

# **CHAPTER V**

## **THE OMBUDSMAN**

## Chapter V – The Ombudsman

In 2006, the CCAC recorded 254 administrative complaints, a 15.5% increase compared with the previous year. The contents of the cases mainly involved the legal system governing public services, municipal affairs and governmental operation. The CCAC carried out in-depth investigations into three of these cases with recommendations made. In addition, the CCAC recorded 753 requests for help and consultation, with a great increase in cases relating to economic and social housing, illegal labour and traffic offences.

In terms of research and investigation in 2006, the CCAC completed two projects of system on research projects, namely the Research and Analysis of Improving the Election System of the Legislative Assembly and the Examinations on the Power of Intervention of the Public Administration Concerning the Misuse and Poor Management of Private Premises. The relevant reports were submitted to the administrative authorities. In terms of research on operation, the Land, Public Works and Transport Bureau became a new collaborative partner; the CCAC investigated the handling procedures of illegal construction projects that society has long been concerned about, and also followed up on the enforcement measures designed to improve the operations of the Civic and Municipal Affairs Bureau and of the Health Bureau.

The CCAC published *Selected Cases of the Ombudsman* in 2006 in order to disseminate information to citizens and public servants about the operation of the Ombudsman Bureau. At the same time, the CCAC continued to co-organise the symposium “Defend Your Rights” with community associations to foster a stronger sense of defending personal legal rights and interests among citizens. In the realm of public services, the CCAC continued to follow up and assist all departments and institutions in formulating internal codes of conduct. Talks were given on “Professional Ethics and Conduct” and “Public Procurement” according to the respective needs of these departments and institutions.

To promote research on ombudsman systems in Macao, the CCAC and the Macao Foundation co-organised the “Research Awards on Comparative Studies of Ombudsman Systems in Asia”. In terms of training, the CCAC assigned staff to attend investigation courses held jointly by the CCAC and the Chinese People’s Public Security University. The CCAC also sent staff to Hong Kong to attend the command course held by ICAC. Local judges were also invited to conduct internal staff training.

## 5.1 Investigation

### 5.1.1 Case Intervention

#### 5.1.1.1 Cases Recorded and Processed

In 2006, the CCAC recorded 254 cases of administrative complaint - a 15% increase as compared with the 220 cases recorded in 2005. This could be attributed to the CCAC's active promotion of the ombudsman and the strengthened functions of the branch office that was "well engaged within the community". It was also due to the fact that citizens boldly reported administrative illegalities or malpractices. In summary, administrative complaints in 2006 primarily involved the legal system governing public services, municipal affairs and illegal constructions.

Table 15  
Content classification of administrative complaints in 2006

Problems involved	Number
Legal system governing public services (staff rights and interests, recruitment, internal management, discipline and abuse of power)	87
Municipal affairs	36
Illegal constructions	33
Traffic offences	16
Public procurement	8
Economic and social housing	7
Occupational health and safety	7
Insurance	4
Irregularities in other administrative procedures	54
Beyond the competence of the CCAC	2
<b>Total</b>	<b>254</b>

Cases of administrative complaints recorded in 2006 were added to the 34 cases brought forward from 2005 and 28 overlapping cases were excluded. As a result, a total of 260 complaints had to be processed throughout the year, of which 203 were handled and filed, accounting for 78% of the total.

Some cases were filed due to lack of evidence of administrative illegality or malpractice. Others were filed because they were handled by their respective departments through the formal or informal intervention of the CCAC. Some cases were filed because they fell beyond the competence of the CCAC or lack of evidence to be followed up, etc. Of the filed cases, some 45 were handled by respective departments or institutions via the intervention of the CCAC, including a case formally commenced with recommendations made. Such filed cases accounted for 22% of the total, an increased percentage compared with the past few years. This suggests that if suitable handling measures of the ombudsman are carried out according to the nature of the cases and issues involved, the problems of administrative illegality and malpractice can be solved more effectively and promptly. Consequently, the Ombudsman can play a more prominent part in defending the legal rights and interests of citizens.

Table 16  
Administrative complaints in 2006

Reasons for case filed	Number
No sign of administrative illegality or malpractice	118
Handled by respective departments (by referral, informal intervention or advice/suggestions of the CCAC)	45
Lack of evidence	29
Beyond the competence of the CCAC	5
Others	6
<b>Total</b>	<b>203</b>

#### 5.1.1.2 Investigations Commenced

During 2006, the CCAC completed 3 cases of administrative complaint, which were commenced for investigation and recommendations and suggestions were made. These included

the “The academic qualifications screening scheme and the appointment of a disciplinary procedure pre-examiner for recruitment purposes” and “The absence of pregnant public servants resulting from prenatal care/checkups”. Other matters involved the “Stipulations of minors’ responsibility of illegal acts under the General Regulations for Public Areas”. A summary of the related cases is stated in the appendix.

### 5.1.2 Request for Help and Consultation

The CCAC recorded a total of 753 requests for help and consultation in 2006, a nearly 24% increase. The types of cases with the most remarkable increase included economic and social housing (four-fold increase), illegal labour (doubled), and traffic offences (an 80% increase), reflecting the primary problems of citizens’ livelihood about which society expressed concern.

