M because Article 36<sup>86</sup> of the law states that:

<sup>84</sup> It is a kind of general relation of power.

<sup>85</sup> It refers to the draft proposed by the Standing Committee for Administration, Finance and Property under the Municipal Assembly.

<sup>86</sup> Amended by Law no. 4/93/M of 5<sup>th</sup> July.

- “1. The resolutions passed by the Municipal Chamber which have general external effect and the decisions made by respective decision-makers shall be publicized on notices in both Chinese and Portuguese posted at the Headquarters of the Municipality and the regular places for notice for 5 consecutive days.
2. *Municipal regulations will be published on the Official Gazette of the Government for free.*”
- (5) There is no document showing that the Municipal Chamber (or former Temporary Municipal Council) complied with this provision (from the viewpoint of the management principle of “good father of a family”. The regulation should have been published on press in both Chinese and Portuguese for the general public’s reference), because only by letting the citizens know about the matters could the interested ones submit application (whether or not they were successful in the ballot or approved is another issue). Even if the regulation had been published, there would be another defect in it – the date of entry into force was not specified.

Moreover, Article 37 of the law states that:

*“Only upon approval of relevant minutes or signing on the draft of the relevant minutes after resolution, or when relevant law is applied and approved by the supervisor, the resolution by the Municipal Chamber will become effective.”*

Although the minutes were signed, whether they were approved as a draft or duly approved was not specified.

Paragraphs 3 and 4 of Article 29 of the *Code of Administrative Procedure* state that:

“(…)

*3. In case the collegial agency resolves to approve the minutes as a draft, the approval shall be done during the relevant meeting.*

*4. Resolution by collegial agency will become effective only after the*

*relevant minutes is approved or the draft mentioned in the previous paragraph is signed.*

(...)”

We believe that the aforementioned minutes were considered approved.

- (6) From another point of view, at that time, Macao SAR had already been established, under Articles 95 and 96 of the *Basic Law*, the nature and position of municipal agencies had been adjusted. Article 8 of Law no. 17/2001 of 17<sup>th</sup> December (*Establishment of the Civic and Municipal Affairs Bureau*) states that:

**“1. The IACM does not possess the power to establish external regulation.**

*2. The municipal regulations which are still effective when the law is promulgated remain applicable in related geographical areas until they are revoked by normative acts, without prejudice to the previous paragraph.”*

Although the law entered into force on 1<sup>st</sup> January 2002, when the Macao SAR was established, it was very clear that the former Temporary Municipal Council as well as the agencies formally established later did not possess the power to establish external regulation.

- (7) Subparagraphs p) and q) of Paragraph 1 of Article 29 of Law no. 24/88/M of 3<sup>rd</sup> October, *Legal Regime of Municipalities*, states that:

*“1. Regarding the structure, operation and administration of services, the Municipal Chamber is entitled to:*

*(...);*

*p) Approve the norms and regulations (normas e regulamentos) necessary for operation of municipal services;*

*q) Formulate other internal regulations (regulamentos internos) within the scope of municipal functions;*

*(...).”*

Obviously, what this provision mentioned was only internal regulation (classified based on its contents). If the relevant regulation was external, we consider it as embodiment of political status, which was contrary to the *Reunification Law* (as analysed before), because as an administrative agency, it should not possess the power to establish external regulations.

Likewise, the Municipal Chamber did not have the power to establish the standard of determining external charge neither, since this is what external regulation should stipulate.

(8) Therefore, regarding this part, our conclusion is that:

- a) - **Regarding nature, the *Internal Regulation for Perpetual Lease of Grave* was not internal regulations** because it had external effect. We think that the Municipal Chamber no longer had the power to establish this regulation upon the establishment of Macao SAR, because it was contrary to the *Reunification Law*.
- b) - **Regarding procedure**, there were defects in the procedure of formulating the regulation since it was not made public and there was no date of entry into force (in principle, it would become effective only after it had been posted on the public announcement board for five consecutive days). In this sense, it should not have any effect (because there were defects in the procedure of formulation);
- c) - **Regarding the content**, the regulation also had defects – the agency which formulated the regulation did not have the power to establish the standard of determining external charge because this is what external regulation should provide. Since the former Municipal Chamber had already delegated the power to grant graves to its President (this point will be further discussed later), it should not suddenly exercise this power without declaring to retrieve it.
- d) **The councillors had the obligation to ensure the legality of the matters they intervened into**, especially the issues about approving a regulation to be executed by other municipal agencies which was related to citizens' rights and interest. Regarding this point, Article 33 of Law no. 24/88/M of 3<sup>rd</sup> October states that:

**“The Municipal Chamber is entitled to:**

- a) **Supervise the activities carried out by municipal agencies especially assigned by the Municipal Chamber through resolution;**
- b) **Assist the President and the Vice-President in execution of duties;**  
to substitute the President or Vice-President by appointment in case of absence or impediment;
- c) *Exercise other powers delegated by the Municipal Chamber through resolution or by the President.”*

This shows that **one of their duties was to supervise the works carried out by municipal agencies in order to ensure the legality and rationality of their execution of duties. The Internal Regulation passed by the Municipal Chamber has led to many problems concerning illegality, so how could they conduct the supervision?**

The facts prove that: The *Internal Regulation* was passed on 14<sup>th</sup> December 2001, but the request by an applicant surnamed Cheang was approved on 26<sup>th</sup> December 2000. The regulation, which was passed on 14<sup>th</sup> December 2001, was cited to re-determine the relevant charge and was applied as the basis for approving the applications for the remaining graves. These would possibly cause suspicion that the approval was “tailor-made” for certain people. We will further discuss this point later.

- (9) Moreover, everyone of them should have realized that their tenure would be until 31<sup>st</sup> December 2001. What was the reason for passing the regulation when their tenure would end in about ten days? What was the purpose? They should have an in-depth discussion and analysis in order to make a rational (prompt and appropriate) decision.

\* \* \*

## 5. The powers possessed by the President of the Municipal Chamber

- (1) Since Cheang's application was approved by the President of the Municipal Chamber, who exercised the power delegated to him, we will have a look at the problems in this aspect.
- (2) In fact, the powers that the Municipal Chamber had delegated to its President at that time were ample. Minutes no. 31/97 (session on 1<sup>st</sup> August 1997) indicate that:

"(...)

### 6. Delegação de poderes.

*A Câmara Municipal em sessão ordinária, de 1 de Agosto de 1997, deliberou o seguinte:*

1. *No uso da faculdade conferida pela parte final do n.º 1 do artº 30º da Lei nº 24/88/M, de 3 de Outubro, na redacção dada pela Lei nº 4/93/M, de 5 de Julho, e pelo nº 1 do artº 13º da Lei nº 11/93/M, de 27 de Dezembro, delegar no Presidente do Leal Senado as competências:*
  - a) - *constantes do artº 29º, com excepção das previstas na primeira parte do artº 30º, da Lei nº 24/88/M, de 3 de Outubro, na redacção dada pela Lei nº 4/93/M, de 5 de Julho.*
  - b) - *para autorizar a realização de despesas, até ao montante de MOP\$300,000.00, e a liquidação de todas as despesas autorizadas por si, bem como, sem limite, das aprovadas pela Câmara, decorrentes da Lei ou resultantes de contratos ou obrigações assumidas pelo Leal Senado de Macau.*
2. *A presente delegação de competências é feita sem prejuízo dos poderes de avocação e deve conformar-se com as orientações gerais determinadas por este Órgão Municipal.*
3. *Os despachos de subdelegação de competências, proferidos no âmbito da presente deliberação, devem observar o disposto do nº 2 do artº 30º da Lei nº 24/88/M, de 3 de Outubro, na redacção dada pela Lei nº 4/93/M, de 5*



*de Julho, e conformar-se com os limites estabelecidos nos termos do nº 1 do artº 13º da Lei nº 13/93/M, de 27 de Dezembro.*

4. *São ratificados todos os actos praticados pelos membros da Câmara e pelo pessoal da direcção e chefia, no período de 28 de Julho até à presente data.*
5. *A presente deliberação entra imediatamente em vigor.”*

[English meaning]

(...)

#### 6. Delegation

*During the regular session on 1<sup>st</sup> August 1997, the Municipal Chamber passed the following resolutions:*

1. *To delegate the following powers to the President by exercising **the power provided by the last part of Paragraph 1 of Article 30** of Law no. 24/88/M of 3<sup>rd</sup> October<sup>87</sup> revised by Law no. 4/93/M of 5<sup>th</sup> July and complying with Paragraph 1 of Article 13 of Law no. 11/93/M of 27<sup>th</sup> December:*
  - a) - ***The power mentioned in Article 29**<sup>88</sup> in exception of those mentioned in the first part of Paragraph 1 of Article 30 of Law no. 24/88/M of 3<sup>rd</sup> October revised by Law no. 4/93/M of 5<sup>th</sup> July.*
  - b) - *The power to approve expenditure no more than MOP300,000 and settlements of all expenditures, without maximum, approved by the President himself and expenditures that result from law, contracts or responsibilities taken by the Municipal Council of Macao and approved by the Municipal Chamber.*
2. *The delegation does not hinder reclamation of the powers and shall be done in compliance with the general guidelines formulated by municipal agencies.*

<sup>87</sup> The underline is inserted by the CCAC.

<sup>88</sup> Same as above.

3. *The orders of delegation regarding what this resolution mentions shall be issued in compliance with Paragraph 2 of Article 30 of Law no. 24/88/M of 3<sup>rd</sup> October revised by Law no. 4/93/M of 5<sup>th</sup> July as well as the restriction under Paragraph 1 of Article 13 of Law no. 11/93/M of 27<sup>th</sup> December.*
  4. *To ratify the acts carried out since 28<sup>th</sup> July by members of the Municipal Chamber and the leadership and supervisory staff.*
  5. *The resolution enters into effect immediately.”<sup>89</sup>*
- (3) This shows that **the competence related to the affairs about graves** mentioned in Article 29 of Law no. 24/88/M of 3<sup>rd</sup> October **was delegated to the President of the Municipal Chamber.**
  - (4) For this reason, we do not understand why the Municipal Chamber suddenly passed a regulation related to grave on 14<sup>th</sup> December 2001 without reclaiming the power.
  - (5) The Internal Regulation for Perpetual Lease of Grave passed by the Municipal Chamber did not contradict the approval made by its President because it served as a set of generally applicable criteria and the President made decisions based on them. If it was so, there is another question: Did these two entities realise that the acts they had carried out might be illegal and irregular?

\* \* \*

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<sup>89</sup> Another order of sub-delegation is 01/PRES/2001, under which the competence was sub-delegated to the Vice-President and other councillors.

