

CHAPTER V

OMBUDSMAN

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In the area of ombudsman, the CCAC recorded 220 complaints and 608 enquiries in 2005, concerning issues of the legal system governing public services, municipal affairs and legal consultations. The overall figures declined compared to those in the previous year, which might be attributed to the promulgation of Guidelines on Professional Ethics and Conduct of Public Servants and Recommendations on the Formulation of Code of Conduct for Public Services and Institutions.

After receiving the cases of administrative complaints, the CCAC would first analyze their nature and problems, then adopt multidimensional measures (such as referral, informal intervention) to handle the cases promptly, flexibly and effectively. In the meantime, the CCAC had changed its past practice in which every case was commenced for investigation; rather, a discreet screening procedure was in place to evaluate the cases before deciding on commencement for investigation. As for the intricate cases (such as problems related to legal systems or operations of government departments) where individual intervention has little effect, “research and examinations of systems and operations” would be used.

Concerning the research and examination in 2005, the CCAC completed two researches on systems, namely “The Prosecution Procedure and Sanction Procedure against Administrative Infringements” and “The System of Serving Exclusively the Public Interest and Not Engaging in Incompatible Activities for Public Servants”. The reports were delivered to the administrative authorities. In terms of examination on operations, the CCAC collaborated with other departments such as the Civic and Municipal Affairs Bureau in reviewing the operations of their subsidiary units, as well as followed up on the Health Bureau and Macao Trade and Investment Promotion Institute on their implementation of the improvement measures.

In order to improve the internal management of different departments/institutions, increase the transparency of work processes and strengthen people’s awareness of integrity, the CCAC formulated Guidelines on Professional Ethics and Conduct of Public Servants and Recommendations on the Formulation of Code of Conduct for Public Services and Institutions in 2004. In 2005, the CCAC spared no efforts in launching various promotional activities, including distributing the publications to all public servants and organizing a series of seminars for the directors and chiefs and public servants of Macao. In the meantime, the CCAC actively

followed up with individual departments on the formulation of internal guidelines suitable for their own working environments and provided them with technical assistance in terms of guideline contents. In addition, the CCAC organized a number of seminars/workshops on public procurement at the request of several departments and conducted workshops on the same topic as an integral part of the training organized by the Public Administration and Civil Service Bureau.

Moreover, in order to strengthen the capacity of ombudsman personnel and to learn efficient working methods from other regions, in 2005 the CCAC sent some staff members to attend the leadership-training course held by ICAC of Hong Kong, and the investigation course co-organized with the Chinese People's Public Security University. Meanwhile, it also assisted the Ministry of Supervision of the People's Republic of China to run personnel training courses. The staff members also participated in many international conferences, maintaining international contacts and learning experiences from each other.

5.1 Investigation

5.1.1 Case Interventions

5.1.1.1 Cases Recorded and Processed

In 2005, the CCAC processed 220 cases of administrative complaints, mostly involving the legal system governing public services, municipal affairs and illegal constructions. Including 83 cases brought forward from 2004 and excluding 31 overlapping cases, there were 272 cases in total to be processed throughout the year. Of these, 238 cases were handled, accounting for 87.5% of the total, an increase of more than 10% compared to 77.2% in 2004.

Table 18
Classification of cases of administrative complaints in 2005

Problems involved	Numbers
Legal system governing public services (staff rights and interests, recruitment, internal management, discipline and abuse of power)	74
Municipal affairs	33
Illegal constructions	30
Education, medical and health matters	8
Traffic offences	5
Insurance	5
Public procurement	5
Irregularities in other administrative procedures	56
Matters outside the competence of the CCAC	4
Total	220

In 2005, the number of complaints in the area of ombudsman dropped compared to the previous year when the number of cases was unprecedentedly high. In 2004, the CCAC intensified the promotion of ombudsman and established its branch office, which might have contributed to the sharp increase of complaints in that year. Concerning the obvious decline of complaints in 2005, there were several possible reasons as follows:

I – Since the CCAC promulgated Guidelines on Professional Ethics and Conduct of Public Servants and Recommendations on the Formulation of Code of Conduct for Public Services and Institutions, and held seminars entitled “Noble Character, Righteous Conduct” for all the public servants of Macao, the public servants became more aware of the issue and consequently avoided administrative illegalities or malpractices. In the meantime, as more departments/institutions had formulated their internal working guidelines and operating procedures, transparency was increased and personnel conduct was regulated, resulting in better management and the decline of complaints.

II – In 2005, the number of enquiries concerning the legal system governing public services and Guidelines on Professional Ethics and Conduct of Public Servants doubled compared to that in 2004. This in a way reflected that the citizens and public servants had become clearer

about administrative illegality or malpractice, and how to protect their own rights after the CCAC's explanations on the operation of different departments/institutions, enforcement of law by agents and application of relevant laws. Consequently, it also lessened the necessity of the citizens lodging complaints with the CCAC.

III – As government departments/institutions all started providing consultations on law amendments concerning transportation, health, labour and other issues closely related to people's livelihood, citizens could express views through various channels. As for some more complicated problems that could only be solved by amending current laws, such as issues concerning transportation, illegal constructions, punishments for certain infringements lacking deterrent power and so on, the CCAC clarified the situations for the citizens, which also contributed to the decline of similar complaints.

In addition, there were 238 cases filed in 2005 for reasons such as lacking sign of administrative illegality or malpractice, cases having been handled (through case referral, informal intervention and advice or suggestions given by the CCAC), cases outside the competence of the CCAC, and cases lacking evidence and so on. It is worth mentioning that among these cases recorded, there were 172 cases found unrelated to administrative illegality or malpractice (70% of the total), an increase of 60% compared to that of the previous year. Even for such cases, when it showed room for improvement by the relevant departments, the CCAC would provide them with suggestions or opinions, such as perfecting the working procedures, reviewing personnel arrangements, formulating internal working guidelines, strengthening information exchange, or even drafting amendments to current laws or regulations. The departments responded positively to all the suggestions.