Requests for help and consultation beyond the competence of the CCAC constituted 16% of the total - a similar percentage to that of 2005. It is of concern that 35% of the requests related to the private sphere in both 2005 and 2006. In fact, many problems which citizens complained about to the CCAC were beyond its competence. Some of these cases involved private acts of corruption and malpractices, suggesting that many citizens believe that the CCAC should be empowered to cope with these problems.

On the other hand, requests for help and consultation relating to the *Guidelines on the Professional Ethics and Conduct of Public Servants* in 2006 registered a 30% drop compared with 2005. This was mainly because all departments and institutions had basically formulated and enforced their internal codes of conduct while the CCAC had been providing help in refining the codes to ensure their effective enforcement.

Table 17  
Classification of requests for help and consultation in ombudsman areas in 2006

Issues involved	Number
Legal system governing public services (staff rights and interests, recruitment, discipline and declaration of income and property)	174
Municipal affairs	72
Guidelines on the Professional Ethics and Conduct of Public Servants	61
Traffic offences	58
Disputes between employers and employees	40
Economic and social housing	25
Illegal constructions	24
Public procurement	15
Tax affairs	15
Illegal labour	14
Medical and health care	13
Social Security Fund	11
Employment training	6
Education	6
Others	95
Beyond the competence of the CCAC (private sector and lawsuits)	124
<b>Total</b>	<b>753</b>

## 5.2 Researches and Examinations

### 5.2.1 Researches and Examinations on Systems

In terms of researches and examinations in 2006, the CCAC completed two projects of research on system, namely the Research and Analysis of Improving the Election System of the Legislative Assembly and the Examinations on the Power of Intervention of the Public Administration Concerning the Misuse and Poor Management of Private Premises. The relevant reports were submitted to the administrative authorities, with conclusions as follows:

### 5.2.1.1 Research and Analysis of Improving the Election System of the Legislative Assembly

In recognising Macao as part of China, Portugal historically granted Macao the right to administer its own legislative body despite its continued rule over the territory. This legislative power was shared by the Legislative Assembly and the Governor. Some of the members of the Legislative Assembly were appointed by the Governor while others were elected via direct and indirect methods.

Before the handover, the extent to which the Legislative Assembly could truly exercise its legislative power and enact laws was far inferior to that of the Governor due to many factors. Macao governing policy was still dominated by the Portuguese authorities in Macao. Macao people played a relatively passive role in the Legislative Assembly. Their main influence was to give opinions targeting the governing policies of the Portuguese authorities in Macao, to voice opinions about whether their policies would conflict with Macao society overall or create great impact to the society. Thus, Macao legislators played a more prominent role in balancing the policies of the Portuguese authorities in Macao. The advantages of the legislators and the interest groups they represented were not clearly reflected. In such an environment, no genuine competition took place in either direct or indirect elections for a long time. Only when the handover to China was imminent did more special-interest groups realise that if they won a seat in the Legislative Assembly they could fight on behalf of their own interests and of the constituencies they represented. Thus, the election became fiercely contested. Public opinions condemned the Legislative Assembly Election in 1996 as severely corrupt.

Following the handover – under the premise of the state governing principle of “Macao people running Macao” - the separation between the Macao Portuguese authorities and Macao local legislators no longer existed in the Legislative Assembly as it had in the past. Although the electoral regulations differed little from the past, all the Legislative Members were Macao





residents, whether nominated by the Chief Executive or elected by direct or indirect election. They were not distinguished by governing concept. In addition, most of the Members had a background of community association involvement, while the associations were the core organizations that supported the related members to enter the direct and indirect election. Consequently, many people categorize Members in terms of the interest groups they represent, reinforcing the opinions that Members are motivated by self-interest: specific interest group (community association) - candidate - candidate elected - elected Member and related interest group benefit mutually from government policy. According to the CCAC's experience of the first and second Legislative Assembly elections, such interactive and mutually-beneficial effects resulted in the situation that the community associations, almost entirely free from system supervision, played an important role in the elections. These associations have been seen as a tool for "vote-buying" or "canvassing targets" by political groups and individuals intent on gaining a seat in the Legislative Assembly. Moreover, large-scale enterprises could take advantage of their employer status and their great number of staff to "lobby" votes. The electoral activities that took place under such circumstances were covered in the shadow of electoral corruption. The integrity of the Macao SAR was severely impinged. The CCAC analysed the situation before, during and after the elections. In terms of practical operation, a comparison of the electoral systems was also made among Macao and Hong Kong, Portugal and Taiwan. In-depth studies were carried out regarding the role of community associations in political activities and whether the association system could be adapted accordingly. In summary, several perspectives were offered as follows, for the purpose of improving the election system of the Legislative Assembly:

1. The Election Committee takes prompt action against any electoral propaganda acts that breach electoral regulations to ensure the justice and fairness of an election. It also plays an important part in fostering a fair and just image of the Legislative Assembly Election. In order to enable the Election Committee to fully play its part in supervising the election, and to promptly target and prevent regulation infringements, it is essential to establish the Election Committee as a standing body to ensure that electoral activities are conducted in good order.
2. Some forgery acts regarding voter registration – using false information to cause cancellation of valid voter registration, for example - are not listed under the sanctions scope of the current Macao Electoral Registration Law. As a result, loopholes have



appeared. It is therefore necessary to stipulate an inclusive regulation covering all forgery acts that are not directly subject to current regulations.