## 6. The application and approval process mentioned in the complaint

- (1) The information shows that an applicant surnamed Cheang (male) submitted an application for a perpetual grave to the President of the former Temporary Municipal Council on 9<sup>th</sup> May 2000 (see page 70). The content of the application document is as follows:

*“(...)vem solicitar a V.Exa., ao abrigo do disposto no artigo 28.º do Regulamento dos Cemitérios Municipais, se digne autorizar o signatário a adquirir a referida sepultura a título perpétuo, declarando o cumprir as disposições contidas no referido Regulamento.*

*Macau, aos 9 de Maio de 2000.*

*Pede deferimento,”*

[English meaning]

*“Macao, 9<sup>th</sup> May 2000*

*(...) Under Article 28 of the Regulation of Municipal Cemeteries, I would like to request for your approval of acquisition of the aforementioned grave on perpetual basis and declare that I will abide by the Regulation. For your approval,”*

- (2) On 5<sup>th</sup> June 2000, the Head of the Department of Environment Protection and Greening made a proposal about the application. Its content is as follows:

*“No seguimento do requerimento entrado em 24/05/2000, do sr. (...), respeitante ao pedido de licença da área para sepultura perpétua no Cemitério de S. Miguel Arcanjo, informo:*

- 1. No referido Cemitério, actualmente enfrenta-se inexistência de sepulturas de 2ª classe (ver mapa em anexo).*
- 2. Durante o ano transacto houve cerca de 186 enterramentos e 206 exumações neste Cemitério, uma média anual dos últimos 5 anos cerca*

*de 210 enterramentos/ano e 220 exumações/ano (média dos últimos 4 anos), pelo que o número de sepulturas necessárias anualmente tem correspondido a um pouco mais do que o número de sepulturas libertadas, porquanto haja um certo número de sepulturas que expediram o prazo de aluguer para efeitos de exumação.*

3. *Mediante o exposto, é nosso parecer haver inconveniência ao solicitado, no entanto havendo precedências nos casos anteriores, deixamos à consideração superior a concessão da licença solicitada (sepultura SM-2-xxxx, onde estão enterrados os restos mortais da ... desde 08/07/1995).*

*À consideração superior.*

*O Chefe dos S.A.Z.V.”*

[English meaning]

*“Regarding the application for grant of perpetual grave at the Cemetery of São Miguel Arcanjo received from Mr. (...) on 24<sup>th</sup> May 2000, I would like to report the followings:*

1. *There is no available grave of 2<sup>nd</sup> class at the cemetery. (Please see attached table)*
2. *Last year, there were 186 burials and 206 exhumations in the aforesaid cemetery. Over the recent five years, there is an average of 201 burials and 220 exhumations (an average of the recent four years) every year. Therefore, the annual demand is slightly more than the number of available graves as there are a certain number of expired burials awaiting exhumation.*
3. ***Therefore, we consider approval of this request inappropriate**<sup>90</sup>. However, there were some cases where such request was approved finally. Regarding whether to grant the requested grave (grave no. SM-2-xxxx, where the burial was done on 8<sup>th</sup> July 1995), we will leave the decision to the superior.*

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<sup>90</sup> The underline is inserted by the CCAC.

*For the superior's consideration.*

*Head of Department of Environment Protection and Greening."*

- (3) In fact, information shows that between 2000 and 2001 there was not only one application but around ten, which were submitted at different times.
- (4) In order to explain the case comprehensively, we conclude and compare the relevant applications in the following Table I:

Table I

Applicant (identified by letters)	Date of submission	Object	Former Temporary Municipal Council			Note
			Date of first order	Date and content of detailed proposal by SAZV Head	Date and content of order by President of Municipal Chamber	
<b>A</b> (Cheang)	2000/05/09	Purchase of perpetual grave	2000/05/23	<ul style="list-style-type: none"> <li>- 2000/06/05 (022/SAZV/2000)</li> <li>- Disapproval recommended</li> </ul>	<ul style="list-style-type: none"> <li>- Approved on 26<sup>th</sup> Dec 2000</li> <li>- Charge fixed as MOP30,000 on 29<sup>th</sup> Dec 2000</li> </ul>	No document proved that the former Temporary Municipal Council had immediately notified the applicant of the approval.
<b>B</b> (Patrícia)	2000/06/22	Same as above	2000/06/23	<ul style="list-style-type: none"> <li>- 2000/07/03 (029/SAZV/2000)</li> <li>- Approval inappropriate, but the beneficiary was a former member of Municipal Assembly, who had contribution to municipal affairs, and there were the same cases which were finally approved.</li> <li>- Since no latest charging standard, adopting Instruction no. 6780 in 1961 (MOP1,200 plus stamp tax of 10%) or the charging standard to be formulated by Municipal Assembly is suggested</li> </ul>	<ul style="list-style-type: none"> <li>- 2000/12/20</li> <li>- Approved but charge to be fixed.</li> </ul>	Same as above

<b>C</b> (Ho)	2000/07/05	Same as above	2000/07/06	<ul style="list-style-type: none"> <li>- 2000/07/19 (040/SAZV/2000)</li> <li>- Approval inappropriate</li> <li>- Approval notification sent in Feb 2001</li> <li>- Notification of procedure suspension sent in Nov 2001</li> <li>- A question to President in the proposal on 27<sup>th</sup> Jul 2001: there are 4 approved cases left at the President's office without further follow-up. What is the next step?</li> </ul>	<ul style="list-style-type: none"> <li>- An order issued by the President on 20<sup>th</sup> Sep 2001: "...the Department Head should know why the relevant procedure is suspended because of some matters to be clarified."</li> </ul>	Same as above
<b>D</b> (Luís)	2000/08/31	Same as above	2000/09/21	<ul style="list-style-type: none"> <li>- 2000/10/05 (074/SAZV/2000)</li> <li>- Approval inappropriate but final decision left to the superior</li> </ul>	<ul style="list-style-type: none"> <li>- 2000/12/26</li> <li>- Approved but charge to be fixed</li> </ul>	Same as above
<b>E</b> (Luís R.)	2000/12/19	Same as above	<b>2000/12/26</b>	<ul style="list-style-type: none"> <li>- <b>2001/01/08</b> (001/SAZV/2001)</li> <li>- Approval inappropriate but final decision left to the superior</li> </ul>	<ul style="list-style-type: none"> <li>- 2001/04/09</li> <li>- Procedure suspended, awaiting further information</li> </ul>	Same as above
<b>F</b> (Lourenço)	2000/12/19	Same as above	2000/12/26	<ul style="list-style-type: none"> <li>- 2001/01/08 (002/SAZV/2001)</li> <li>- Approval inappropriate but final decision left to the superior.</li> </ul>	<ul style="list-style-type: none"> <li>- 2001/04/09</li> <li>- Procedure suspended, awaiting further information</li> </ul>	Same as above

<b>G</b> (João)	2001/01/18	Same as above	2001/01/18	<ul style="list-style-type: none"> <li>- 2001/01/23 (009/SAZV/2001)</li> <li>- Approval inappropriate but final decision left to the superior.</li> </ul>	<ul style="list-style-type: none"> <li>- 2001/04/09</li> <li>- Procedure suspended, awaiting further information.</li> </ul>	Same as above
<b>H</b> (Gongalo)	2001/01/17	Same as above	2001/01/23	<ul style="list-style-type: none"> <li>- 2001/02/01 (011/SAZV/2001)</li> <li>- Approval inappropriate but final decision left to the superior, as there are approved precedents</li> </ul>	<ul style="list-style-type: none"> <li>- 2001/04/09</li> <li>- Procedure suspended, awaiting further information.</li> </ul>	Same as above
<b>I</b> (Verónica)	2001/11/26	Same as above	2001/12/04	<ul style="list-style-type: none"> <li>- 2001/02/01 (011/SAZV/2001)</li> <li>- Approval inappropriate</li> <li>- Later, another proposal no. 136/SAZV/2001 (19<sup>th</sup> Dec), suggested approval.</li> </ul>	<ul style="list-style-type: none"> <li>- The President ordered procedure suspension, due to awaiting information about charge fixing.</li> <li>- Power sub-delegated to SAZV Head.</li> <li>- Request approved by the President on 21<sup>st</sup> Dec 2001 (see Proposal no. 136/SAZV/2001).</li> <li>- Charge fixed as MOP38,000</li> </ul>	same as above Applicant declared withdrawal on 25 <sup>th</sup> Mar 2002
<b>J</b> (Fong)	2001/12/18	Same as above	2001/12/18	<ul style="list-style-type: none"> <li>- 2001/12/18</li> <li>- To handle under the new <i>Internal Regulation for Perpetual Lease of Grave</i> suggested</li> </ul>	<ul style="list-style-type: none"> <li>- Approved finally</li> </ul>	Same as above

Note: The approval by the President mentioned in the table was not the final decision because the orders about these requests were issued again on 21<sup>st</sup> December 2001.



(5) In the case, the facts are as follows:

- a) On 9<sup>th</sup> May 2000, Mr. Cheang submitted the application.
- b) On 10<sup>th</sup> May 2000, the former Temporary Municipal Council passed the application to a staff member for follow-up.
- c) On 24<sup>th</sup> May 2000, the former Temporary Municipal Council passed the application to its Department of Environment Protection and Greening (SAZV) for suggestions.
- d) On 5<sup>th</sup> June 2000, the Head of the SAZV made a proposal which **suggested disapproval**;
- e) On 7<sup>th</sup> June 2000, “*Read (Visto). 06-07-2000 (signature)*”<sup>91</sup> was written down by a supervisory staff on the proposal.
- f) Later, “*Visto. À consideração do Sr. Presidente para a aprovação do presente pedido*” [Meaning: Read, for the President’s consideration of the approval of the application.] appeared on the proposal (without signature).
- g) Subsequently, the President wrote on his order that “*Aprovo nos termos informativos (...) devendo ser fixado o preço. 26/12/2000 (assinatura)*” [Meaning: I would like to give my approval according to the information submitted... The charge should be determined. 26/12/2000 (signature)]
- h) Later, another supervisory staff wrote that: “*Senhor Presidente Proponho que nos presentes pedidos, sejam fixados o montante de MOP\$30,000.00, correspondendo assim a sua área sensivelmente como a renda de seis ossórios de MOP\$5,000.00. À sua melhor consideração (assinatura) 28/12/2000*” [Meaning: Mr. President, I suggest fixing the amount as MOP30,000, which corresponds to the size and is equivalent to the rental of six bone boxes at MOP5,000. For your consideration. (Signature) 28<sup>th</sup> December 2000]

<sup>91</sup> It is worth noticing that the superior only wrote “Read” (*Visto*) on the proposal without stating any stance.

- i) The President issued an order: “*Concordo com o montante. (assinatura) 29/12/2000*” [Meaning: I agree on the amount. (signature) 29<sup>th</sup> December 2000]
- (6) Let us review the stance and policy of the former Temporary Municipal Council on the issues about grant of grave:
  - a) The proposal (no. 125/SAZV/98) submitted by the SAZV to the President of the Municipal Chamber on 30<sup>th</sup> November 1998 indicates that:

*“O Sr. XXX aliás XXX, através de carta datada de 12/10/98, solicita ao Leal Senado de Macau que seja autorizada a “Concessão de Área para Sepultura Perpétua” da sepultura n.º xxx, de 3.ª classe, do Cemitério de Nossa Sra. da Piedade, onde se encontra sepultada sua mãe XXX, desde 24/05/93.*

*Mediante o solicitado informo:*

1. *No cemitério de Nossa Sra. da Piedade existem 2659 sepulturas de 3.ª classe, das quais 299 são compradas, isto é, foi autorizada a “Concessão de Área para Sepultura Perpétua, isto é, cerca de 11.2% das totais.*
2. *Os enterramentos em 3.ª classe nos últimos 5 anos neste cemitério apontam para um valor médio de 271 enterramentos/ano, o que implica que para um período de 6 anos se deve prever a ocupação de 1626 sepulturas (61.2% do total) e como margem de segurança para o caso de exumações não consumadas e pedidos de prorrogação por um ano cerca de 135 sepulturas. Assim, prevê-se a ocupação anual de cerca de 1761 sepulturas, isto é, aproximadamente 66.2% das sepulturas totais do Cemitério de Nossa Sra. da Piedade.*
3. *Verifica-se assim que existem ainda 599 sepulturas nesta categoria como margem de manobra, isto é, cerca de 22.5%.*
4. *Há ainda a salientar que é nesta classe de sepultura e neste Cemitério que se procede aos enterramentos dos indigentes (gratuitamente) a pedido dos Serviços de Saúde de Macau ou do Instituto de Acção Social de Macau.*
5. *Mediante o exposto é meu parecer que:*

- 5.1 *Não devem ser autorizadas para “Concessão de Área para Sepultura Perpétua” mais do que 20% do total de sepulturas desta classe, isto é, 530 sepulturas, estando concedidas actualmente 299 sepulturas.*
- 5.2 *A sepultura MH-3-xxxx solicitada, localizada na zona 3 do levantamento recentemente efectuado, fica no interior do talhão, não se prevendo que possa vir a afectar o plano de reordenamento em estudo no referido Cemitério.*
6. *Considerando o exposto proponho superiormente que seja autorizada a “Concessão de Área para Sepultura Perpétua” ao requerente, pelo preço que actualmente tem sido aplicado de MOP\$25.000,00, devendo o requerente comprometer-se a fazer a devida manutenção do momento funerário edificada.*