Table 19
Cases of administrative complaints handled in 2005

Reasons for cases filed	Numbers
No signs of administrative illegality or malpractice	172
Handled by respective departments (referral, informal intervention, advice or suggestions)	37
Lack of evidence	15
Outside the competence of the CCAC	11
Others	3
Total	238

5.1.1.2 Cases Commenced for Investigation and Given Recommendation and Suggestions

In 2005, the CCAC conducted in-depth investigations into two cases as well as provided recommendation and suggestions, concerning “Personnel Regulations in Administrative and Financial Autonomous Entities” and “Supervisory System Governing the Discipline of the Directors and Chiefs”. A summary of the documents was included in the Appendix.

5.1.1.3 Suggestions on Amending the Road Code and the Road Regulations

As stated above, traffic management and violations were major issues of complaints that were in fact closely related to the Road Code and the Road Regulations. As the Macao SAR Government consulted the public about amendments to the two laws/regulations in 2005, the CCAC took the initiative to contact the competent authority, the Law Reform Office. The CCAC raised certain traffic-related problems discovered and suggestions derived from past working experience, from analysis of relevant laws and regulations, and from discussions with relevant departments. An abstract of the problems proposed to the Law Reform Office is as follows:

Abstract of problems	Relevant laws
1. The authoritative entity in canceling temporary driver's certificates is not yet clearly defined by the law; even if a point-deduction system is introduced later on, it is still imperative to definitely clarify the authority concerning the cancellation of driving qualifications.	Road Regulations, Article 66, Clause 11
2. The law should clearly define whether a driving qualification derived from false data contained in a driver's licence shall lead to disqualification, as it involves the issue of re-application for the licence.	Road Regulations, Article 66, Clause 7
3. The current regulations require driver's licence examinees and driver's licence holders to pass a special examination by oculists. However, since private oculist licence does not exist in current law, the regulations should be amended to be more practical and should take into consideration the fact that the eyesight problems of glasses or contact lens wearers may be rectified by technology nowadays.	Road Regulations, Article 63, Clause 4
4. As for those drivers in certain age-brackets who have not yet renewed their driver's licences before the due time, the law requires them to pass the examination to validate their licences. In reality, except that they have gone to the next age-bracket, they are normally allowed to renew their licences by merely paying overdue renewal fees and providing health certificates. Therefore, it is necessary to reconsider the legal standpoints and to clearly stipulate the requirements for renewal and the penalties for breach of regulations at the time of law amendment.	Road Regulations, Article 74, Clause 7
5. The current regulations stipulate that "administrative and technical staff of foreign envoy" or "drivers employed by mainland organizations" are issued special driving permits/licences. Regarding the requests from some air companies, institutes and public institutions from the mainland to have the regulations extended to their staff who drive in Macao (non-Macao driver's licence holders), it is necessary to amend the law to regulate	Road Regulations, Article 72 and Decree-Law No. 67/84/M on 30 June
6. The current law only requires an institute applying for a special driver's licence to promise to monitor its driver's behaviour, which may not exert efficient supervision. At the time of law amendment, it shall take into account factors such as criteria for issuing a special licence, legal consequences for violators of the traffic regulations and for the institutes they belong to.	Decree-Law No. 67/84/M on 30 June
7. At present, there is no law regulating the driving lessons of the Public Security Force. The lessons should be regulated in order to ensure the quality of the trainers.	Road Regulations, Article 76, Clause 1
8. Concerning the examination of the specifications of imported vehicles, the current practice is that a department conducts preliminary screening when a vehicle enters into Macao, and then another department carries out a detailed examination when registering the vehicle. Since coordination problems between departments are likely to occur in the process and may result in importing substandard vehicles to Macao, the mechanism should be reviewed.	Law No.7/2003, Article 12; Road Regulations, Article 49, Clause 1 and Article 51, Clause 1

Abstract of the problems	Relevant laws
9. According to the current law, the registration requirements vary with the country of origin of the vehicles (from Portugal, China or other places). Such practice may give people the impression of “favouring one over the other”. Therefore, the relevant article should be deleted and the registration requirements should be consistent.	Road Regulations, Article 52, Clause 1
10. At present, new imported vehicles must undergo a process of auto-brand-model examination. Since the special committee is only in charge of document checking and the vehicle dealers can actually modify some data of the certificate of origin, putting the credibility of the procedure in doubt, the mechanism should be reviewed.	The Regulations of Approval of Model and Brand of Motorized Vehicles published in the Official Bulletin of Macao, Series II, No.5, 3 rd February 1999
11. The current law requires applicants for importing old/used industrial machines to provide quality certificates issued by the country of origin. However, the requirement can hardly be fulfilled and, in practice, the authority accepts applicants’ declarations instead. A clarification is imperative at the time of law amendment.	Edict, Article 1, Clause 2d, 219/98/M, 19 th October
12. The current law stipulates that luminosity of a car’s front light shall not be “dazzling”, but lacks a judging standard that ought to be clearly defined to avoid controversies.	The Road Regulations, Articles 27 and 28
13. The current law stipulates that luminosity of a car’s glass shall be of achromatic colour or completely colourless, but lacks a judging standard that ought to be clearly defined to avoid controversies.	The Road Regulations, Articles 32 and 33
14. There is no mechanism for re-examining the noise level of vehicle engines in the current law. The citizens who are unsatisfied with the examination results may doubt the impartiality of the law enforcement agent. Therefore, the current noise-measuring mechanism should be further improved.	Article 11 of The Regulations of Inspection and Regulation to Fix the Various Specifications of Motorized Vehicles published in the Official Bulletin of Macao, Series I, No.10, 9 th March 1994
15. Many coaches in Macao are equipped with an entrance door on the right side. However, by law they must park on the left side of a road or on a footpath. In that way, the on-off passengers are exposed to danger, which requires a study of the problem.	The Road Regulations, Article 32
16. If a driver is caught without a valid insurance, he or she is required to show the certificate within a limited period of time. However, the Road Code and the Legal Regime of the Compulsory Insurance of the Civic Responsibility of the Vehicles stipulate the period of time to be “5 days” and “8 days” respectively. Based on the principle of “special law derogates general law”, “8 days” should be the criterion. Therefore, the Road Code should be amended to avoid confusion.	The Road Code, Article 78 and Decree-Law, no. 57/94/M, Article 40, 28 th November
17. Since some drivers’ original registration cards have to be kept with the bank for their mortgage, they are allowed to show the “certified copy” when being inspected. The practice lacks legal basis and should be considered at the time of law amendment.	The Road Code, Article 56, Clause 2