3. In order to refine current electoral regulations, it is suggested that Macao draw partly on the legislative experiences of Hong Kong, Portugal and Taiwan.

- 3.1 The following five initiatives could profitably be introduced from Hong Kong, regarding its definition of electoral corruption crime and its restriction of electoral propaganda and expenditure:

- a) Criminalize the corrupt acts of bribing candidates or potential candidates;
- b) Introduce Hong Kong's stipulation regarding "the corrupt act of bribing voters or others in elections" to counter i) enticement of others to register as voters in order to influence their voting intention; ii) vote buying and selling in other formats; and iii) bribing community association leaders or proffering subsidies to the associations in exchange for votes and other fraudulent acts. Such acts should be penalized;
- c) By defining the format of an "electoral gathering", formally restricting hospitality extended to influence voting intention, including the provision of food and beverages, entertainment and travel;
- d) Individuals incurring electoral expenditure without authorization should be penalized in order to prevent inappropriate acts of electoral propaganda through others and any evasion of the maximum limit of electoral expenditure;
- e) Reduce the maximum electoral expenditure to a reasonable level in order to prevent create an unfair phenomenon of "money election".

- 3.2 As for the legal system of Portugal which is deeply related to Macao, the following four aspects of the current Portuguese electoral system can serve as a reference in terms of the establishment of penalty and the definition of all kinds of electoral corruption:

- a) Since vote buying and selling cause great harm to electoral propriety and the reputation of the regional political system, no reduction of penalty is allowed for any attempted acts. In other words, the same penalty is applicable for both attempted/unaccomplished crimes and committed crimes;

- b) Apply open-style clauses and inclusive terminology in order to plug loopholes and punish all acts of forgery, fraud, threat, vote buying and selling;
- c) Target occupational threat. Despite the similarity between the regulations of the Macao Electoral Law and those of Portugal, the Macao labour law has failed to sufficiently protect employees' rights. As a result, the mechanism that specifically prevents occupational threat in elections has not produced any practical effects. Therefore, it is necessary to enhance the protection of employees' rights;
- d) Apply the expression of "buying and selling votes" to cover all acts of obtaining votes by any means of enticement by promise of gain.

3.3 The election system of Taiwan, which also advocates capitalism in a Chinese society, also provides references in the following four aspects:

- a) Stipulate by legislation that it is illegal to provide benefits to the leaders of community associations or to proffer subsidies to the associations in exchange for the votes of their members;
- b) Formally introduce the "indemnified witness" system to give duped voters, upon receipt of bribes, a chance to make amends for their crimes;
- c) Establish as many polling stations as possible to reduce the attractiveness for voters of accepting free transportation to the polls;
- d) Stipulate that all relevant departments and institutions must report to the anti-electoral-corruption agency any suspicious acts of money laundering so as to make the activities against electoral corruption more proactive and effective.

4. The following four suggestions provided by the CCAC address the issues that impede clean elections but cannot merely draw on the experiences of overseas practices:

- 4.1 Cancel voter registration cards in order to create more difficulty in instigating vote buying and selling activities;
- 4.2 Alternatively, send voter registration cards by registered mail, or stipulate that voters must obtain voter registration cards in person or through an authorized third party to ensure that voter registration cards reach genuine voters;

- 4.3 Restrict all public department leaders or public servants in charge of specific duties from conducting electoral propaganda in public to ensure the neutrality of the administrative authorities;
- 4.4 Strengthen the protection of labour rights, especially by imposing tighter restrictions or increasing compensation in regard to employers terminating a contract, to prevent or reduce any occupational threat during an electoral campaign.
5. While community associations are the core organizations that carry out political activities and exercise political rights for Macao citizens, many imperfections exist in the current association system. This system negates the protection of the image of neutrality of the administrative authorities; moreover, it is difficult to define and account for electoral expenditure, making it hard to monitor the source of electoral expenditure; the qualification of “corporate voters” for indirect election fails to reflect the degree to which they can represent and be recognized in their related constituencies. Therefore, from a long-term perspective, it is necessary to consider the following policies:
  - 5.1 Redefine the core organizations of political activities, especially the regulations of those political organizations which currently exist to no practical effect;
  - 5.2 If the current situation - any community association can assume a pivotal role in political activities - is retained, it is necessary to refine the current regulations of community associations, especially in terms of the following four aspects:
    - a) In terms of association formation, requirements must be made on the proportion of members with Macao residency status. Limits of minimum numbers of members should be imposed upon community associations, or at least upon the community associations eligible as corporate voters.
    - b) Stipulate a suitable monitoring system for accounting, especially regarding income sources and expenditures. Also, specify the mechanism of announcement under certain circumstances;
    - c) It is necessary to set a higher threshold for corporate voters in indirect elections. In terms of application for corporate voters, the authorities should necessarily consider whether the association can represent the intended interest constituency and be

recognized to a certain extent. In addition, it is essential to consider the distribution of voting rights, lest the associations which were established purely for election purposes should obtain the same number of votes as those associations that have engaged in long-term practical operations with greater recognition and higher representation. In addition, for the community associations that apply to be corporate voters, it is equally necessary to examine whether most of their members have joined another association that already has corporate voter qualification in order to prevent “shadow community associations” from influencing elections;