*À consideração superior.*

*A Chefe dos S.A.Z.V., subst.<sup>a</sup> (assinatura)”*

[English meaning]

*“Mr. XXX, in his letter dated 12<sup>th</sup> October 1998, requested the Municipal Council of Macao to grant him the grave of 3<sup>rd</sup> class no. (...) located at the Cemetery of Nossa Sra. da Piedade (Cemitério de Nossa Sra. da Piedade), where his mother, XXX, was buried on 24<sup>th</sup> May 1993.*

*Regarding the request, I would like to report the following:*

1. *There are a total of 2,659 pieces of grave of 3<sup>rd</sup> class at the Cemetery of Nossa Sra. da Piedade, including 299 purchased i.e. perpetually granted graves, accounting for 11.2%.*
2. *Over the recent five years, there was an average of 271 burials done at the graves of 3<sup>rd</sup> class at the cemetery. We expect that 1,626 graves will be needed in six years (accounting for 61.2% of the total). Moreover, there are around 135 graves where exhumation or application for extension of burial period has yet to be done. Therefore, we expect that 1,761 graves are in need every year, accounting for 66.2% of the total at the cemetery.*
3. *Therefore, there are now 599 graves available, accounting for 22.5%.*

4. *What should also be pointed out is that it is necessary to reserve graves of 3<sup>rd</sup> class to satisfy the requests for free burial from the Health Bureau or the Social Welfare Bureau.*
5. *My suggestion is that:*
  - 5.1 *The number of perpetual graves of 3<sup>rd</sup> class to be granted shall not exceed 20% of the total (530). Currently 299 of them have been granted.*
  - 5.2 *Grave no. xxxx on request is located at zone 3, which is within the area under ongoing refurbishment. Since it is located inside the area, it is expected that the refurbishment will not be affected.*
6. *In conclusion, I suggest the superior approving the application at the current price of MOP25,000, while the applicant shall promise to carry out necessary maintenance.*

*For the superior's consideration.*

*Acting Head of SAZV (signature)"*

- b) The proposal (no. 114/SAZV/99) submitted by the Acting Head of SAZV to the President of the Municipal Chamber on 12<sup>th</sup> November 1999 indicates that:

*"No seguimento do requerimento entrado em 10/11/99, do sr. XXX, respeitante ao pedido de licença de área para sepultura perpétua no Cemitério de S. Miguel Arcanjo (SM-2-xxxx), informo:*

1. *No Cemitério de S. Miguel Arcanjo existem cerca de 486 sepulturas de 2<sup>a</sup> classe, das quais 481 estão já compradas e alugadas.*
2. *Durante o ano de '98 houve 260 enterramentos neste Cemitério e 230 exumações, sendo a média dos últimos 5 anos de 230 enterramentos enquanto que a média dos últimos 3 anos de exumações tem sido de 233. Assim, o número de sepulturas libertadas (todos estes dados só poderão vir a ser mais precisos após a conclusão da introdução dos dados na aplicação informática).*
3. *Durante o corrente ano, e até finais de Outubro, já houve 164*

*enterramentos e 164 exumações, o que reporia a situação do Cemitério de S. Miguel numa situação de maior disponibilidade comparando com os dados acima referidos.*

4. *No entanto, mediante o exposto, deixa-se à consideração superior a concessão da licença solicitada [sepultura SM-2-xxxx, onde estão enterrados os restos mortais de (...) desde 01/07/96], em caso afirmativo propõe-se que o valor de concessão seja de MOP\$30,000.00, de acordo com os preços efectuados anteriormente no corrente ano.*

*À consideração superior.*

*O Chefe dos S.A.Z.V. subst.º (assinatura)”*

[English meaning]

*“Regarding the request for grant of perpetual grave (no. SM-2-xxxx) at Cemetery of São Miguel Arcanjo (Cemitério São Miguel Arcanjo) received from Mr. XXX on 10<sup>th</sup> November 1999, I would like to report the following:*

1. *There are around 486 pieces of grave at the Cemetery of São Miguel Arcanjo, including 481 purchased and leased.*
2. *In 1998, there were 260 burials and 230 exhumations done at the cemeteries. The average number of burials done was 230 over the recent five years, while that of exhumations over the recent three years was 233. Therefore, the number of available graves (all figures above will become more accurate upon calculation by computer).*
3. *Up to December this year, there were 164 burials and 164 exhumations done. Comparing with the aforementioned data, there are more available graves at the Cemetery of São Miguel Arcanjo.*
4. *However, as to whether to approve the application for the grave (grave no. SM-2-xxxx, where the burial was done on 1<sup>st</sup> July 1996), the decision will be left to the superior. If the application is approved, I suggest fixing the charge as MOP30,000, which is the same as those for the graves granted this year.*

*For the superior’s consideration.*

*Acting Head of SAZV (signature)”*

- c) On 6<sup>th</sup> December 2001, a supervisory staff of the former Temporary Municipal Council, in a document that s/he submitted to his/her superior (proposal no. 131/SAZV/2001), pointed out that:

*“In 2000 and 2001, the applications received by the Council for grant of lots as perpetual grave included: SM-2-xxxx, SM-1-xxxx, SM-1-xxxx, SM-1-xxxx, SM-1-xxxx, SM-1-xxxx, SM-1-xxxx and SM-2-xxxx.*

*According to Article 25 of the Regulation of Municipal Cemeteries of 1961, sale of lots as perpetual graves is allowed. However, there are 1662 graves available for lease at the Cemetery of São Miguel Arcanjo (Cemitério São Miguel Arcanjo). There is little spare space to meet the demand. If the following conditions are approved by the superior, the aforementioned and future applications can be satisfied:*

- 1. To set an annual quota (e.g. 10) of application for perpetual lease.*
- 2. The applicant shall be lineal relative of the deceased, while the requested lot shall be where the deceased buried.*
- 3. The usage right shall be exercised only once. In other words, the right shall return to the Council upon the exhumation.*
- 4. These conditions are not applied to the perpetual graves granted previously.*
- 5. At the end of a year, in case the number of applicants exceeds the quota under the first condition, approved applications will be determined by ballot.*
- 6. After the ballot, the unsuccessful applications are considered rejected and the applicants shall apply for exhumation within 60 days under the regulations of municipal cemeteries.*

*The charge for this type of perpetual lease of grave can be calculated based on that for bone box of 1<sup>st</sup> class. For example, a grave is equivalent to six bone boxes of 1<sup>st</sup> class, so the charge will be about MOP30,000 (6 x 5,000).*

*For the superior’s consideration.”*

(7) To sum up all information above, it is easily discovered that there are many situations hard to be made clear:

- (1) The application by Mr. Cheang was approved in December 2000, but there was no document proving that any written notification had been made.
- (2) When approving Mr. Cheang's request, the President of the Municipal Chamber determined the amount of relevant charge immediately (though we do not know which criterion had been adopted). It was December 2000 then.
- (3) As to the requests from other people, the President stated in an order that the standard of charge for grant of grave had yet to be determined; therefore the relevant procedures were suspended (see Table I of point 6 above). The most typical example is B's application, for which the President stated that the standard of charge had yet to be determined. However, different method was adopted to handle the same kind of application within one month. What was the reason?
- (4) The IACM did not present all information to the CCAC. For example, when did the applicants pay? Where were the receipts? When did the applicants receive the written notification of approval of their applications?

On 4<sup>th</sup> April 2011, the Head of the SAZV of the former Temporary Municipal Council stated to the CCAC that: "As I remember, the notification of approval was made on phone. Later written form was also used for some applicants, but not all of them." This proves that the handling was weird and did not accord with statutory method.

- (5) Had Mr. Cheang's application been already approved up to 26<sup>th</sup> December 2000 (the charge was determined on 29<sup>th</sup> December)? Why the applications for the ten graves were processed once again in December 2001 (one year later)?
- (8) Due to the *Internal Regulation for Perpetual Lease of Grave*, the Head of the SAZV submitted a proposal (no. 136/SAZV/2001) to the superior on 19<sup>th</sup> December 2001. The content is as follows:

*“Em conformidade com o novo Regulamento Interno de Arrendamento Perpétuo de Campas Alugadas, deliberado em Sessão Camarária de 14/12/2001, e, tendo recebido até ao momento num total de 10 pedidos cujos dados se encontram no quadro anexo, proponho o seguinte:*

1. *Que o prazo para se candidatar ao arrendamento perpétuo em sepulturas alugadas correspondente ao corrente ano se termina no dia 19 de Dezembro;*
2. *Que sejam autorizados os pedidos referidos com dispensa de sorteio por não exceder dez pedidos, nos termos do mesmo regulamento.*

[English meaning]

**“Under the new Internal Regulation for Perpetual Lease of Grave passed by the Municipal Chamber, ten applications have been received. The relevant details and my suggestion are as follows<sup>92</sup>:**

1. *The period for application for perpetual lease of grave in this year ends on 19<sup>th</sup> December.*
2. *As there are not more than ten applications, I suggest approving them without balloting under the said regulation.”*

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<sup>92</sup> The underline is inserted by the CCAC.



No. of grave	Name of deceased	Name of applicant	Identification code <sup>93</sup>
SM-2-xxxx	(...)	(...)	A
SM-1-xxxx	(...)	(...)	B
SM-1-xxxx	(...)	(...)	C
SM-1-xxxx	(...)	(...)	D
SM-1-xxxx	(...)	(...)	E
SM-1-xxxx	(...)	(...)	F
SM-1-xxxx	(...)	(...)	G
SM-2-xxxx	(...)	(...)	H
SM-1-xxxx	(...)	(...)	I
SM-1-xxxx	(...)	(...)	J

*For the superior's consideration.*

*(Signature of Head of SAZV)"*

This proposal clearly shows how the former Temporary Municipal Council handled the applications for grave: on 14<sup>th</sup> December 2001 (Friday), the Municipal Chamber passed the *Internal Regulation for Perpetual Lease of Grave*. After the application period, which lasted only two working days (Monday and Tuesday), on 19<sup>th</sup> December (Wednesday), the application period expired and the proposal was made on the same day. On the next working day (20<sup>th</sup> December was public holiday in commemoration of Macao's handover), the applications were approved by the President of the Municipal Chamber. The pace was incredibly rapid. Since the regulation was not publicized in advance, there were only a few applicants.

<sup>93</sup> In order to protect the applicants' privacy, the CCAC replaces their identities by letters A to J under the principle of appropriateness.

The facts prove that: In December 2001, the former Temporary Municipal Council made another proposal about the ten applications and approved them. **It is hard to understand the reason.** The acts carried out by the authority made an impression that it tried to have as many people as possible involved in the cases. However, it is necessary to point out that increasing the number of involved people could neither make up for nor justify the illegality of the facts.

- (9) With the proposal mentioned in (8), the President issued the following order regarding the ten applications once again:

*“Autorizo, ao abrigo da deliberação camarária de 1/8/97, e conforme a sessão camarária de 14/12/01.*

*Comunique-se aos interessados.*

*(Vide no documento a assinatura do Presidente da Câmara Municipal)  
21/12/01”*

[English meaning]

**“I would like to announce my approval according to the resolution<sup>94</sup> by the Municipal Chamber on 1<sup>st</sup> August 1997 and its session on 14<sup>th</sup> December 2001<sup>95</sup>.**

**Please notify the interest parties<sup>96</sup>.**

*(Signature of President of Municipal Chamber)  
21/12/01”*

This order has brought out some problems:

- (1) The President of the Municipal Chamber exercised the power delegated to him and gave approval under the *Internal Regulation for Perpetual Lease of Grave*. However, we have realized that it is problematic in terms of content and procedure:

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<sup>94</sup> It refers to the resolution about delegation.

<sup>95</sup> The underline is inserted by the CCAC.

<sup>96</sup> Same as above.