Abstract of problems	Relevant laws
18. In case of a fatal traffic accident, the current law requires the troublemaker to take an alcohol-test, yet the time of testing is not specified. Considering that timing of testing is a vital factor in evidence collection and that some possibilities may affect its effectiveness (such as the driver's health problems or the driver's deliberate interruption of the alcohol-test), the testing mechanism should be improved.	The Road Code, Articles 93 and 94
19. The equipment used to examine and determine the quantity of exhaled alcohol has not been standardized, and the tests for anaesthetics and psychotic drugs have not been institutionalized either. These issues should be considered at the time of law amendment.	The Road Code, Article 68 and Article 95, Item a and Edict, Article 8, Clause 1, 274/95/M, 16 th October
20. The current law cannot effectively impel the law-breakers to pay the fines before the vehicle is transferred, especially when the driver's address and phone number are changed, posing difficulties for the law enforcement agency to advise the driver. The problem should be considered at the time of law amendment.	—
21. When the court has "disqualified" a driver, the law enforcement agency will not inform the offender until it receives a formal notice from the court. Then the driver's certificate or licence can be withdrawn or detained (if it has not been previously detained). Since it requires coordination between the court and the law enforcement agency and problems may occur during the follow-up procedure, some drivers who were "disqualified" years ago had not been actually penalized yet. It is necessary to review the mechanism.	The Road Code, Articles 86 and 90
22. Regarding the detainment of a driver's licence, the current law describes that "a law enforcement officer may detain the driver's licence". It may give people a wrong impression that the detainment is subject to a law enforcement officer's free will (discretionary power). The way of expression should be adjusted.	The Road Code, Article 89
23. As there are many bicycles on the road, which may affect traffic safety, stipulations on bicycle riding should be in place.	—
24. Since electric bicycles do not meet legal requirements and thus cannot pass the model-brand examinations, in principle they should not be allowed on the road. However, in reality these engines can easily be dismantled and replaced, making it difficult for the supervisory authority to determine the fact and enforce the law. Therefore, this issue should be regulated.	—

5.1.2 Help and Consultation

In 2005, the CCAC recorded 608 cases for help and consultation, a decline of 5.7% compared to that of the previous year. In some particular areas, the number decreased sharply. For example, concerning public procurement, there were 21 cases compared to 38 cases in 2004, a decrease of 45%; its overall proportion also declined to 3.5% in 2005 compared to 6% in 2004. The decline may be attributed to the following reasons: In 2004, the Guidelines for the Procurement and Acquisition of Public Goods and Services was promulgated, so many departments and public servants consulted with the CCAC about their relations with the citizens and with the suppliers. Up to 2005, the “Guidelines” had been publicized widely, the individual departments/institutions had generally established and improved their internal procurement systems, and the procedures had also become more transparent to the public. These factors all contributed to the decline in the number of cases for help and consultation in related areas.

However, in 2005 cases for help and consultation concerning the legal system governing public services and the Guidelines on Professional Ethics and Conduct of Public Servants accounted for about 40% of the overall cases, which doubled that in 2004. The phenomenon resembled the initial period when the Guidelines for the Procurement and Acquisition of Public Goods and Services was publicized, causing an increased number of consultations in that area. This reflected the fact that both departments and public servants normally consult more with the CCAC when formulating internal code of conduct and upholding honourable practices.

Table 20
Classification of matters appealing for help and consultation in ombudsman area in 2005

Matters	Numbers
Legal system governing public services (staff rights and interests, recruitment, discipline and declaration of incomes and properties)	148
Guidelines on the Professional Ethics and Conduct of Public Servants	93
Municipal affairs	46
Disputes between employers and employees	33
Traffic offences	32
Illegal constructions	26
Public procurement	21
Information supply	14
Legal consultation	11
Medical and health matters	8
Tax affairs	7
Illegal labour	6
Economic and social housing	5
Others	61
Outside the competence of the CCAC (private sector and lawsuits)	97
Total	608

5.2 Research and Examinations

5.2.1 Research and Examinations of Systems

In 2005, the CCAC completed two research projects – “The Issues on the Prosecution Procedure and Sanction Procedure Against Administrative Infringements” and “The System of Serving Exclusively the Public Interest and Not Engaging in Incompatible Activities for Public Servants”. The main contents of the projects are as follows:

The Issues on the Prosecution Procedure and Sanction Procedure Against Administrative Infringement

In recent years, there have been many problems relating to the prosecution procedure

and sanction procedure against administrative infringements, discovered from the complaints the CCAC received and the joint investigations with other government departments. Issues include different legal interpretations of the same law articles by different departments, prolonged procedures and lack of practicability in some parts of the procedures, etc. In the meantime, the promulgation of the General Regulations for Public Areas and other separate laws provided some alternate punishments and preventive measures for the current system which is mainly regulated by the General Regime of the Administrative Illegality and Respective Procedure in terms of administrative infringement. However, since such measurements may have some effect on people's rights and freedom, they should be properly regulated.

To this end, the CCAC started reviewing the "Issues on the Prosecution Procedure and Sanction Procedure Against Administrative Infringements" in 2005, including making suggestions on the amendment of the General Regime of the Administrative Illegality and Respective Procedure (hereinafter "General Regime"). The main conclusions of the report are as follows:

I - Subsidiary applications of the law

The General Regime currently adopts a "multi-application" approach (subsidiary applications of the Code of Administrative Procedure and the general principles of Penal Code and Penal Procedure Code) which requires an interpretation of the applied article. The practice not only prolongs the handling process, but also leads to different explanations of the same item by different departments, causing the law enforcement authority to lose consistent criteria and hurt its credibility. This should be taken into account when amending the General Regime.

II - Substantial System

(1) The concept of "administrative infringement"

The definition of "administrative infringement" in the General Regime is not different from the concept of "contravention" defined in the Penal Code. The infringed subject in both laws are "preventive provisions of a law or regulation", which makes it difficult to differentiate between the one of criminal nature and the one of non-criminal nature. Therefore, if the system of coexistence of the two mechanisms is to be maintained, it will be necessary to redefine the concept of "administrative infringement" through amending the General Regime.