- d) Stipulate the mechanism of cancelling corporate voter qualification to ensure that corporate voters have at least minimal recognition and representation, especially to eliminate associations that have not been in operation for a long time and become active at election time only.
- 6. Last but not least, electoral corruption largely occurs in a society with a weak sense of civic duty. If the acts of buying and selling votes commonly occur in a society, electoral bribers can easily find voters willing to sell their votes “on the market”. Therefore, systematic and long-term civil education must be initiated to convey to the people about the harm created by electoral corruption. It is also necessary to specifically strengthen the civil responsibility of citizens so that they will be capable of resisting enticement by bribers. Such will therefore play a positive effect in preventing or reducing electoral frauds.

#### *5.2.1.2 Examinations on the Power of Intervention of the Public Administration Concerning the Misuse and Poor Management of Private Premises*

Under the principle of respecting private property rights, the administrative authorities cannot easily intervene in the use and management of private housing. However, when the use and management of private housing causes harm to the public interest, the administrative authorities should intervene according to the law. If the current regulations are not sufficient, the authorities should amend the regulations or formulate new regulations; if the acts of intervention are not effective, the authorities should improve the operations.

The typical situations which harm the public interest due to misuse and poor management

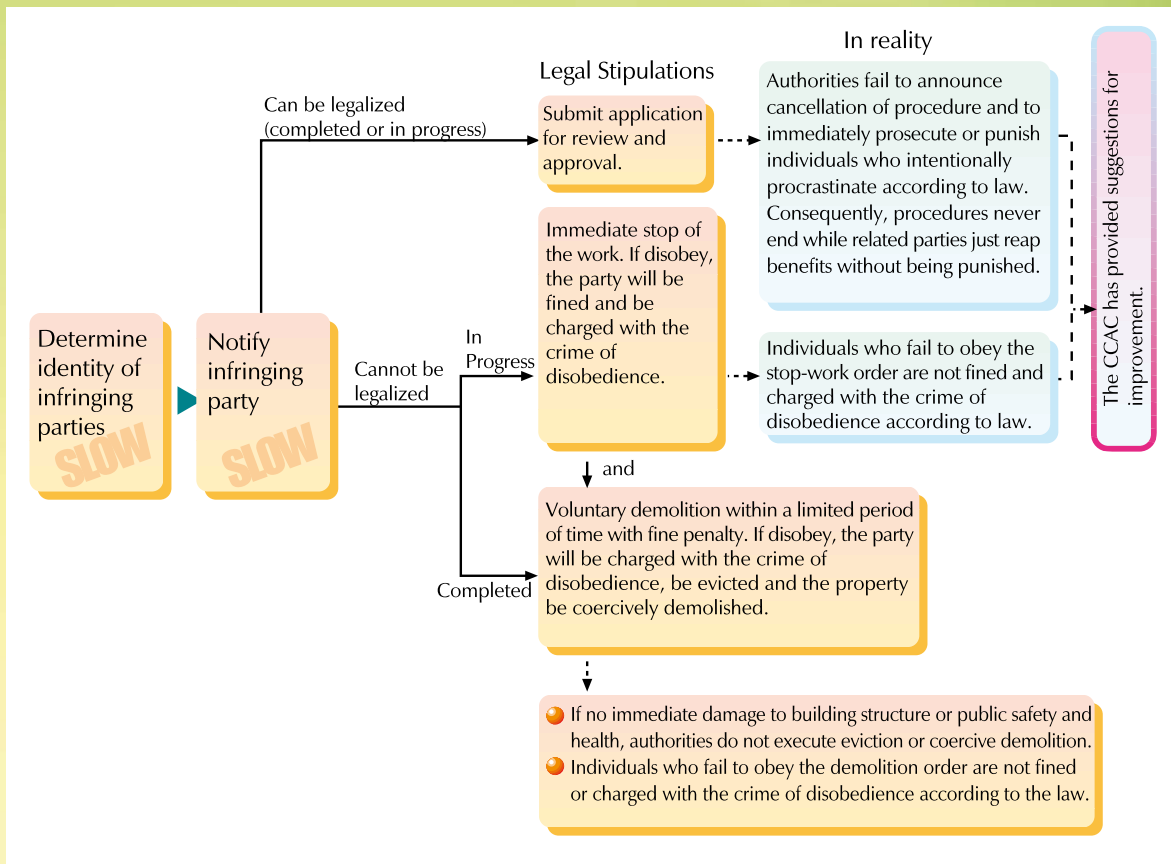
of private premises primarily include change of property usage, illegal construction, causing annoyance to neighbours, occupation of public area in buildings, etc.

The issues mentioned above are mainly due to the owners' lack of legal knowledge, absence of owners' association and of the Regulations of Condominium and the difficulties in fulfilling the demanding legal procedures. When citizens fail to solve problems involving the use and management of private housing from either subjective or objective perspectives, they often turn to the administrative authorities for solutions. While most of these problems constitute acts of administrative infringement, citizens would rather let the authorities to prosecute offenders and penalize them accordingly than negotiate with fellow owners by themselves. However, the current regulations have had a poor effect. On the one hand, the regulations that define infringement have not specified the prosecution procedure. On the other hand, the scope defined by the General Regime is not detailed. The administrative authorities can hardly master the rules to apply the Code of Administrative Procedure and the general principles of the Penal Code and the Penal Procedure Code. Furthermore, the regulations define "coercive demolition" and "coercive restoration" as a final resort without considering the views of society and civil livelihood. Consequently, the penalties exist yet cannot be executed.