- a) The date of the entry into force was not specified;
  - b) Approved on 14<sup>th</sup> December, they should have been publicized for five consecutive days<sup>97</sup>. In this sense, the last day would be 20<sup>th</sup> December (or 19<sup>th</sup> December if publicized on 14<sup>th</sup> December)<sup>98</sup>. However, the deadline for application was 19<sup>th</sup> December. In normal cases, the regulations should enter into force and the application period should start only after publicity.
  - c) The *Internal Regulation* stipulated that assessment and approval were done in the end of a year. Normally this does not mean “mid-December”.
- (2) All of the applicants requested for acquiring grave on perpetual basis, but the regulation regulated “perpetual lease of grave”. Meanwhile, the President simply stated “approval”. Approval of the former or the latter?
- (3) Reason and criteria for the approval were not clearly stated!

\* \* \*

(10) **Criteria and method of processing applications and procedural problems**

Upon analysis of the information above, our preliminary conclusion is that: The criteria adopted in handling the applications were unknown. The decision making entity could “approve” or “disapprove” freely.

- 1) Take Mr. Cheang’s application (A) for example, he submitted the application on 9<sup>th</sup> May 2000, while the former Temporary Municipal Council (specifically, the President of the Municipal Chamber) did not made any reply within 60 days<sup>99</sup>. This case should be considered tacit rejection according to Article 38 of Law no. 24/88/M of 3<sup>rd</sup> October, which states that:

<sup>97</sup> See Article 36 of Law no. 24/88/M of 3<sup>rd</sup> October.

<sup>98</sup> See Article 272 of the *Civil Code*

<sup>99</sup> It is different from the ordinary period provided by Article 102 of the *Code of Administrative Procedure*, 90 days.

*“1. The Municipal Chamber and the leadership of municipal agencies shall, within the scopes their duties respectively, make a resolution and decision on application or petition submitted by individual within 60 days upon receipt.*

*2. Except the special cases prescribed by the law, in case where the resolution or decision is not made within the time limit mentioned in the previous Paragraph, **the case will be considered tacit rejection** for the purpose of judicial appeal, **without prejudice to giving approval of the application in the future.**”*

Although the law allows handling of the relevant request after the 60-day period expires, the former Temporary Municipal Council never notified the applicants that their requests were being processed (at least there was no written information to prove this). Therefore, the reason why the application was approved suddenly on 26<sup>th</sup> December 2000 (and the charge was determined on 29<sup>th</sup> December) was unknown.

- 2) The Head of the SAZV under the former Council suggested in **the proposal (022/SAZV/2000) dated 5<sup>th</sup> June 2000 disapproval of the relevant request**, but the President approved it. Later, on 19<sup>th</sup> December 2001, the Head of the SAZV suggested approval in his proposal (136/SAZV/2001). Therefore, the President issued a simple order of “approval”.
- 3) According to general rules of public affairs management and the principle of “good father of family”, where there are discrepancies between the superior’s decision and the subordinate’s suggestion, it is necessary to state adequate reason (we are talking about the first order issued by the President regarding Mr. Cheang’s request on 26<sup>th</sup> December 2000 (the charge was determined on 29<sup>th</sup> December)). However, we have never seen any analysis and reason but *“I approve the application according to the information submitted”* written by the President, despite the fact that his subordinate suggested disapproval in a proposal. Therefore, the approval was a contradictory as well as unreasonable decision. To make it simple, it was a decision with defect.
- 4) In fact, as far as administrative management is concerned, when the decision of the administrative authority is consistent with application, i.e. when the application is approved, the demand for giving reason is laxer.

However, when the decision is to reject the application or when there are discrepancies between the superior's decision and the subordinate's suggestion, the demand will be stricter, requiring comprehensive explanation of the facts that lead to the rejection and the legal basis. Therefore, Article 114 of the *Code of Administrative Procedure* states that:

**“1. Apart from the administrative acts for which the law requires reason, the following administrative acts shall be backed by reason:**

a) *Administrative acts that totally or partially deny, eliminate, restrict or infringe upon rights and interests or legally protected interests, or impose or aggravate duty, incumbency or sanction;*

b) *Making decision on objection or appeal;*

c) *Making decision contrary to request by interest parties;*

d) **Making decision contrary to content of proposal, report or official suggestion;**

e) *Making decision in a way different from normal one in solving similar case in interpreting or applying the same principle or legal provision;*

f) *Repeal, modification or suspension of previous administrative acts.*

2. *The reason for recognition of resolution by jury panel of examination and the superior's order to the subordinate regarding works according to statutory form is not required, except the cases where other laws are applicable.”*

In the case, the approval was contrary to what the proposal suggested. Therefore, it is necessary to thoroughly explain why the decision was not made based on the proposal in order to ensure the consistency and logical sense of the information in the documents.

- 5) In this point of view, the decision made by the President of the Municipal Chamber had defects; therefore it was a revocable act in a legal sense.
- 6) Regarding period for revocation, Article 130 of the *Code of Administrative*

*Procedure states that:*

*“1. Revocable administrative act can only be revoked based on its invalidity during the period for filing relevant judicial appeal or before the entity which the appeal is against gives the reply.*

*2. In case there is any different period stipulated for judicial appeal, the latest one shall prevail.”*

**Under the provisions above, it is difficult to revoke the relevant decision under this article since the period for appeal has already expired.**

- 7) Some problems triggered by the order issued by the President of the Municipal Chamber on 21<sup>th</sup> December 2001 have been pointed out above, including:
- a) The approval was made based on a regulation which had defects, as long as the date of entry into force and the deadline for application was not indicated;
  - b) The request was not consistent with the content of the regulation which was not clearly stated by the President of the Municipal Chamber when giving approval;
  - c) The basis for the approval was not specified;
  - d) The price was determined as MOP30,000 when the approval was given on 29<sup>th</sup> December 2000, but it was changed to be MOP38,000 based on the *Internal Regulation for Perpetual Lease of Grave*. Which one was correct? Normally the latter was correct, but this reflected that the people who had the approval power changed their mind without any reason and explanation!
  - e) The proposal did not indicate why the application period ended on 19<sup>th</sup> December and the decision was made on 21<sup>st</sup> December. The President of the former Municipal Chamber explained to the CCAC that taken account into the Christmas holiday in December, this approval procedure was completed in advance. However, this is not a convincing, rational and legitimate reason. As a political position

holder, he should know that such a significant decision should not be made right before his tenure ended.

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(11) **Difference between “perpetual grave” and “grave on perpetual lease”**

There are a few complicated legal problems in the case (According to the information from the IACM, the former Temporary Municipal Council, including the entities possessing decision-making power, never explored them thoroughly).

- 1) Was there any difference between “perpetual grave” and “grave on perpetual lease”? Were they the same?
- 2) Under the legal regime of Macao SAR, did the former Temporary Municipal Council have the power to grant “perpetual grave” and “grave on perpetual lease”?
- 3) What was the relation between the *Internal Regulation for Perpetual Lease of Grave*, which was approved that year, and the *Regulation of Municipal Cemeteries*, approved on 5<sup>th</sup> July 1961? When there was conflict between them, which one should prevail?

Moreover, it is worth emphasizing the following points:

- 1) The President did not point out the basis for the approval of the application of A (Mr. Cheang). Did it accord with the *Internal Regulation for Perpetual Lease of Grave* or the *Regulation of Municipal Cemeteries*, approved in 1961 (the order issued by the President did not cite the latter)?
- 2) What did “perpetual” stand for? Permanent? Forever? Or does it only refer to a long term on condition that the relevant grave would be retrieve under certain circumstances?
- 3) Let us look at points 2, 3, and 4 of the *Internal Regulation for Perpetual Lease of Grave*:

- “2. *The applicant shall be lineal relative of the deceased, while the requested lot shall be where the deceased is buried.*
3. *The usage right shall be exercised only once. In other words, the right shall return to the Municipal Council upon the exhumation.*
4. *These conditions are not applied to the perpetual graves granted previously.”*

Were the perpetual graves granted in the past not subject to any restrictions? Were the graves granted after the *Internal Regulation for Perpetual Lease of Grave* approved on temporary basis or subject to restrictions?

Let us have a thorough review on the requests by the said ten applicants (Table II) to see whether the grants were totally consistent.

**Table II**

Name of applicant	Request written on the application	English meaning
<b>A</b>	<i>(...) a adquirir a referida sepultura a título perpétuo (...)</i>	(...) to acquire the said grave on a perpetual basis (...)
<b>B</b>	<i>(...) autorizar a cedência, a título definitivo, (...), da sepultura (...)</i>	(...) to approve the grant of the grave definitively (...)
<b>C</b>	<i>(...) autorizar a aquisição da sepultura n.º xxx, para servir de sepultura perpétua (...)</i>	(...) to approve the acquisition of grave no. XXX as a perpetual grave (...)
<b>D</b>	<i>(...) se digne autorizar a aquisição da campa (...)</i>	(...) to approve the acquisition of grave (...)
<b>E</b>	<i>(...) a adquirir a campa em causa a título perpétuo (...)</i>	(...) to acquire the relevant grave on a perpetual basis (...)
<b>F</b>	<i>(...) a aquisição da sepultura a título perpétuo (...)</i>	(...) to acquire the grave on a perpetual basis (...)



<b>G</b>	(...) <i>autorizar com que a sepultura xxx permanecer eternamente (...)</i>	(...) to approve permanent rest in the grave
<b>H</b>	(...) <i>digne autorizar a aquisição da campa n.º xxx a título perpétuo (...)</i>	(...) to acquire grave no. xxx on a perpetual basis (...)
<b>I</b>	(...) <i>se digne autorizar a aquisição da campa n.º xxx (...)</i>	(...) to approve the acquisition of grave no. XXX (...)
<b>J</b>	(...) 請求將該墓地轉購成永遠墓位 (...)	(...) to request for acquisition of the grave to serve as a perpetual grave (...)

This shows that **almost all applications were for acquisition (purchase) of perpetual grave, but the *Internal Regulation for Perpetual Lease of Grave*, proposed by the Standing Committee for Administration, Finance and Property and subsequently deliberated and passed by the Municipal Chamber, defined it as perpetual lease of grave.** We believe that they were not exactly the same. As the supervisory body, the former Temporary Municipal Council should have clarified the relevant concepts and distinguished one from another.

The normal handling way was to notify the applicants so that the Council could rectify their requests within a designated period, otherwise their requests should be rejected.

What was the criterion for approving the requests for the “grave on perpetual lease” mentioned above? Would they only be approved to those deceased who had had remarkable contribution to the society? It seems that this criterion has long been adopted (it was also adopted before the incident occurred and is still being adopted nowadays<sup>100</sup>). However, the President never mentioned and cited it when approving the said ten requests. This has obviously caused injustice especially to the people who had previously submitted application, no matter approved or rejected, because the criteria adopted previously had been modified. However, no explanation has been made, causing suspicion of arbitrariness.

<sup>100</sup>For example, proposal no. 031/SAL/2004 indicated that, “...had remarkable contribution to society of Macao in the aspects of philanthropic activities, cultural promotion, tourism and entertainment and had received many awards from the Macao SAR Government. Their contribution to Macao is beyond doubt...”

We do not know whether the President of the Municipal Chamber had taken any thorough consideration into these complicated problems when approving the requests, but we believe that he did not. It is because the former Temporary Municipal Council was going to be closed and the tenure of the members of Municipal Assembly would end in December 2001, while the IACM would replace it on 1<sup>st</sup> January 2002. Though the scope of duties basically remained the same, changes in personnel and management would be expectable (there were changes in fact). The President should not have made such decision which did not accord with the law without any reason.

Another distinguishing feature of the case is that even though the administrative authority could revoke the acts as the President's approval was considered to have defects, it is meaningless to make the repeal now after ten years because:

- (1) The relevant decisions have already been executed. In other words, the graves have been used (we do not have any information to prove that the real situation is the opposite). In this sense, it is impossible to revert to ten years ago as if nothing happened. For example, an individual who has improperly received an excessive amount of money can be required for repayment plus interest. However, this is a different case due to different nature.
- (2) Therefore, the case, indeed, does not have much effect, but it serves as a valuable reference with inspiration.