(2) The punishment for administrative infringement

a) Principal punishment

1. In the General Regime, the principal punishment for an “administrative infringement” is to impose a fine. However, there are separate laws composed of non-fine principal punishment. Therefore, it is necessary in the General Regime to clarify different types of principal punishment, or to stipulate other types of principal punishment in separate laws apart from imposing a fine. In this way, contradictions between separate laws (especially those in the form of administrative regulations and not of a legislative nature) and the General Regime may be avoided.

2. The conditions and limitations of principal punishment should be stipulated in the General Regime, which may be used as subsidiary applications when there is a lack of provisions in the separate laws. In addition, an imperative provision on the confinement of principal punishment is also required, so as to prevent the law enforcement agencies from having too extensive discretionary power and using inconsistent criteria when imposing punishment.

3. For administrative infringements with punishment that are not applied according to the seriousness of the infringement, a fixed-fine approach may be adopted to improve the administrative efficiency. Therefore, “prescribed fixed fines” should be introduced in the General Regime to distinguish it from “prescribed fines with top-bottom limits”.

4. For administrative infringements that may be punished by judging their faults and legal interests protected, it is necessary to introduce a classification of different “infringement behaviours” into the General Regime, such as “general infringements”, “serious infringements” and “very serious infringements” and so on; and the corresponding punishment (including accessory punishment) of different categories and degrees may also be stipulated. Meanwhile, as for administrative infringements that may be punished by non-fixed fines, relevant criminal provisions may be taken for reference, so as to establish general principles and rules for what concrete fines to apply and how to reduce or increase the punishment. In a way, these principles may be applied as supplements to cases that are not stipulated in separate laws.

b) Accessory punishment

1. It is appropriate in the General Regime to stipulate different types of accessory pun-

ishment that may be adopted by different administrative regulations.

2. For the accessory punishment that constrain an offender's rights and freedom directly and indirectly, it is necessary in the General Regime to clarify their preconditions and limitations to avoid any inappropriate provisions. To this end, an amendment of Article 6, Item 3 (concerning accessory punishment) in the General Regime may be considered.

3. As some of the accessory punishment such as "prohibiting any business practices", "closing down establishments permanently" are not very effective in practice, it may be ideal to establish a mechanism targeting establishments confined by the administrative licence system and enabling the public to gain access to their records of administrative infringements and of the principal and accessory punishment imposed. Furthermore, to deal with the issues of changes of name or transfers of ownership/operatorship of establishments, the individuals concerned are required to submit a declaration or agreement of accountability to the authority.

c). Recurrence of infringements

1. Although cases of "recommitted offender", "repeated offender" and "continuing offender" are once in a while regulated in the current law, they have not yet been clearly defined. Consequently, some offenders have successfully escaped severe punishments due to the undefined "quantity" of offences. Therefore, clearly classified punishment is required in the General Regime so as to be able to quantify the actual offences.

2. If lawmakers deem a "continuing offender" system necessary for accountability of administrative infringements, it is appropriate to confine its applicability to those infringements with non-fixed fines as principal punishment, since the amount of forfeit is determined by the nature of infringements. Meanwhile, the preconditions of a "continuing offender" should also be clearly defined.

3. The preconditions to confirm a "recidivist" are defined differently by different separate laws. The practice may be altered when amending the General Regime in which either clarified provisions are stipulated to maintain the practice, or a general principle is enacted to define a "recidivist" as an offender who has perpetrated the same infringement within a year, meanwhile leaving the possibility for separate laws to define particular intervals within specified terms.

4. There are currently different types of punishment for a “recidivist” in different separate laws. Therefore, it is necessary to analyze carefully Article 6 Item 2 in the General Regime (a general provision of “recidivist”); it may be maintained or stipulated as a general principle to guide its top-bottom limits. An accessory punishment may be increased for each repeated offence.

5. Though it is stated in Article 8 of the General Regime the principle of “no one should be punished twice for the same cause”, it may also be mandatory to clarify that the principle only applies to cases where the legal interests enacted by the criminal law and the administrative regulations are the same; namely, an offence of a criminal law or misdemeanour absorbs the offence of an administrative law, in which a criminal offence and an administrative infringement are not essentially overlapped. Therefore, an article should be added to the General Regime postulating that “unless the protected legal interests are different”.

6. For plural or multiple offences codified by several administrative regulations (enforced by the same administrative institution), there are not yet any provisions clarifying the relevant legal consequences in the General Regime. It is therefore necessary to introduce a general principle to regulate the “joinder of punishment for plural offences committed by one person” (joinder of fines for plural offences) and the confinements of the unique concurrent punishment.

d) Intervals within procedural period of prescription

1. It should stipulate the intervals within procedural period of prescription in the General Regime to make good the flaw of the current statute.

2. Considering illegal constructions have been long-term tricky problems, an effective calculating mechanism should be ensured by the General Regime, in particular the “starting day” ought to be clearly defined. Moreover, the duties of owners of the real properties and places may also be taken into account.

III-Procedural System

1. Considering the difficulties administrative authorities encountered in determining suspects’ identities and preventing consecutive infringements, especially the ineffectiveness of searching and preserving evidence, the General Regime should give the detectors, examin-

ers and investigators the law enforcement power, including some temporary or preservative measures. The detailed implementations may be defined by separate laws.

2. Given the complete nature of a general statute, the applicable temporary or preservative measures should be exemplified, stipulating punishments for the crime of disobedience if the measures are not observed so as to make the statute more compelling.

3. As some witnesses of the authority are able to instantly identify the infringers, a mechanism of "Prosecution Record" should be introduced into the General Regime, which enables the sanction procedure to be launched in time. Subsequently, the infringers will be informed with the accusation and advice note, so that defence of accusation or direct punishment (i.e. paying a fine) can be carried out, thus the overall procedure will be accelerated.

4. Classifications of the contents of the statement and prosecution record should be clearly prescribed in the General Regime.

5. For the administrative infringements that occur concurrently or are interrelated, even if not committed by the same person but is part of the responsibility of the same department, it should be stipulated in the General Regime the possibility of taking only one statement to make the process smoother.

6. In the General Regime, cooperation should be made a legalized obligation should be made to prevent the individuals concerned from refusing to provide data (such as an infringer's identification data) to hamper the process. Criminal liabilities should be stipulated for any breach of the obligation.