Administrative infringement relating to the misuse and poor management of private premises is summarized as following chart:



Chart 1: Procedures carried out by the authorities after verification of illegal constructions



The two “slow” situations mentioned above are primarily due to the fact that the current General Regulation of Urban Construction do not stipulate that the person on the spot is obliged to provide the identification data of the construction supervisor or person-in-charge; neither does it specify that the infringing party is regarded as being notified several days after notification is sent by mail. Although the authorities legally issue temporary and formal stop-work orders, progress is slow because of the absence of the mechanism described above. Moreover, the authorities do not actively adopt any effective measures (e.g. through a property management agency) or eliminate of redundant measures such as in-person notification, slowing down the progress even further.

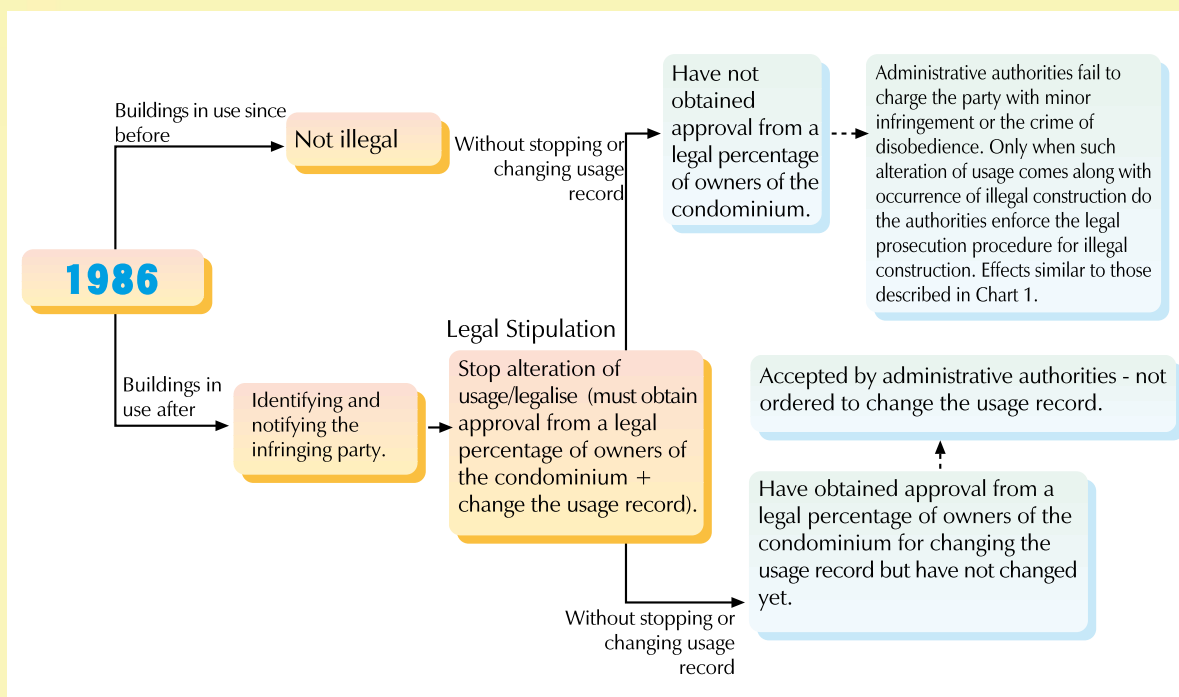
Unauthorised constructions are often “pending to be legalized” for years while the persons concerned are not penalized. Illegal constructions that should be demolished according to the law remain intact. On one hand, the authorities have not executed the regulations (i.e. penalize and charge the persons with the crime of disobedience in a timely manner.) On the other hand, the General Regulations of Urban Construction define the “eviction order” and “coercive



restoration” merely as final resorts. Since these resorts often influence the basic livelihood of citizens, it is hard for the authorities to enforce these measures when the illegal constructions have not caused any harm to the building structure or public health and safety. Therefore, it is necessary to adopt more practical deterrent measures other than these “last resorts”.

In fact, targeting certain problems of the prosecution procedure and sanction procedure for illegal constructions (in the areas of data access, notification, follow-up and prosecution procedure, provision of information, etc.) before law amendments, the CCAC proposed suggestions for improvement to the Land, Public Works and Transport Bureau when collaborating with the Bureau on the research on operation this year. The CCAC also suggested that the Bureau consider exercising its rule-setting power granted by article 76 clause 3 of the General Regulations of Urban Construction to clearly specify the related operation procedure through the order of the Chief Executive.