\* \* \*

The problems mentioned above are also reflected in the regulations formulated later.

Administrative Regulation no. 37/2003 of 24<sup>th</sup> November (which approves the *Regulation of Management, Operation and Supervision of Cemeteries*) may serve as a reference, of which Articles 14 and 26 state:

*“Right of long-term use of grave*

*The Chief Executive can bestow upon certain people **the right of long-term use of grave** due to some facts considered significant, namely, personal achievement, contribution to society, service provided for the Macao SAR or their decease due to*

*protection for public interests, etc.” (Article 14)*

*“Entitled rights*

*The rights bestowed upon to individuals to possess the traditionally named ‘perpetual graves’ can be remained according to the content and terms of the acquisition of the rights.” (Article 26)*

In these articles, there are two different concepts:

- (1) “Right of long-term use of grave”;
- (2) “Perpetual grave”.

Although Administrative Regulation no. 37/2003 can not be applied directly to the case, it can prove our conclusion: “perpetual grave” and “grave on perpetual lease” are two different concepts.

\* \* \*

Another problem resulted from the *Regulation of Municipal Cemeteries* of 1961, which was still effective in 2001. Article 28 states:

*“As pessoas que pretendam adquirir sepulturas perpétuas ou jazigos de família e bem assim gavetas-ossários, deverão fazer o pedido à Câmara, devendo o interessado preencher o impresso a que se refere o artigo 25.º do presente regulamento.”*

[English meaning]

***People who intend to acquire perpetual grave, family grave or bone box<sup>101</sup>***  
*shall submit application to the Municipal Council with the form mentioned in Article 25 of the Regulation filled out by interested parties.*

Article 29 states that:

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<sup>101</sup> The underline is inserted by the CCAC.

*“As pessoas que pretendam apenas o aluguer das sepulturas deverão informar o fiel da sua intenção e assinar uma declaração pela qual se comprometem a pagar o preço do aluguer dentro de 30 dias e, não o satisfazendo, serão executadas pelo meios ordinários.”*

[English meaning]

***People who intend to only lease a grave**<sup>102</sup> shall notify the fiduciary office and sign a statement to promise to pay the rental within 30 days. In case of failure to fulfil the promise, the procedure will be carried out coercively under normal method.*

It seems that the *Regulation of Municipal Cemeteries* did not stipulate any conditions for purchase or lease of grave on a perpetual basis. However, after the Macao SAR was established, the concept “perpetual purchase” is no longer applicable because public land shall not be sold. The government can only lease out “perpetual usage right” subject to certain conditions. Regarding this point, Article 7 of the *Basic Law* may exert its effect:

*“The land and natural resources within the Macao Special Administrative Region shall be State property, except for the private land recognized as such according to the laws in force before the establishment of the Macao Special Administrative Region. The Government of the Macao Special Administrative Region shall be responsible for their management, use and development and for their lease or grant to individuals or legal persons for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region.”*

In other words, the President of the Municipal Chamber was able to lease out the rights to use the graves subject to conditions. Although the President did not specify the contents and scopes of the approval in his orders, the *Internal Regulation for Perpetual Lease of Grave* was cited. Therefore, the approval should be understood as one for usage rights for once only, which should be returned to the IACM after exhumation.

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<sup>102</sup>The underline is inserted by the CCAC.

## 7. The role of supervisory body in the case

There has been suspicion that the approval was made under instruction given by the superior or due to offering of advantage.

The President of the Municipal Chamber of the former Temporary Municipal Council, who came to the CCAC to provide information on 26<sup>th</sup> April 2011, pointed out the following when being asked which criterion had been adopted to approve the applications for graves:

*“Naquela altura de transição do Leal Senado a Câmara Municipal de Macau Provisória, e depois a IACM, houve alguns pedidos de campas, e existe um entendimento quase unânime na altura do Leal Senado até a IACM, que é necessário tranquilizar as pessoas, evitando o surgimento de dúvidas e problemas no período de transição da administração Portuguesa para RAEM. E demais, a exumação do osso que exigem a presença do requerente e um complexo procedimento, para as pessoas que vão sair de Macau e residir noutro País pode ser prejudicial.*

*A testemunha disse que durante a apreciação de aprovação ou não do pedido acima referido, não recebeu nenhuma ordem ou influência.*

*A testemunha disse que na altura decidiram elaborar um regulamento (discutido por uma Comissão Permanente Administrativa, Financeira e Patrimonial, que inclui o Lei Hon (falecido), Ao Kam San, etc.), que denominou depois por “Regulamento Interno de Arrendamento Perpétuo de Campas Alugadas”, fixando o preço e serviu como critério de aprovação dos pedidos.*

(...)

*Na apreciação dos pedidos nunca chegou a receber ordens ou sugestões externas, porque a Câmara é uma entidade autónoma e as decisões são homólogas pela Tutela com apoio do SAFP.”*

[English meaning]

*“During the transitional period from the Municipal Council to the Temporary Municipal Council at that time and later to the IACM, applications related to grave were received. To this kind of applications we bore the same understanding in mind: In order to avoid problems and difficulties during the transitional period, it was*

*necessary to take care of and understand citizens' demand. On the other hand, exhumation required the presence of the applicants as well as procedures which were rather complicated, which might affect the citizens who were going to emigrate from Macao.*

*The witness stated that in the process of assessing the aforementioned applications, he did not receive any instruction nor was he subject to any influence.*

*The witness added that they decided to formulate a regulation (upon discussion by the Standing Committee for Administration, Finance and Property with members including Lei Hon (deceased), Ao Kam San, etc.) and determine the amount of relevant charge. Finally the regulation was named Internal Regulation for Perpetual Lease of Grave, which was adopted as the criterion for assessment and approval of relevant applications.*

(...)

*He never received any external instruction or suggestion when assessing the requests because the Municipal Council was an autonomous entity whose decisions had to be submitted to its supervisory body for homologation with the assistance of the SAFP.”*

Since the President stated that the decisions made by the former Temporary Municipal Council would be passed to the supervisory body for homologation (*homologação*), we have to highlight the following points:

- (1) In this case, we do not find any document proving the “homologation”;
- (2) The term “homologation by supervisory body” in law refers to:
  - (a) The competent entity was still the President of the former Temporary Municipal Council (since he had been delegated the relevant competence earlier);
  - (b) The decisions made by the President did not have any external effects without homologation by the supervisory body. That is, under normal circumstances, the decisions could not be executed (in case the relevant acts had already been carried out, ratification could be made to make up for the defect);

- (c) In other words, the liability was still attributed to the entity that possessed the competence to approve, the President of the Municipal Chamber.
- (d) Meanwhile, there were not any laws stipulating that the decisions about grant of graves should be passed to the supervisory body for homologation. However, regarding the fact that the Municipal Chamber passed the *Internal Regulation for Perpetual Lease of Grave*, **the Chamber should have sent the relevant minutes to the supervisory body within five days under Paragraph 5 of Article 12 of Law no. 24/88/M of 3<sup>rd</sup> October. In this sense, the latter should be able to know the existence of the regulation.**
- (e) If the Municipal Chamber did not submit the minutes to the supervisory body (to prove the approval of the said regulation), it would be definitely unlawful. Meanwhile, **the supervisory body was obliged and able to know that the Chamber did not fulfil the legal provision and was able urge the supervisee to abide by the principle of legality** (see Paragraph 1 of Article 47 of Law no. 24/88/M). Therefore, it should urge the Chamber to submit the minutes. This law was not a new one as it has been in force since 1988.

Article 5 of the *Civil Code* states:

*“Ignorance or wrong interpretation of law neither justifies non-compliance nor exempt the party concerned from sanction under the law.”*

The same provision is also preserved in Paragraph 1 of Article 3 of Administrative Regulation no. 32/2001:

*“1. Minutes of the entities under the IACM shall be submitted to the supervisory body within five days since the approval.”*

- (f) The relevant resolutions would be passed to the supervisory body for homologation as stated by the President of the Municipal Chamber to the CCAC. In this sense, if any illegalities were discovered after the relevant minutes and regulation were homologated by the supervisory body, both sides should be liable for the consequence.

Since the problems about supervision have been mentioned, let us look at the concept and system of supervision in legal sense in order to understand the responsibilities of the two parties.

The former Temporary Municipal Council enjoyed administrative and financial autonomy but was subject to the Chief Executive's supervision, while the supervisory power was delegated to the Secretary for Administration and Justice.

Therefore, there was a kind of relation of supervision.

First of all, what the fundamental concept of supervision (*tutela*) is in the legal sense should be made clear.

1. "Administrative supervision" exists based on the premise that there are two different bodies: a "supervisory body" and a "supervised body", of which one must be a public legal person. The supervised body is usually a public legal person.

"Administrative supervision" is different from all other forms of supervision systems in the following ways:

- (1) First, in administrative supervision, a "supervisory body" and a "supervised body" are usually two separate legal persons or units. This is different from the supervisory system established within the same legal person (i.e. internal supervision).
  - (2) It is different from judicial supervision that can only be exercised by the court;
  - (3) It is different from internal regulation as it is subject to authorisation (*autorização*) or approval (*aprovação*).
2. We may look at the scope of supervision from two perspectives:

**Objective:**

- (a) Supervision over content of decisions (made by the supervised body);
- (b) Supervision over legality.



For (a), the supervisory body should look at whether the relevant decisions are opportune (*oportuno*) and appropriate (*conveniente*), especially from the points of view of administrative management, financial management and technical management. The supervision does not focus on the legality of the decisions (even though illegalities should be dealt with whenever they occur).

With regard to (b), consideration should always be given to whether the decisions comply with law.

According to the traditional theory, administrative supervision is divided into five types:

**(1) Integrative supervision:**

This type of supervision empowers the supervisory body to authorise or approve the acts of the supervised body.

Authorisation means official permission should be obtained before taking action.

When it comes to approval, the supervised body may perform an act but the act will have no effect. Only when the act has been approved by the supervisory body does it becomes effective. In short, decisions (acts) should not be carried out when they are yet to be approved.

**(2) Supervision intended for inspection:**

This type of supervision empowers the supervisory body to oversee the structure and operation of the supervised body.

**(3) Supervision intended for carrying out punitive acts:**

This type of supervision empowers the supervisory body to impose sanctions on the supervised body when any irregular act conducted by the latter is found. It is a type of disciplinary supervision.

**(4) Supervision intended for abolishing acts:**

This type of supervision empowers the supervisory body to abolish the acts of

the supervised body.

**(5) Supervision intended for acting on behalf of the supervised body:**

This type of supervision empowers the supervisory body to enforce acts (decisions) that are legally due for the supervised body when the latter does not act so.

\* \* \*

There are four principles in administrative supervision, as follows:

- (1) Administrative supervision must not be presumed but only exists under certain conditions expressly prescribed by law.
- (2) The scope and types of supervision must also be expressly prescribed by law and must not be presumed.
- (3) The supervisory body does not have power to give orders but to establish guidelines on the acts and activities of the supervised body.
- (4) The supervised body may file complaints, administrative appeals or judicial appeals against the decisions of the supervisory body, provided that they conform to all requirements as stipulated by procedural law.

In conclusion, the supervisory body has the obligation to keep an eye on the content and legality of the acts of the supervised body and also to ensure the latter functions and performs its duties in compliance with the legal framework.

This is the very significance of administrative supervision.