7. As the current noticing mechanism is utterly time-consuming, improvements can be done on two fronts. On the one hand, it is appropriate to set up a strict system where notices are delivered in person and by mail and to identify the circumstances where the fact of delivery can be confirmed or be inferred to exist. On the other hand, public notices and non-accusation notices should also be regulated. In addition, if it is feasible for the police authorities stationed at the border checkpoint to issue notices, a relevant information exchange mechanism should be in place.

8. The General Regime should unequivocally prescribe how the stakeholders' rights to plea to charges and to defend at hearings can be exercised (for example, it may stipulate that

pleas and defences at hearings ought to be carried out in written form while the agency in charge of the investigation may decide, according to specific situations, that the procedures be done verbally, provided that the statements are recorded accordingly. Also, it may stipulate that pleas and defences at hearings can only be in written form, except for the cases where the agency in charge of the investigation is allowed by separate laws to carry out the procedures in verbal form). In addition, it may also stipulate that if the stakeholders can provide justifiable reasons for absence, a written hearing should be allowed to be postponed.

9.Despite the stipulations that certain legal obligations ought to be fulfilled within a statutory period, in reality it is impractical for the law enforcement agencies to conduct hearings for a huge number of people and it may jeopardize the social interests that the law aims to protect by setting the obligations. Therefore, mainstream academic opinions and judicial interpretations all suggest that the hearing procedures be nullified. However, the General Regime should stipulate and clarify that such nullification only applies to the fixed-punishment cases prescribed by law, while for the non-fixed-punishment cases the authorities have to decide on punishment in accordance with the offences committed and so the current hearing procedures may not be nullified.

10.Although the mobility of non-resident offenders is high, their right to hearing should be protected. As for those non-resident offenders who are unwilling to pay fines or bails instantly, the provision of “offenders are strictly prohibited to enter the SAR until their fines are paid” in the current statute should remain. To this end, it should be stipulated that the relevant authorities ought to inform the police agencies stationed at the border checkpoints in a timely manner. In addition, non-resident offenders should not be allowed to provide community services in lieu of fines.

IV-Legislative Procedure

It is appropriate to enact the current General Regime in the form of “law”. Currently, there are many separate laws (some of them in the form of “law”, others by way of administrative regulations) stipulating other kinds of principal punishments apart from fines as well as a series of accessory punishments affecting offenders’ rights and freedom. Some regulations even enacted systems of incriminating and fining minors that are different from what is stipulated in the current civil and criminal laws. The practice has gone beyond the framework of the General Regime. Therefore, the regulations should be enacted in the form of “law” or

the amendment of the General Regime should follow a legislative procedure, so that a proper framework can be in place to avoid any inappropriateness in defining people's rights and freedom. As for implementation, administrative regulations may formulate rules of punishment based on the type and classification of the offence.

“The System of Serving Exclusively the Public Interest and Not Engaging in Incompatible Activities of Public Servants”

Concerning the current legal system of Macao public servants' integrity, the CCAC accomplished the Report on Avoiding Conflict of Interests in 2003, in which the system of exclusiveness of public servants (namely that public servants can only be exclusively employed by the authority and cannot moonlight except in some special cases) was reviewed. The system is essentially important for public servants to fulfill their missions in a fair and selfless manner as well as for the administrative authorities to protect their reputation.

In 2005, the CCAC promoted in full scale the “Guidelines on the Professional Ethics and Conduct of Public Servants” and required public departments/institutions to formulate their code of conduct. Meanwhile, opinions on the flaws in the current system of exclusiveness were also collected. In fact, the system does have deficiencies and provokes controversy. (For example, the definition of outside practice is neither clear nor practical, especially for those who engage in private practices without pay; inconsistent criteria exist for outside practices between public institutions and general departments/institutions; lack of provisions for reluctant participants in private practices, and so on.) Therefore, the CCAC started a research on “the System of Serving Exclusively the Public Interest and Not Engaging in Incompatible Activities of Public Servants” and proposed some suggestions for amendments to the General Principle for Civil Servants of Macao and the General Regulations Governing the Directors and Chiefs. The conclusions of the report are as follows:

1. Any administrative governance must be implemented through public servants who are entitled to execute and enforce the administrative powers. On the one hand, they can demand citizens or private entities to fulfill their legal duties for the sake of public interests, and can hold the offenders responsible. On the other, public servants can grant, confirm, terminate or cancel citizens' or private entities' special qualifications through examination and verification procedures.

2. Thus, the administrative authorities have the responsibility to ensure public servants'

professional ethics of fairness and selflessness.

3.Guided by such rationality, most of the countries and regions in the world have adopted the “system of exclusiveness ” to ensure that public servants’ integrity not be impaired by outside practices and to create a favourable environment for them to carry out their duties.

4.The system of exclusiveness for public servants established under Macao’s current law (including the General Regulations for Civil Servants, the General Regulations Governing the Directors and Chiefs and the specified personnel regulations of certain public institutions) has been implemented for more than ten years. Defects in the system have gradually emerged.

5.Regarding public servants’ involvement in outside practices with a private enterprise, “work without pay” may be less risky than “work with pay” in terms of “conflict of interest” and of violation of the principle of exclusiveness. However, the General Regulations for Civil Servants stipulate that every outside practice has to be applied for approval in advance, and the General Regulations Governing the Directors and Chiefs forbid any moonlighting activities. Treating “work with pay” and “work without pay” in such an indiscriminative way is undoubtedly too strict to the latter.

6.Moreover, although personnel at department head level generally have no rights to make final decisions nor do they know much about the government’s confidential data, they are treated as top-level personnel in terms of “work without pay” which is absolutely prohibited. The question about the necessity of placing such a strict restriction was raised.

7.In fact, as community activities in Macao are very popular, it is common for public servants to serve civil associations without pay. Whether this should be treated as “work without pay” has not yet been clarified by the current laws.

8.On the other hand, although the former High Commission Against Corruption and Administrative Illegality and the administrative authorities have elucidated “work without pay with private enterprises”, it is still impractical.

9.Being different from the Common Regime, some personnel regulations of public institutions impose no constraints even on leaders at management and decision-making level engaging in “work without pay” with private enterprises. The personnel are simply not required to apply for approval or make declaration.