Chart 2: Mere alteration of property usage of flat function, e.g. residential flat used as community association site/trading company/freelance office

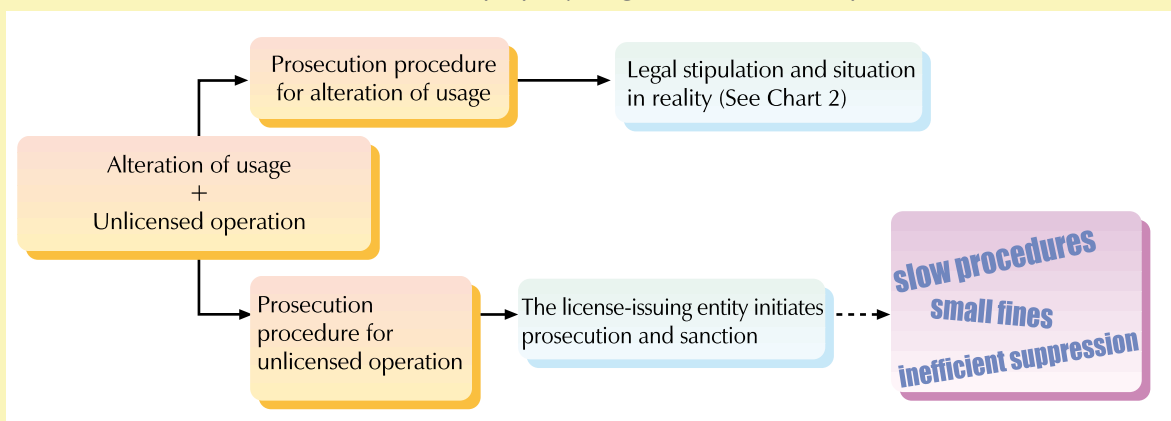


Clearly, with regard to altering the property usage without the consent of the majority of owners, the authorities traditionally do prosecute the concerned party for criminal liability according to the law. Instead, the authorities simply charge and penalize offenders for “illegal construction”. Thus, poor results are unavoidable due to the imperfections of both legislation and law enforcement mentioned above.

For those who fail to obtain enough legal percentage of owners’ approval but can complement the absent percentage through judiciary procedure, the administrative authorities now allow “exemption from judiciary procedure” and “exemption from formal changing of usage record” in order to answer to social reality, since judiciary procedure is both money-and-time consuming, and the formal changing of usage record can affect the market value and salability of the property. However, efficient policies of the authorities should have legal basis; otherwise, they will be challenged legally, resulting in a loss of public credibility.

Moreover, the prosecution and sanction system for misuse is inapplicable to buildings in use since the time before 1986. Regardless, the authorities to date have not adopted any preventive measures in circumstances where buildings with altered usage are aging and may result in structural defects or endanger public safety.

Chart 3: Alteration of property usage with unlicensed operation



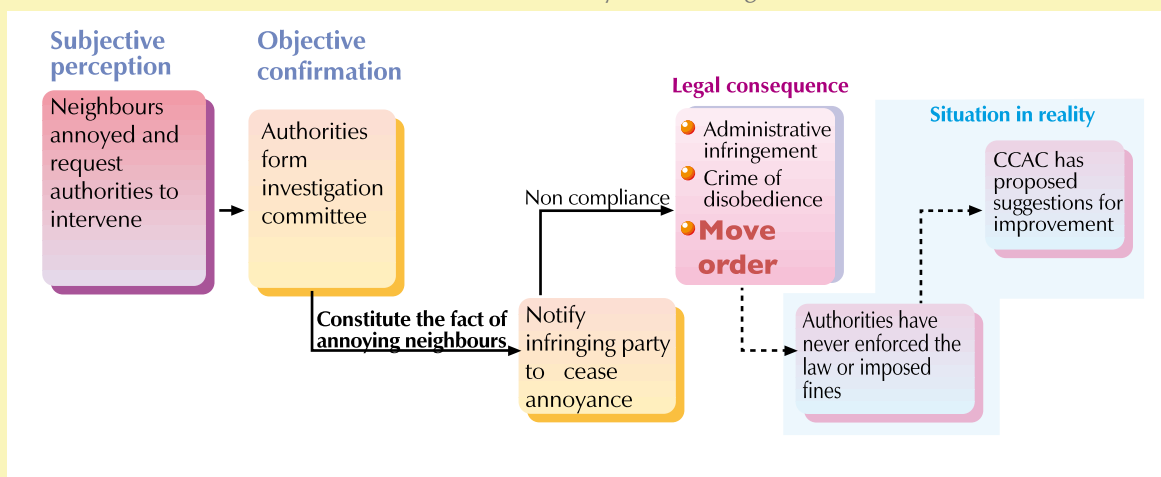
In practice, the authorities only prosecute and penalize the concerned persons by the device of “unlicensed operation”. If illegal construction took place as well, the authorities can follow. Should the prosecution against “unlicensed operation” fail due to difficulty in obtaining evidence, the authorities would not prosecute on the point of causing annoyance to the neighbours even if the alteration of property usage was severe enough to actually trouble the

neighbours. As a result, the infringing individual could escape prosecution due to the imperfection of legislation and law enforcement regarding illegal construction.

For prosecution against “unlicensed operation”, the General Regime is applicable to the relevant licence issuing system; as a result, it takes quite a long time for the prosecution and sanction procedures to conclude. In regard to the problems in the General Regime, the CCAC conducted a research on system in 2006, namely the “Issues on the Prosecution Procedure and Sanction Procedure Against Administrative Infringements”. While some cases could easily be prosecuted, they have no deterrent effect because the fines are too small. As a result, these cases can hardly be suppressed.