\* \* \*

The lawmakers clearly defined the scope of supervision in the *Legal Regime of Municipalities* (Law no. 24/88/M) of 3<sup>rd</sup> October, of which Articles 46 and 47 state:

**“Article 46  
(Administrative Supervision)”<sup>103</sup>**

*The Governor has the power to exercise administrative supervision on the Municipal Council, which can be delegated to one of the Secretaries.”<sup>104</sup>*

**“Article 47  
(Competence of Supervisory Body)”<sup>105</sup>**

**1. Regarding the execution of inspective supervision, the Governor, through analysis of the minutes of the municipal bodies, is responsible for:**

**a) Ensuring the compliance with law;**

**b) Carrying out inspection, inquiry and probe into the activities conducted by municipal bodies and their services;**

<sup>103</sup>To revise the article with more accurate legal language:

“Article 46 (**Administrative Supervision**)

*The Chief Executive (in the original text, it is “Governor”, but it should be interpreted as the “Chief Executive” under the Reunification Law) has the power to exercise administrative supervision on the municipal bodies, which can be delegated to one of the Secretaries.”*

<sup>104</sup>Amended by Law no. 4/93/M of 5<sup>th</sup> July.

<sup>105</sup>To revise the article with more accurate legal language:

“Article 47 (**Competence of Supervisory Body**) (The Chinese translation is “監管人的職權”, but it should be understood as “監督實體的權限”).

*1. Regarding the execution of inspective supervision, the Chief Executive (in the original text, it is “Governor”, but it should be interpreted as the Chief Executive under the Reunification Law), through analysis of the minutes of the municipal bodies, is responsible for:*

**a) Ensuring the compliance with law, of which the Chinese translation is “注視對本地區合法性的遵守”, which should be replaced by “致力於對本地區合法性的遵守”;**  
(...).

**2. Regarding the execution of the power of corrective supervision, the Chief Executive is entitled to approve the resolutions made by the Municipal Assembly about the following issues:**

- a) Plans of activities and relevant revision;
- b) Budget of the municipality and supplementary budget;
- c) Management accounts of the municipalities;
- d) The organizational structures of municipal departments and long-term personnel and their revision;
- e) Loan;
- f) Formulation of municipal regulations about fining and the tariff and adjustment of charge;
- g) Agreements signed with entities outside the territory;
- h) The issues mentioned in the last part of Subparagraph j) of Paragraph 1 of Article 29.

*3. The resolutions mentioned in the previous paragraph will be submitted to the supervisory body enclosed with relevant files after they are approved by the Municipal Assembly.*

*4. The Governor has the power to resolve conflict on competences between the municipalities and the central administrative bodies.”*

*c) Requesting for explanation of any resolution which has been made within 15 days by the relevant entity.*

**2. Regarding the execution of the power of corrective supervision, the Governor is entitled to approve the resolutions made by the Municipal Assembly about the following issues:**

- a) Plans of activities and relevant revision;*
- b) Budget of the municipalities and supplementary budget;*
- c) Management accounts of the municipalities;*
- d) The organizational structures of municipal departments and long-term personnel and their revision;*
- e) Loan;*
- f) Formulation of municipal regulations about fining and the tariff and adjustment of charge;*
- g) Agreements signed with entities outside the territory;*
- h) The issues mentioned in the last part of Subparagraph j) of Paragraph 1 of Article 29.*

*3. The resolutions mentioned in the previous paragraph will be submitted to the supervisory body enclosed with relevant files after they are approved by the Municipal Assembly.*

*4. The Governor has the power to resolve conflict on competences between the municipalities and the central administrative bodies.”<sup>106</sup>*

\* \* \*

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<sup>106</sup> Amended by Law no. 4/93/M of 5<sup>th</sup> July.

When the Macao SAR was established, the Chief Executive delegated the power to supervise the former Temporary Municipal Council to the Secretary for Administration and Justice through Administrative Regulation no. 6/1999 of 20<sup>th</sup> December 1999, of which Article 2 states:

*“Secretary for Administration and Justice*

*1. The Secretary for Administration and Justice exercises the following competences:*

- 1) Public Administration;*
- 2) Civic and municipal affairs<sup>107</sup>;*
- 3) Legal translation and promotion;*
- 4) Legislative affairs and judicial administration;*
- 5) Rehabilitation of criminals;*
- 6) Civil and Criminal identification;*
- 7) Orientation and coordination of registry and notarial systems;*
- 8) Production of the Official Gazette of Macao SAR.*

*2. For the effect of the previous paragraph, whether the departments and entities mentioned in Appendix II of the Administrative Regulation are subordinate to or supervised by the Secretary for Administration and Justice depends on real situations. Appendix II indicates the components of the Administrative Regulation.”*

According to Article 46 and 47 of the *Legal Regime of Municipalities* (Law no. 24/88/M), we know that the categories of supervision stipulated by law include supervision intended for inspection and integrative supervision but not the following ones:

- Supervision intended for carrying out punitive acts;

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<sup>107</sup> Highlighted by the CCAC.

- Supervision intended for acting on behalf of the supervised body, and
- Supervision intended for abolishing acts.

The article cited above clearly points out that: **Within the scope of supervision, the supervisory body** (the former Temporary Municipal Council or the IACM) **shall (strive to) ensure the legality of the procedure and contents of the acts conducted by the supervised as well as the convenience and timeliness of the relevant decisions.** This is supervision of rationality. Therefore, Paragraph 7 of Article 30 of Law no. 24/88/M of 3<sup>rd</sup> October states:

*“7. The appeals filed to the Plenary Assembly of the Municipal Chamber can be against illegality, untimeliness and inconvenience of relevant decisions. The Municipal Chamber shall deliberate the complaints no later than the second session upon receipt.”*

Since the administrative complaints to the Municipal Chamber would be against inconvenience or untimeliness<sup>108</sup>, we believe that these would also be the reasons for the appeals to supervisory body. In other words, the supervisory body shall perform its supervisory role in compliance with the said three principles (legality, timeliness and convenience).

Regarding administrative supervision, we can view this point from a comparative perspective.

Some articles of Law no. 24/88/M originated from the municipal legal regime of Portugal, including:

- (1) Article 6 (Principle of Independency)<sup>109</sup>;
- (2) Paragraph 7 of Article 30 (The appeals filed to the Plenary Assembly of the Municipal Chamber can be against illegality, untimeliness and inconvenience);

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<sup>108</sup> In general, these cannot be the reasons for filing judicial appeal against an administrative act (decision), because Article 20 of the *Code of Administrative Litigation* states, “Only legality of the act is considered when processing a judicial appeal because the purpose is to revoke the act, or declare its annulment or invalidity, except the cases where other laws applies to.”

<sup>109</sup> This refers to the law of Macao.

- (3) Subparagraph a) of Paragraph 1 of Article 47 (Supervision on legality carried out by the supervisory body).

In Portugal, the supervision carried out by the government on the municipal assembly focuses now only on legality compared with both legality and rationality in the past. The main factor of the transformation is the development of constitutional system – to strengthen and widen the power of local authorities as well as comply with the principle of decentralized autonomy, by placing representatives of the government at municipal entities. This is clearly prescribed by the law formulated later.

Article 92 of Law no. 79/77 of 25<sup>th</sup> October of Portugal states:

*“Enquanto autoridade tutelar, compete ao governador civil:*

*a) Velar pelo cumprimento das leis gerais do Estado por parte dos órgãos autárquicos;*

*b) Promover a realização de inquéritos, se necessário através dos serviços da Administração Central, à actividade dos órgãos autárquicos e respectivos serviços, precedendo parecer do conselho distrital.”*

[English meaning]

*“As the supervisory authority, the municipal governor is entitled to:*

*a) Supervise the compliance of local autonomous agencies with the general law of the State;*

*b) Conduct inquiry, through central administrative bodies if necessary, into the activities carried out by local autonomous agencies and related departments after obtaining opinions from district council.”*

In this sense, according to academics and precedents in Portugal, the government’s supervision on municipal bodies merely focuses on legality but not rationality.

Even though it is considered that this theory is applicable to Macao, we think that it is necessary to take into account the reality: (1) the political power of municipal

bodies was not recognized; (2) their scope of power had been narrowed down and they no longer possessed the power to formulate external regulation. Therefore, the supervision on rationality is not completely excluded.

As renowned German jurist Philipp Heck says, *“The one who applies a law applies the whole legal system. The one who interprets a law interprets the whole legal system”*. This is true.

Moreover, the Municipal Chamber’s plan to formulate the regulation of grant of grave on perpetual lease and the decisions to approve the grant in 2001 should have been covered in the plan of activities for 2001. According to Subparagraph a) of Paragraph 2 of Article 47 of Law no. 24/88/M, the plan of activities and its revision afterwards should be submitted to the supervisory body for approval. This was subject to supervision. Therefore, it was possible and reasonable for the supervisory body to intervene into it.

There is no document showing the said submission or approval. If the supervisory body was aware of this, it had the power to intervene into the case and even refuse to approve it.

On the other hand, although the power of granting in the case was possessed by the President of the Municipal Chamber, since one of the beneficiaries was a relative of an advisor of the Office of the Secretary for Administration and Justice, whether manipulation existed in the process of approval is in the spotlight. When the case was revealed, everyone was not able to know the truth. Clearly the case is about whether the principle of impartiality has been strictly abided by. Under this circumstance, given that the involved people, the nature of the case and the image of impartiality that administrative authorities must have, the supervisory body was able to adopt other better measures in compliance with the principle.

Regarding the principle of impartiality<sup>110</sup>, we would like to quote what Professor Freitas do Amaral, an eminent expert in administrative law, says:

*“The administrative entity and its staff shall not intervene into any of the procedures under the principle of impartiality as long as there is a reason for the third party to suspect the fairness and righteousness of the relevant act...This principle is*

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<sup>110</sup> Article 7 of the Code of Administrative Procedure states, *“The Public Administration shall treat all related parties in a just and impartial way when carrying out its activities.”*



to protect citizens' trust in public administrative entities."<sup>111</sup>

Professor Vieira de Andrade, in an unpublished report of legal comments, points out that:

*"The guarantee of impartiality in administration is for the image and reputation of administrative entities. The law prevents administrative entities from conducting partial acts by setting up prohibitions and defining dangerous situations. In this sense, the legal protection for the legally protected interests can be widened to a preventive scale. The illegality of partiality roots in its danger, and this danger arises upon violation of certain prohibitions, regardless of the existence of real damage. In case real damages emerge it is an actual infringement upon the principle of impartiality. Moreover, this principle seems to cover prohibition to the administrator in creating a situation to endanger the principle of impartiality. Therefore, the illegality defined by the principle of impartiality covers not only real violation but also the acts that may cause the violation."*<sup>112</sup>

As the supervisory body, the former Temporary Municipal Council should have taken a thorough consideration about some basic questions regarding the grant of the graves:

- (1) Was every step of the assessment and approval carried out in compliance with the law (both procedural law and substantive law)?
- (2) Was it opportune or convenient of the councillors to grant the graves when the former Temporary Municipal Chamber was about to be revoked<sup>113</sup> and their tenure was going to end in less than 20 days?
- (3) When a large entity was facing such a significant change (replacement of the former Temporary Municipal Council by the IACM), the supervisory body could have formulated general guidelines (order could not be issued as they were different) which could indicate that entities that were about to be revoked should not make significant decisions which would lead to long-term incumbency for the new entity. If it is necessary to do so, they should report to the supervisory body in advance. It is because under Article 95

<sup>111</sup> See his work, *The Principles of Administrative Law*, page 59 and 72.

<sup>112</sup> See his report, page 7.

<sup>113</sup> Paragraph 1 of Article 2 of Law no. 17/2001 of 17<sup>th</sup> December states, "1. The temporary municipal bodies of Macao and the Islands are revoked and their municipal services are dissolved."

of the *Basic Law*, the municipal bodies are entrusted by the government to provide service, unlike the ones in Portugal, of which the independency is guaranteed at a constitutional level<sup>114</sup>. Therefore, the government has the power to formulate general guidelines in order to ensure the legality of the administration.