10.In view of the practices of other countries and regions, their “systems of exclusive-

ness” generally do not require public servants to apply for approval in advance for their “work without pay”, while their private engagements are not allowed to have a conflict of interest with their current duties. However, the public servants are required to keep alert on any potential conflicts of interest and to consult their superiors whenever in doubt. Meanwhile, they also stipulate specific regulations of exclusiveness for public servants at various levels.

11. In fact, what the so-called “public servants shall not carry out outside practices” really means is that they shall not engage in activities that may contravene their public duties. In other words, any activities that may cast doubt on their integrity and harm the reputation of administrative authorities should be strictly forbidden.

12. Hence, for the public servants who engage in “work without pay” that has no conflict of interest with their duties, the administrative authorities should not impose too strict constraints.

13. On the contrary, the administrative authorities are obliged to remind public servants of their obligation of “not engaging in activities that may contravene their public duties”. Thus, the public servants will consider the possibility of “conflict of interest” with their public duties before taking any positions in private institutes or organizations outside their posts.

14. Deficiency still exists in the Common Regime regulating public servants working outside their duties. For example, some public servants engage in private practices not because they intend to do so but because they have inherited the business from their ancestors. The Common Regime does not stipulate any special regulations for this kind of case. Handling such cases with the mechanism of application for approval (for general public servants) and the mechanism of prohibition (for directors and chiefs) is unreasonable. Moreover, the administrative authorities currently follow three criteria when examining the applications: 1) the time involved in private practices not conflicting with the working hours of their public position, 2) the private practices not compromising the duty of impartiality, 3) the private practices not being prohibited by special laws. These three preconditions are not adequate to ensure that the private practices do not contravene the public servants’ duties. In fact, some other factors have not been taken into account, such as whether the outside practice may severely reduce the public servant’s rest time, whether the outside practice is so high-paying that it even attracts the public servant’s full attention, and how the public servant’s past job performance was, etc.

15. In addition, public servants are permitted to engage in professional training activities or in teaching activities not exceeding 11 hours per week. When granting permission, the administrative authorities should consider factors like the influence of such activities on the effectiveness of their current duties. There is no clear regulation in the Common Regime.

16. In view of other countries or regions with relatively advanced mechanisms of professional ethics for public servants, the factors used to judge the applications for outside practices include: whether the practices will affect the public servant's current job efficiency and how the public servant's job performance is, etc. Besides, the mechanisms also allow the departments to set up other judging criteria and standards in accordance with their specific circumstances.

17. Based on these, the following suggestions were made, aiming to establish an honest and efficient team of public servants and a legal system¹ that can safeguard public servants' professional ethics.

18. In the long run, the administrative authorities should amend² the "system of exclusiveness" prescribed by the General Principles for Civil Servants and the General Regulations Governing the Directors and Chiefs in the following areas:

a) Concerning general public servants working with private enterprises, it should distinguish between "work with pay" and "work without pay". For the former, while the application-approval mechanism may be maintained, additional conditions for approval may also be considered and formulated by individual departments, in order to ensure public servants' current duties will not be impaired by their outside practices³. For the latter, a more relaxed measure may be adopted; they may not need to apply for permission beforehand, nevertheless, they should be alert to any potential conflicts of interest and should consult their superiors whenever in doubt.

¹ In fact, in the Government Financial Policy Report 2006, p. 42, it is pointed out that "By perfecting the system, promotion, education, supervision and other various channels and ways, we will continuously promote the building of clean administration, in cooperation with the auditing work, especially in an effort to make public servants more aware of serving the public, understanding and abiding by the law as well as making better use of public resources through vocational training ..."

² In fact, amending the General Regulations Governing the Directors and Chiefs is mentioned in the Government Policy 2006 (ref. the Government Financial Policy Report 2006 in the Area of Administration and Justice, p. 1041)

³ In the same way, concerning the practices that public servants are allowed by the administrative authorities to undertake vocational training and engage in teaching activities no more than 11 hours per week, judging criteria should be set up to prevent the activities from affecting the public servant's current duties.

b) Concerning the engagement of directors and chiefs in private practices, it may be appropriate to maintain the mechanism of “absolute prohibition” for “work with pay”. As for “work without pay”, it may be appropriate to require the personnel to make a declaration in advance. Moreover, it should be stipulated that in case the director or chief is found to have engaged in a private practice constituting a conflict of interest with his/her official duties, his or her contract would be terminated without any compensation.

c) If the mechanism of “absolute prohibition” is to be maintained for outside practices with or without pay, it is appropriate to take the regulations in other countries or regions for reference and to distinguish between leaders with and leaders without decision-making power. For the latter, “absolute prohibition” may not be necessary for their engagement in private practices without pay.

d) It should be unequivocally stipulated that all public servants are prohibited from undertaking any activities that may intervene with their current duties, especially when the activities may put their integrity in doubt and damage the reputation of administrative authorities. The departments may provide supplementary clarifications on what activities might pose potential conflicts of interest, based upon the functions of the departments and work allocations of the staff. Furthermore, before engaging in any outside practices, public servants at all levels should also be required to proactively examine whether potential conflicts of interest exist and to consult their superiors when in doubt.

e) For public servants who do not intentionally engage in private practices, especially in situations of business inherited from ancestors, a transitional measure should be in place.

19. Concerning the special systems of certain public departments or entities, while their provisions permit all personnel, including directors and chiefs, to freely engage in any private practices without pay, it is still appropriate to establish a mechanism of self-examination and declaration to prevent conflicts of interest.

20. Before amending the laws, the administrative authorities should issue guidelines to clarify the meaning of “not engaging in outside (contravening) activities”, which include activities that may compromise the impartiality of public servants or impair the reputation of administrative authorities. The public servants should be reminded to stay alert to potential conflicts of interest and to consult their superiors when in doubt. In addition, when joining the public services, all public servants should be required to sign a “declaration of non-contraven-

tion” as a reinforced reminder.

21. During the transitional period before the law is amended, if the administrative authorities choose not to adopt the mechanisms of “application for approval” and “absolute prohibition” stipulated by the Common Regime when treating private practices without pay, they should issue guidelines as stated in previous paragraphs and clarify their standpoints to ensure the public servants’ understanding of their obligation and to remove their doubts about private practices.

5.2.2 Research and Examinations of Operations

In 2005, the CCAC and the Civic and Municipal Affairs Bureau carried out two research projects on the units under the Department of Vehicles and Transportation, as well as followed up on the implementation of improvement measures with the Health Bureau and the Macao Trade and Investment Promotion Institute.