Regarding the establishment of illegal inns which have aroused much public attention recently as an example of unlicensed operation, the authorities cannot deny their provision of accommodation as a commercial activity merely based on the fact that their facilities do not meet legal requirements. Problems arise from the authorities’ definition of “presence of the provision of accommodation and ancillary services to the public in commercial format”. There is a distinction between the provisions of an inn accommodation contract and a real estate lease contract of a purely civil affair nature. This problem has been analysed in detail in the third section of this report and will not be elaborated upon here.

Chart 4: Cause of Annoyance to Neighbours



According to the Regulations of the Usage of Urban Real Estate, whether the authorities should intervene in neighbourhood relationships with neighbours relies on the subjective

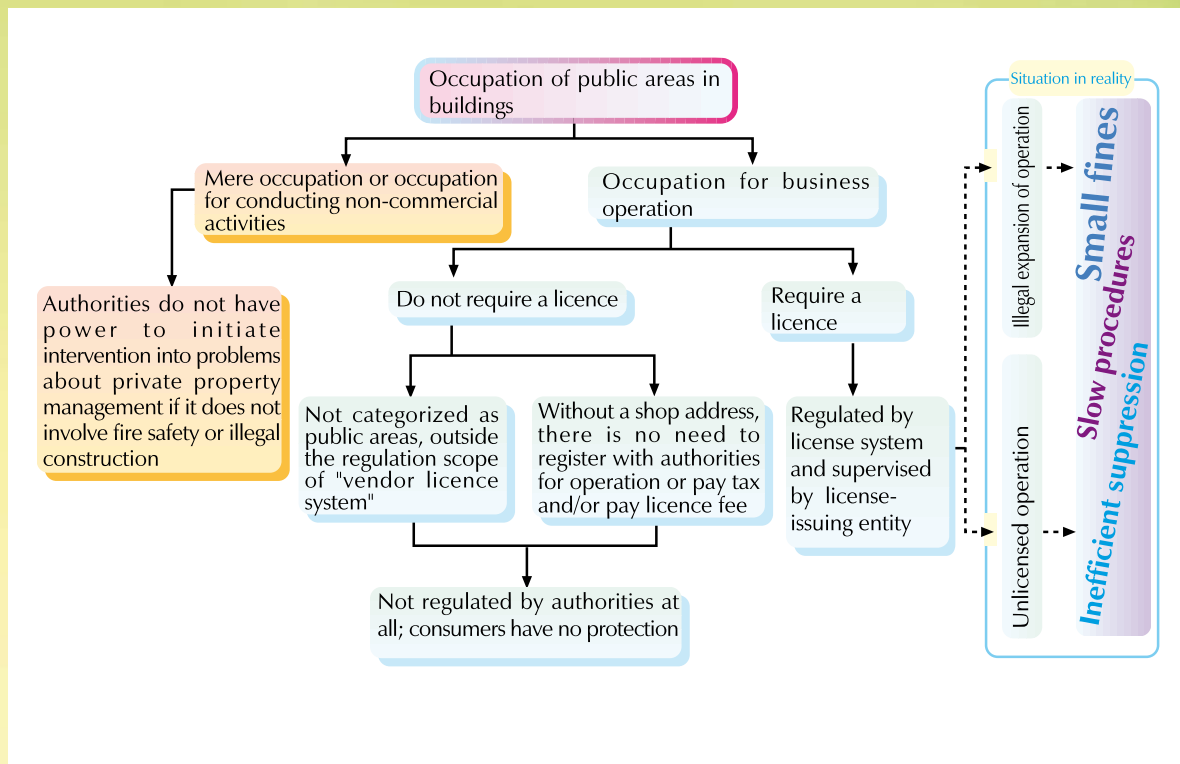
perception of the neighbours and the objective confirmation of the authorities. However, the regulations do not define the scope of “neighbours” and do not state clearly the criteria for “annoyance”, making it difficult to prosecute in reality. Nevertheless, the authorities are blamed for their sluggishness in law enforcement. Even though the administrative authorities seriously enforce the law, it is hard to execute the eviction order as the last resort against offenders who do not comply with the authorities’ order to cease causing annoyance. The authorities therefore often encounter great difficulties when citizens turn to them for help against troublesome neighbours.



The CCAC has suggested that the authorities formulate sanction standards and procedures to protect the public interest, before any amendments can be made to existing laws and that the authorities can provide other suggestions for law amendment after gaining practical experiences.

Chart 5: Occupation of public areas in buildings

(E.g. occupying a building hallway and corridor to sell vegetables, fruits, meat or cooked food; food and beverage establishments occupying the building hallway and corridor for business operation)



The profit-making activities that do not require a licence and that occupy the public area of buildings (e.g. prepared food stalls and fruit juice stalls), are not restricted by the current regulations. If their retail products or food products cause health or safety problems, or arouse consumer disputes, it is hard for the authorities to prosecute them. Since there is no “legal” mechanism of data registration for the operators and their operational status, the authorities cannot protect the rights of consumers. Moreover, the operators are not obliged to pay tax, thus causing unfairness of taxation.