- (4) Did the supervisory body take any measures to obtain the details of the case after they realized it?
- (5) After the media revealed the case, the supervisory body of the former Temporary Municipal Council and the IACM only released a written statement without any objective, independent and concrete investigative measures (such as ordering the supervised body to carry out investigation into the case). Was this the only and the best measure to handle the case?
- (6) Is it possible to request the Chief Executive to reclaim the supervisory power and commence administrative investigation according to Article 46 of Law no. 24/88/M of 3<sup>rd</sup> October in order to discover the truth?
- (7) Since there are rumours that the case involved an advisor of the Office of the Secretary for Administration and Justice, before the case is investigated, it is the IACM that should have responded to the public. Because the IACM has all written information and a majority of the staff members who handled the case directly or indirectly are still working for it. The IACM should have clarified the doubts or commenced internal investigation. However, in fact, it never did so. For the time being, it has not yet adopted any relevant measures according to the information obtained by the CCAC.

According to the supplementary materials submitted by the Office of the Secretary for Administration and Justice in early July, the IACM opened a file for summary investigation in October 2010, but it only focused on whether there was any staff member who had disclosed internal documents or provided them to a third party in violation of law instead of the case of grant of graves. Therefore, this measure is not directly related to our investigative procedure. Moreover, since the Public Prosecutions Office has already commenced a probe, we will not further analyse this issue.

<sup>114</sup>In fact, the supervision by the Portuguese government on its municipal bodies has also experienced transformation, from one which focused on both legality and rationality to only legality.

(8) In addition, under Article 47 of Law no. 24/88/M of 3<sup>rd</sup> October, **one of the ways to exercise the supervisory power is to analyse the minutes of municipal bodies, while Paragraph 5 of Article 12 states that “the minutes shall be submitted to the supervisory body within five days after the approval”.** Regarding the grant of graves, our conclusion can only be:

- a) **The Municipal Chamber did submit the minutes (of the session during which the requests for the ten graves were approved under the Internal Regulation for Perpetual Lease of Grave) to the supervisory body, but the latter did not carry out any assessment or carried out inadequate assessment. As a result, the problems were not discovered. In this sense, the supervisory body was liable.**
- b) **Another possibility is that the Municipal Chamber did not submit the minutes. In this case, the President of the Municipal Chamber, who gave the approval, was liable for the responsibly. However, the supervisory body also had the responsibility to request the supervisee to submit the minutes.**

(9) Moreover, in this situation, we think that Subparagraph d) of Paragraph 1 of Article 50 of the *Code of Administrative Procedure* should be observed. It states that:

*“1. In the cases where any reason for suspicion of the impartiality of the officeholder or the staff of the public administration or the righteousness of his/her act is constituted, especially the following, s/he shall request for recusation from the relevant procedure:*

*(...)*

*d) There is serious enmity or intimacy between the officeholder or staff, or his/her spouse, and the party who has direct interest in the procedure, act or contract.*

*(...)”*

Based on all information and thorough analysis, our conclusion is that the supervision was not strong enough and objectively it was possible to strengthen it.

\* \* \*

## **8. Whether circumstances requiring recusal existed**

Regarding recusal or conflict of interests, Article 46 of the *Code of Administrative Procedure* states:

*“1. In the following cases, the officeholder or staff of the Public Administration shall not take part in the administrative procedure and the acts or contracts under public or private law of the Public Administration:*

*a) When the person, as himself/herself or as the representative or manager of another person, has an interest in the said procedure, act or contract;*

*b) When his/her spouse, any of his/her lineal relatives or in-laws by lineal or collateral descent within the second degree of consanguinity, or any person who lives in the same household, as himself/herself or as the representative of another person, has an interest in the said procedure, act or contract;*

*c) When the person, as himself/herself or as the representative of another person, has an interest in the said procedure, act or contract, has an interest in similar cases on which s/her should made a decision, or when the people mentioned in the previous subparagraph encounter such situation;*

*d) When he/she is involved in the procedure as the appraiser or entrustee, or has made any commentary report on the issue to be resolved;*

*e) When his/her spouse, any of his/her lineal relatives or in-laws by lineal or collateral descent within the second degree of consanguinity, or any person who lives in the same household, is involved in the procedure as the appraiser or entrustee;*

*f) When a judicial lawsuit is filed by an interested party or his/her spouse against the officeholder or the staff, or his/her spouse or lineal relative;*

*g) When an appeal is filed against the decision made by the officeholder or the staff, or anyone of the people mentioned in Subparagraph b);*

*h) When the relevant issue is related to an individual in defense of economic interests or any member of an association of the same kind, of which the officeholder or the staff is also a member;*

*2. The previous paragraph is not applicable to the acts which are merely related to execution, especially issuance of certification.”*

In the case, it is worth highlighting the following points:

- (1) The doubts were caused by the fact that one of the ten granted graves was for the relative of an advisor of the Office of the Secretary for Administration and Justice, while the one who possessed the power of approval was not the supervisory body (the Secretary) but the President of the Municipal Chamber (delegated). In this sense, recusation due to kinship was not required.
- (2) Regarding whether there were any special reasons which led the entity with decision making power into making the decision contrary to the law or existing criteria (which might be internal), since the case occurred around ten years ago, it is very difficult to search the evidence. Moreover, there is a legal problem – the prescription for prosecution has already expired – this will be analysed later.
- (3) After analysing all evidence, no situation that breached the said recusation system has been found.

Therefore, only proving that kinship or relation of interest existed between the people who possessed the power of giving approval and the applicant can the reason for recusation be constituted, but this is not the case.

\* \* \*

## **9. Whether power abuse existed; extinction of the right to prosecute due to lapse of time**

About the concept of power abuse, Article 347 of the *Penal Code* states:

*“Beyond the cases prescribed by previous articles, a public servant who, in attempt to gain illicit interests for oneself or the third party or cause damage to the third party, abuses the powers or violates the duties inherent in his/her position, shall be liable to imprisonment for a maximum term of three years or a fine when a severer penalty stipulated by other laws is not applicable.”*

This article indicates several key points, including:

- (1) Abusing the powers inherent in the position (or violating the duties inherent in the position);
- (2) Attempting to gain illicit interests for oneself or the third party or cause damage to the third party;
- (3) Carrying out the act intentionally.

The purpose of this article is to ensure that public servants shall perform their duties in compliance with some basic legal principles, especially the principles of equality, impartiality, justice and appropriateness, while the power or duties shall be functional ones. Power abuse can be constituted in many cases, such as:

- (1) When the limit of the power is exceeded (if the public servant has the power to deal with relevant matters);
- (2) When acting beyond the statutory ways or legal framework (violating the law)...;
- (3) When using the power for the purpose straying from the one for which the power is conferred upon (misuse of power).

Both precedents and theories assert that if the relevant entity, which originally did not have the power to handle a certain matter (absolutely had no competence), has made decision on it or acted in a way exceeding its power, it does not constitute power abuse but another kind of illegality.

Duties can refer to the general duties that public servants shall follow or special duties determined according to their specific functions. All these shall be related to their functions.

In addition, regarding “illicit interests”, the lawmaker provides that it can be tangible or intangible, which shall be substantiated through power abuse and reflected in the damage to the normal procedures of administrative management bodies or infringement upon the principle of justice.

Regarding damage to the third party’s interests, the lawmaker does not require that the damaged interests shall be pecuniary interests or that of administrative agencies, while the damage can be done to the party that the act is against.

Therefore, given that the power to grant grave was not possessed by the supervisory body, and the procedure was in charge and decided by the President of the Municipal Chamber of the former Temporary Municipal Council, it is unable to prove the existence of power abuse for the time being.

**Nevertheless, it is necessary to point out the most important point:**

Even if there is evidence to prove the existence of power abuse, it is not able to pursue criminal liability because **the case occurred in 2000/2001 and the prescription for prosecution is five years, which has already been extinct.**

Subparagraph d) of Paragraph 1 of Article 110 of the *Penal Code* states:

***“1. The right of prosecution will be extinct after the following prescriptions:***

- a) 20 years for crimes punishable by imprisonment up to more than 15 years;*
- b) 15 years for crimes punishable by imprisonment up to more than ten years but less than 15 years;*
- c) Ten years for crimes punishable by imprisonment up to more than 5 years but less than ten years;*
- d) Five years for crimes punishable by imprisonment up to one year or more than one years but less than five years;***

*e) Two years in other cases.*

*2. For the effect of the previous paragraph, when determining the maximum penalty for each crime, it is necessary to consider the elements of the facts about the crime but not the situations giving rise to aggravation or mitigation.*

*3. For any crimes punishable by either imprisonment or fine, only the former is considered for the purpose of this article.”*

Therefore, **the criminal proceeding should be commenced by December 2006 as the case occurred in December 2001 or the prescription would be extinct.**

**Information shows that no criminal investigative procedure was commenced by December 2006. Therefore the prescription for prosecution has already expired.**

\* \* \*

**As to disciplinary liability, the limitation has also expired**, since Article 289 of the *Statute of Personnel of the Public Administration of Macao* states:

*“1. The limitation for conducting disciplinary procedure expires three years after the day the violation takes place.*

*2. If the fact categorized as violation of discipline is also considered criminal offence and the prescription for prosecution is over three years, the limitations provided by the Penal Code are also applicable to the disciplinary procedure.*

*3. If there is any investigation into the relevant violation conducted before the limitation mentioned in Paragraph 1 expires has real effect on the procedure, the limitation period will start from the day the final act was done.*

*4. The period of limitation for commencing probe, simple investigation, inquiry or discipline procedure terminates when any offence for which the public servant or staff is liable is discovered during any of these procedures even though the procedure is not against the one who is benefited from the limitation.”*



Even if the longest prescription of criminal prosecution was applicable (five years), the period has already expired.

\* \* \*

## **10. Other criminal investigative procedures raising from the case**

According to the information provided by the MP, it has commenced criminal investigation procedures, one of which is about the crime of “refusal to cooperate” (see Article 346 of the *Penal Code*).

Article 346 of the *Penal Code* states that:

*“The public servant who, having received legal request from the competent authority to provide necessary cooperation in judicial activity or with any public departments, refuses to cooperate or does not cooperate without legitimate reason shall be liable to imprisonment for a maximum term of one year or a fine of up to 120 days.”*

These are the consequences of the grant of the graves. Since the MP has already commenced investigation, the CCAC will not intervene into the case (as it is beyond our competence).

\* \* \*

## **B- Case 2 – Complaint by a citizen**

### **1. Cause of the complaint**

1. Ms. Al(...), the complainant, stated that the IACM had adopted incorrect method to handle her sister’s and her applications because there was untrue information in Proposal no. 016/SAL/2010 of the IACM and thus the truth was concealed.
2. Ms. Al(...) said that her sister had been requesting for purchase of grave on

perpetual basis, while she applied for grant of “the right of perpetual use of grave” (both were for the same grave but were not filed at the same time).

3. The IACM suggested rejecting the applications. Therefore, on 17<sup>th</sup> December 2009, the Chief Executive rejected the applications based on this proposal.
4. Regarding the rejection, Ms. Al(...) considered that the rationale was inadequate and did not accord with any criteria. Therefore, she compared her case to the grant of the ten graves in 2001 and stated that the grant was unlawful but her applications were qualified for approval.
5. The complainant added that it was not the second Chief Executive who rejected her applications, because they were submitted respectively on 21<sup>st</sup> December 2009 and 11<sup>th</sup> January 2010, during which the incumbent Chief Executive was the current one.
6. Therefore, Proposal no. 016/SAL/2010 of the IACM indicated that the disapproval of the relevant application by the former Chief Executive on 17<sup>th</sup> December 2009 was untrue because the third Macao SAR Government had already assumed office when the complainant submitted the application.
7. The complainant asserted that the IACM has breached Article 11 of the *Code of Administrative Procedure*, which states that:

**“1. Administrative authorities have a duty to make decision on all matters within their competence brought up by individuals, especially:**

*a) The matters directly related to the administrative authorities;*

*b) Petitions, representations, complaints or appeals in defense of legality or general interests.*

*2. The competent authority does not have a duty to made decision when it has already carried out an administrative act on the request and when the individual brought out the same request based on the same reason within two years since the day the administrative act was done. ”*

8. The complainant cited a case which also occurred in 2001, in which a person was convinced by the former Temporary Municipal Council to pay MOP30,000

for purchase of a perpetual grave, which was not a normal case of grant of grave.