The Civic and Municipal Affairs Bureau

A. A research was conducted on the operations of the Vehicle Inspection Centre of Division of Transportation under Department of Vehicles and Transportation. The following improvement measures were agreed on:

1. Facilities and equipments: to improve conditions for confidentiality of case files, security and order of facilities, labeling of facilities and usage of queuing status indicators.

2. Public reception and information supply: to install more directional signs, to ensure the receptionists properly identify themselves, to ensure the accuracy of information provided to the public, and to further promote the booking service of the centre for vehicle inspections.

3. Complaint mechanism: to establish a complaint recording mechanism and relevant statistics database as references for improving operations; to adopt adequate measures to ensure the confidentiality of complainants’ data and internal procedures; to ensure the staff being complained about be informed of the complaint handling results.

4. To improve the filing of internal documents.

5. Queuing system: to standardize the inspection hours for vehicles; to ensure punctuality

for starting inspections; to review and improve the current sortition system for inspection.

6. For inspections of vehicles applying for registration, to randomly select an inspector-in-charge by computer on a daily basis.

7. Inspection procedure:

7.1 In case the vehicle is photographed, to ensure that the owner or the deputy sign on the photo(s) as confirmation.

7.2 To consider setting up a team for examining parts to carry out inspections by item so as to accelerate the process.

7.3 If there is no light transmission marked on the glass of the vehicle, to ensure taking the measurement and fill in the “vehicle glass light transmission” or given reference number and have it signed by the owner or the deputy.

7.4 To ensure that the examination checklists of all vehicles be signed not only by the inspector, but also by the owner or the deputy as a confirmation of the examination results.

7.5 To improve the printing quality of the current checklists.

7.6 To ensure that the inspectors properly record all the inspected items.

8. Concerning the practice that vehicles failing to undertake compulsory annual inspection within prescribed periods are allowed a grace period of 10 days to provide explanation, to consider stipulating it unequivocally when amending the Road Regulations.

9. Concerning the flaws or irregularities discovered during the inspection that are irrelevant to the safety conditions of a vehicle, to ensure setting a proper deadline according to law for necessary repair and re-examination; to keep the re-examination results properly in the record.

10. To amend the contents of the penalty notice, which is issued when the vehicle features do not match those recorded on the registration card.

11. When amending the Road Regulations, to conduct an integrated study on the necessity of coexistence of both “codified right” and “non-codified right” registration cancellation mechanisms, so as to ensure that the legislative intention is achieved.

12. For vehicles that are found to be unusable or fail to pass the examination during the inspection, to ensure that the “substitute registration card” include a validity date.

13. Regarding some provisions in the Regulations of Inspection and Regulation to Fix the Various Specifications of Motorized Vehicles that are hard to be implemented (i.e. the compulsory spare tyre must show three-fourth of its width; otherwise be disqualified), to review and amend the provisions properly.

14. To consider the possibility of establishing a special mechanism to provide suggestions on certain complicated inspections.

15. To review and improve the current inspection forms.

16. Concerning the special vehicle inspections requested by the Public Security Police Force, to ensure that the Police Force is well informed of the results.

17. To consider setting up a special team to carry out evaluations on the vehicles requested by the court, and to provide grounds for the evaluations in the reports.

18. To improve the examination procedure for vehicles involved in accidents, and to ensure that the inspectors-in-charge sign to confirm the inspection results.

19. To improve the test-driving procedures for taxis, and to ensure that the taxi drivers sign to confirm the test results.

20. To reinforce staff training on communication and conflict-handling skills, and to consider exchanging experience with counterpart departments in the vicinity.

B. The CCAC and the Civic and Municipal Affairs Bureau commenced a research project on the Division of Vehicle Authorization of Transportation Department of Vehicles and Transportation during the fourth quarter of the year. The CCAC personnel completed the initial phase of the research and gained an understanding of its actual operations.

Health Bureau

The CCAC continuously followed up with the Health Bureau on the research commenced in 2001 on operations of the Department of Pharmaceutical Affairs, and the research commenced in 2003 on the regulations of personnel attendance records, duty scheduling, overtime and shift work subsidies, internal rules and guidelines, and mechanism and proce-

dures for public reception.

A. Department of Pharmaceutical Affairs: The qualifications and guidelines for pharmacies were formulated; the “agreed upon remedy” was also included.

B. The Health Bureau’s staff attendance records, duty scheduling, overtime and shift work subsidies, internal rules and guidelines, and mechanism and procedures for public reception.

The improvements implemented in the past year are as follows:

Overall

1) By cooperating with Hong Kong Academy of Medicine, evaluations and training of medical staff members were strengthened.

2) Internal working regulations, including professional guidelines, were formulated.

3) The Regulations on Dealing with Salesmen Promoting Goods were finalized; Guidelines on the use of drug samples were drafted and opinions are being collected for preparation of the final version.

Supporting and Administrative Works

1) The electronic attendance recording system had been closely followed up by a task force in three stages and came into use in August 2005. The online authentication scheme for “doctor certificates” is in its initial exploration phase.

2) A study on the format of medical certificates, the usage guidelines and the issuing procedures was conducted.

3) By amending the payroll system, the computing programme for shift work subsidy calculation would be improved.

Emergency and Specialist Outpatient Departments of the S. Januario Hospital

1) Signs for the emergency and outpatient departments were gradually improved.

2) The roster programme for nurses in the emergency department, as an integrated part of the electronic attendance management system, was uniformly developed. The system also consists of the roster programming functions and emergency call confirming functions for the

personnel in all sections of the emergency departments.

Health Centre

1) The Regulations of Pharmacy Operation and the Guidelines for Dispensers in the Health Centre were formulated and included in the internal working regulations.

2) In Fai Chi Kei Health Centre, the electronic indication boards showing queuing status numbers were installed, which would be widely used in other health centres.

3) Complaints or suggestions that had been handled were being recorded in time and reported to the superiors regularly.

Macao Trade and Investment Promotion Institute

Following the promulgation of Administrative Regulation No. 3/2005 (amended the Residency Scheme for Investors, Managerial Personnel, Technical and Professional Qualification Holders), the CCAC followed up on the Guidelines on Application for Temporary Residency redrafted by the Macao Trade and Investment Promotion Institute and proposed suggestions on:

1. The establishment of a real estate evaluation commission and its operational mechanism, especially the set-up of a recusal procedure to prevent potential conflicts of interest.

2. The duration for examining and approving applications for investment residency.

3. The establishment of an effective mechanism for examining the educational background of investment residency applicants.

4. The preconditions to be met and the certificates to be submitted for family reunion involving de facto marriages.

5. The shelving and cancellation of procedures.

6. The submission of valid proof of real estate ownership for the initial and renewal applications for investment residency.

7. Concerning alteration of legal status, including changes of personal identity, Macao Trade and Investment Promotion should be informed of all the applications within a prescribed time.

5.3 Guidelines Formulated and Seminars/Workshops Held

5.3.1 Promotion of Guidelines on the Professional Ethics and Conduct of Public Servants

Promotion of the Guidelines on the Professional Ethics and Conduct of Public Servants was an important task for the CCAC in 2005. It aimed to enhance the public servants' integrity awareness and cultivate an ethical culture in public services.

Along with the promulgation of the Guidelines on the Professional Ethics and Conduct of Public Servants and Recommendations on the Formulation of Code of Conduct for Public Services and Institutions, the CCAC first set up a liaison mechanism to allow close and effective coordination with different government departments. Subsequently, the CCAC conducted a series of explanatory sessions on the two publications. Seminars entitled "Noble Character, Righteous Conduct" were implemented in two stages: the initial stage was in the first half of the year and the audiences included directors and chiefs of the departments/institutions as well as staff members of those departments closely related to citizens' livelihood. The second stage was in the period of October-December and the audiences were staff members from other departments. In total, there were 122 seminars (including 8 seminars in Portuguese) held for 64 departments, with 18,410 participants of all levels.

In the seminars, the CCAC exemplified the professional ethics and conduct of public servants required by the current law through short films and real-life work examples, and views were exchanged among participants. The CCAC intended to help the public servants realize the importance of professional ethics as well as to assist different departments in formulating their internal guidelines and strengthening their personnel management.



The Chief Executive Edmund Ho, Secretary for Administration and Justice Florida Chan and the Commissioner Cheong U presided over the Launching Ceremony for the Guidelines on the Professional Ethics and Conduct of Public Servants



The Chief Executive and chiefs of cabinets and directors of bureaus

Table 21

Statistics on the number of participants in the seminars of “Noble Character, Righteous Conduct”

Participants / Languages	Number of sessions	Number of participants
Directors and chiefs (Cantonese)	13	869
Directors and chiefs (Portuguese)	1	102
General public servants (Cantonese)	101	16,401
General public servants (Portuguese)	7	1,038
Total	122	18,410



Seminars for directors and chiefs



Seminars for general public servants



Suggestions, guidelines and pamphlets concerning the Guidelines on the Professional Ethics and Conduct of Public Servants

During the promotion, the CCAC responded to many enquiries by public servants. The most popular questions were then compiled in question-answer format and were published on the CCAC website for public servants to consult.

During the second half of the year, the CCAC followed up with different departments on the formulation of their internal guidelines. By the end of 2005, the progress of 55 public departments/institutions was as follows:

- the guidelines were formulated (22);
- the formulation was in process (17);
- while the formulation was in process, the Guidelines on the Professional Ethics and Conduct of Public Servants issued by the CCAC were adopted for the transitional period (2);
- The Guidelines on the Professional Ethics and Conduct of Public Servants issued by the CCAC were directly adopted (12);
- The Guidelines on the Professional Ethics and Conduct of Public Servants issued by the CCAC were adopted and supplemented with additional regulations (2).

During the above follow-up work, the CCAC not only paid attention to the progress of formulation of different departments but also provided technical support and suggestions and clarified the doubts occurring in the process, so that the guidelines could be more relevant to the specific needs of the departments and be an effective tool for personnel integrity management. Meanwhile, the CCAC also emphasized the concrete implementation measures of the guidelines, especially the necessity for the departments to establish internal communication mechanisms, such as organizing seminars and setting up consultation and feedback systems, etc. The CCAC believes that constant and effective internal communication mechanisms are of significance for strengthening the public servants' integrity awareness.

During the promotion, the CCAC was fully supported by different departments and institutions. They established long-term liaison relations with the CCAC, assisted in distributing the Guidelines on the Professional Ethics and Conduct of Public Servants to their staff members, required personnel at all levels to attend the CCAC seminars and gave the formulation of their internal guidelines high priority. Even though some departments of relatively simple structures may not have an urgent need for separate internal guidelines, they actively adopted

the guidelines published by the CCAC as their internal rules. This support and cooperation reflected the great emphasis attached to integrity cultivation by different departments, which were devoted to establishing a mechanism for effective management in the long run.

5.3.2 Other Specific Lectures and Workshops

Apart from organizing the seminars “Noble Character, Righteous Conduct” during the promotion of the Guidelines on the Professional Ethics and Conduct of Public Servants, the CCAC also, at the request of the departments/institutions, conducted seminars to explain the Guidelines on the Procurement and Acquisition of Public Goods and Services, aiming to raise the public servants’ awareness of “clean procurement” and to minimize the risk of breaching the law. Furthermore, the CCAC kept working with the Administrative and Public Service Bureau by sending representatives to speak at the “Public Procurement Workshops” that the Bureau organized for different departments/institutions.

5.4 Training and Exchanges

Apart from the routine courses organized by the Macao Government for middle- and senior-level public servants, in 2005 the CCAC also sent investigators of the Ombudsman Bureau to participate in some training programmes organized by the police departments or the anti-corruption agencies in other places, including a short training course on investigation knowledge and techniques organized by the Chinese People’s Public Security University and a commanding course for chief investigation officers organized by the Hong Kong ICAC.

In 2005, the CCAC visited the ombudsman agencies in several countries and received leaders or representatives from the Ministry of Supervision of the People’s Republic of China and from the ombudsman agencies in other Asian countries/regions (see Chapter VI, 6.4.2). In addition, the CCAC also assisted the Ministry of Supervision of the People’s Republic of China in their personnel training. These activities allowed the staff members of the Ombudsman Bureau to broaden their horizons, to learn from others’ experiences, and to gain new ideas for future work.