9. Finally, the complainant requested the competent body to make correction and recognize her qualification for acquisition of the grave on perpetual lease.

\* \* \*

## **2. Analysis and summary**

Regarding Ms. Al(...)’s complaint, we have the following conclusion according to our analysis on relevant information:

1. Since the grave that Ms. Al(...) requested for was not any of the said ten graves, there was no mutual exclusiveness between her request and the said ten graves. In other words, the grant of the graves did not directly impair her rights and interests.
2. Although there were defects in the procedure and criteria adopted to approve the ten graves, Ms. Al(...)’s request could not be considered reasonable based on this fact. In other words, the illegality or irregularity committed by administrators shall not be the basis for them to continue to adopt illegal method to assess her request.
3. The IACM modified the request from Ms. Al(...)’s sister from the one for perpetual “purchase” to “perpetual lease” without notifying the applicant. This was defective and even illegal, but Ms. Al(...) should have commenced relief mechanism – administrative appeal and administrative judicial appeal. In fact, she did not do so and eventually the limitation expired.
4. Ms. Al(...) chose to file an objection to the Chief Executive, who made the decision on 17<sup>th</sup> December 2009. Since then Ms. Al(...) has not file any judicial appeal against the decision, which was eventually converted to a final act, which could not be changed anymore.
5. In fact, it was not the second Chief Executive who rejected her applications, because they were submitted respectively on 21<sup>st</sup> December 2009 and 11<sup>th</sup>

January 2010, during which the incumbent Chief Executive was the current one who rejected her application dated 21<sup>st</sup> December 2009 on 3<sup>rd</sup> February 2010.

6. Thus, on the one hand, Ms. Al(...) pointed out in her complaint that since the approval of the applications in 2001, where illegality existed, was still effective, she considered that her request should be approved based on the same criteria. However, this is impossible, as the applicant has no power to request the administrative authority to adopt “illicit” or “illegal” criteria to make a decision.
7. On the other hand, what Ms. Al(...) complained about was that her request was handled in an improper and even illegal way and that the supervisor body of the IACM did not reveal the truth. In fact, according to the information from the IACM, the IACM submitted the materials related to the graves, including the application documents from the complainant, to the Office of the Secretary for Administration and Justice (see official letter no. 013/VPD/2010) on 5<sup>th</sup> March 2010. Therefore, the supervisory body should know the case in August 2010.
8. Since the Chief Executive has already made decision on the complainant’s request and appeal through issuing an order and there are no new information and request for CCAC’s investigation and analysis, there is no need to adopt any other measures.

\* \* \*

## Part V: Conclusion

According to the analysis above, our conclusion is as follows:

### I- The decision on approval given by the President of the Municipal Chamber:

#### Procedural defects

1. The President of the Municipal Chamber neither followed normal and statutory procedure to handle the relevant applications **nor publicized the date of entry into force of the *Internal Regulation for Perpetual Lease of Grave and the deadline for application* to the public.**
2. The President of the Municipal Chamber did not adopt a set of clear criteria to approve the applications for the ten perpetual graves and the rationale of approval was obscure. Also, **he did not clearly point out the reason for the changing of his stance** (At first, these applications were not approved, but finally they were approved.)

#### Material defects

3. The President of the Municipal Chamber **neither adopted a set of objective and clear criteria nor specified the reason for approval when approving the applications for perpetual grave.**
4. **It is suspected that “tailor-made” decisions existed in the grant of grave** because the criteria and procedure of approval were not established until the data of all applicants were obtained, **contrary to the principles of equality and justice.**
5. When assessing the applications for the ten graves, the legality of the rules cited and whether conflict between different norms existed were not thoroughly considered.
6. The content and scope of the approval were not specified when giving the approval (whether the granted grave was perpetual grave or grave on perpetual lease).

7. When making a decision (the order in December 2000) contrary to the suggestion made by the subordinates, the President did not give any reason and explanation, violating Subparagraph d) of Paragraph 1 of Article 114 of the *Code of Administrative Procedure*.
8. In addition to making illegal decision, **the President of the Municipal Chamber also made an inappropriate and inopportune decision at that time<sup>115</sup> (two weeks before his tenure ended)**.
9. As the President of the Municipal Chamber, **he did not fulfil his responsibility to ensure legal administration carried out by all departments and staffs of the municipal bodies**.

\* \* \*

## II- **The role of the Standing Committee for Administration, Finance and Property and related problems:**

1. The Committee, being unclear about its own competence and responsibilities, **proposed regulation which did not accord with the law, showing its inadequate awareness of law observance and indirectly giving chance to third parties to carry out illegal acts**.
2. **The Committee did not exert its function to ensure and supervise legal administration carried out by all entities under the municipal bodies and their respective officeholders**.
3. When there were only less than 15 days left for its tenure, **the Committee proposed an important measure which had significant effect. This action was, indeed, inconvenient and inopportune** (in addition to illegal) as far as policy and legality are concerned.

\* \* \*

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<sup>115</sup> If the regulation was publicized by statutory means, it would be impossible to grant the graves by December 2001.

### III- About the supervisory body of municipal bodies:

1. When exercising the competence of supervision, the supervisory body failed to ensure strict compliance with the principle of legality by the supervised body.
2. Through analysis on the minutes, the supervisory body should be able to adopt measures in order to prevent the illegal, inopportune and inappropriate decisions made by the former Temporary Municipal Council before it was revoked, especially the approval of the said *Internal Regulation*. It was also able to review the activities carried out by the Municipal Chamber and whether the revision of activity plan it submitted accorded with the law or should be modified.
3. As revealed by the report, there were irregularities existing in the grant of graves, which contradicted the “clarification” it released.
4. After the case was made public, **the supervisory body, apart from issuing a press release to explain the case, should have ordered to take investigative measure (such as requesting the IACM to conduct investigation and review the procedure) according to the law as well as reveal other relevant details to the public.**
5. In order to protect the image of the Public Administration and abide by the principle of impartiality, it could, under Subparagraph d) of Paragraph 1 of Article 50 of the *Code of Administrative Procedure*, have requested the Chief Executive in written form to assign other staff to carry out independent investigation<sup>116</sup> into the case and notify the public of this suggestion.

\* \* \*

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<sup>116</sup> Article 354 or Article 357 of the *Statute of Personnel of the Public Administration of Macao* can be cited.

#### IV- About the complaint:

1. The criteria adopted to illegally grant the ten graves could not be adopted to approve the complainant's application.
2. Facing the IACM's irregular handling of the application, the complainant should employ the mechanism of administrative and judicial appeal in order to protect her rights and interests instead of waiting until the limitation expired.
3. Since the Chief Executive has already made a decision on the complainant's request and the latter did not file any judicial appeal, this case has already been resolved. In addition, there is no information or evidence proving the illegality (invalidity) of the decision for the time being, so the CCAC is not able to follow up the case.

\* \* \*

#### Conclusion:

1. Since the former Temporary Municipal Council has been revoked, **those who made the decision have already left his office, the limitation against the alleged power abuse has expired and the prescription for prosecution for disciplinary liability is extinct**, there is no legal basis for continuing the follow-up currently. At the same time, as the decision on the grant has been executed for almost ten years, it is impossible to solve the problem by means of reinstatement. Nevertheless, the case serves as a warning for the IACM since it is the government department in charge of the matters about cemeteries and graves and there are many cases and situations yet to be clarified. Therefore, the relevant departments should adopt appropriate measures to follow up the matters in order to boost the efficiency and improve the procedures.
2. Article 59 of the *Basic Law* states, "A Commission against Corruption shall be established in the Macao Special Administrative Region. It shall function independently and its Commissioner shall be accountable to the Chief Executive." Since the conclusion of this investigation involves the staff of the supervisory body and the Office of the Secretary, in order to ensure strict compliance with the principle of neutrality and impartiality that administrative bodies should



abide by, given that the content and conclusion of the investigation are on the spotlight, we herein request the Chief Executive to issue an order under Paragraphs 4 and 8 of Article 4 of the *Organic Law of the CCAC*.<sup>117</sup> If given an order of his approval of the report, the CCAC will notify the supervisory body of the IACM and the complainant of its content as well as reveal it to the public through appropriate channels.

\* \* \*

Finally, my order is as follows:

**To submit this report to the Chief Executive.**

\* \* \*

**The CCAC will follow up the case upon receipt of order from the Chief Executive.**

\* \* \*

The Commission Against Corruption, August 2011

The Commissioner Against Corruption  
Fong Man Chong

<sup>117</sup> Article 4 of Law no. 10/2000 of 14<sup>th</sup> August (*Organic Law of the CCAC*) states, “*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; (...) 8) Report the results of its main inquiries to the Chief Executive and inform him of any acts carried out by principal officials and by other officials as referred to under Subparagraph a) of Paragraph 2 of Article 336 of the Penal Code and which may be subsumed in its scope of activity;(...)*”

**Note: The report was publicized on internet on 8<sup>th</sup> September 2011 upon receipt of an order of approval from the Chief Executive.**

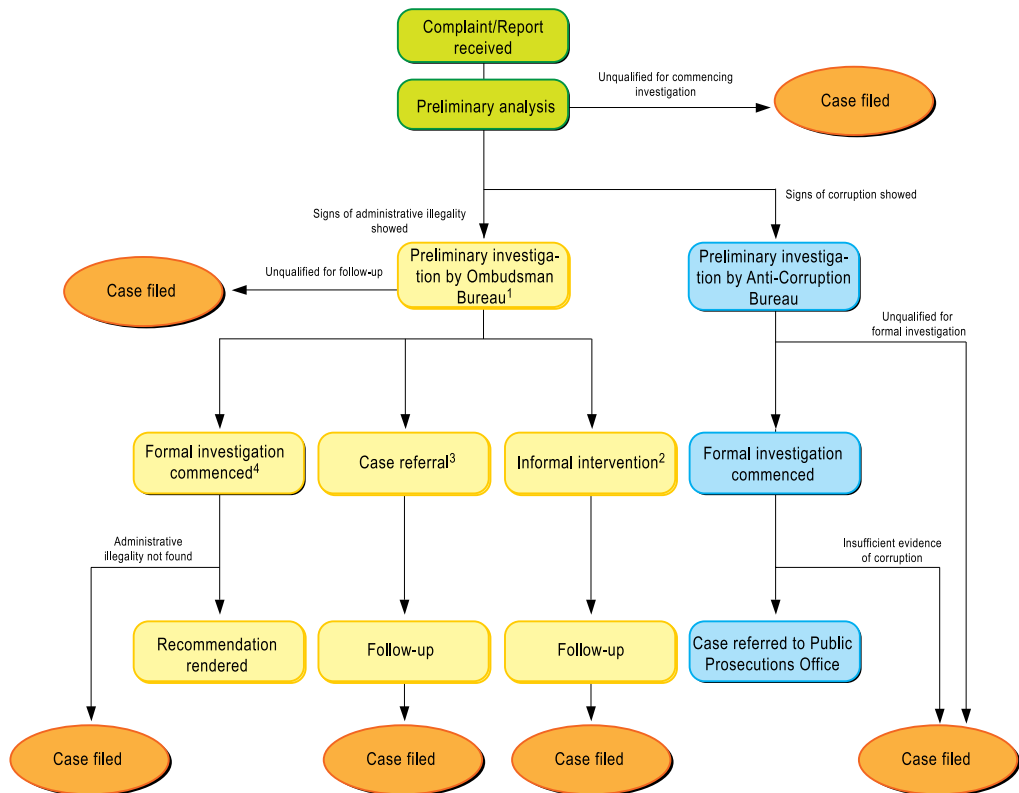
**Conclusion:**

Inspiration of the case:

- (1) Establishment of internal regulations beyond competence and in violation of the requirement for public announcement is illegal;
- (2) Inconsistent approaches to handle different applications without pointing out the basis;
- (3) The president of collegial body did not strictly comply with the principle of legality and even made illegal and inopportune decisions;
- (4) The supervisory body did not strictly supervise the legality of activities carried out by the supervised body.

## 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.



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