The activities that require a license and occupy the public area of buildings include common infringements such as illegal expansion of operation and unlicensed operation. The authorities have to apply the General Regime most of the time when undertaking related prosecutions and sanctions. As a result, the process is very time-consuming and the fines amounts for certain infringements are too small to achieve a deterrent effect.



Targeting all the administrative infringements mentioned above relating to the misuse and poor management of private premises, the CCAC requested related departments to refine their operations where possible. Suggestions for improvements include strengthening the promotion of the related legal system<sup>1</sup>, and making more owners realize that getting engaged in property management affairs is an important and effective means of defending personal interests. The CCAC will continue to follow up on the process of these issues. In terms of refining legislation, the suggestions are summarised as follows:

## 1. Illegal constructions

- a) Amend the General Regulations of Urban Construction, especially by introducing the following regulations:
  - I. Persons on the spot of illegal constructions are obliged to provide the authorities with identity data of construction supervisor or person-in-charge;
  - II. Stipulate that construction supervisor/person-in-charge is regarded as having been notified once the authority personnel have issued to on-spot persons temporary stop-work order or construction-ban order, or have posted such orders on the spot;
  - III. In regard to notifications of penalty and demolition, stipulate that infringing party is regarded as having been notified several days after notifications are sent by registered mail;
  - IV. Increase penalty or set penal rules against persons who do not voluntarily carry out the demolition, e.g., increase fines, impose trading obstacles, or even stipulate that the related property cannot be transferred before the fine for illegal construction is paid or the illegal construction is demolished (similar to the application of “charging order” in Hong Kong).
- b) Apply the rule-setting power granted by the current General Regulations of Urban

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<sup>1</sup> Lands, Public Works and Transport Bureau regularly educates the public on legal system relating to the Bureau’s responsibilities via regular newspaper columns.



Construction - specify the practical operation procedure and working rules of monitoring illegal constructions (also applicable to annoyance to neighbours) through the order of the Chief Executive.

## **2. Illegal alteration of property usage/cause of annoyance to neighbours**

- a) Amend the Regulations of the Usage of Urban Real Estate
  - i) Separate the handling procedures for the following two cases: 1) a mere change of property usage; 2) change of property usage with unlicensed activities requiring application of administrative licences in advance. If the former case does not annoy neighbours, the administrative authorities should intervene to handle the case after receiving a certain percentage (e.g. over one third) of owners' complaints. In terms of the latter, the administrative authorities should keep the power to initiate intervention;
  - ii) Clearly define the practical legal effects produced by the change of property usage with a certain percentage of owners' approval if not changing the usage record, especially regarding the restrictive power of the approval upon future owners;
  - iii) Clearly define the standards of cause of annoyance to neighbours (if owners' association is established, it is appropriate to stipulate a mechanism to refer to the opinions of the owners' association);
- b) In order to make it easier for the authorities to discover an illegal change of property usage as soon as possible, it is appropriate to strengthen collaboration among departments and introduce a reporting mechanism, enabling the departments responsible for the acceptance of commercial or operation-start registrations to report the related data to the monitoring department;
- c) Introduce a database mechanism to collect the related data of buildings in use since the time before 1986 (e.g. the original and current usages of the buildings);
- d) In regard to the work procedures and regulations for monitoring illegal change of property usage and cause of annoyance to neighbours, it is appropriate to make good

use of the provisions granted by law through providing supplements by the order of the Chief Executive.

### 3. Occupation of public areas of buildings

- a) Evaluate the current regulations in regard to activities that occur in the public area of buildings with free public entry; if the activities may cause harm to public health and safety, it is necessary to clearly grant the administrative authorities the power of direct intervention;
- b) Amend the current Regulations of Industrial Tax and make the business acts taxable or categorise them as commercial activities which require registration;
- c) If the Regulations of Industrial Tax are not amended, review the current Rules Relating to Hawkers to extend the definition of hawkers to include all commercial activities occurring in the public area of buildings; or to at least stipulate that the related commercial operators must register at a specific entity.

### 4. Other regulations

Along with the law amendments relating to the use and management of private premises mentioned above and the refinement of the prosecution procedure, it is appropriate to adjust other related regulations (e.g. the regulations on the use and management of condominium as prescribed in the *Civil Code*) accordingly.

#### 5.2.2 Researches on Operations

In 2006, the CCAC began examining the operations of the Civic and Municipal Affairs Bureau and the Land, Public Works and Transport Bureau. The CCAC also followed up on the enforcement of the improvement measures of the Health Bureau and the Driver's Licence Division under the Traffic and Transportation Department of the Civic and Municipal Affairs Bureau.

##### 5.2.2.1 Civic and Municipal Affairs Bureau

#### Project of Research on Operations

With regard to the joint examination into the operational procedures of the Vehicle Affairs Division of the Traffic and Transportation Department, agreements on the following

improvement measures were made:

1. To make a comprehensive review and amendment to the administrative formalities guidelines to ensure the consistency of the content; to provide in detail the formalities for the auction of special vehicle registration number by ballot for the purchase of personal vehicle registration number, and for the data renewal of taxi driver licences; to amend the over-the-counter licence issuing procedure to stipulate that vehicle owners can obtain the new vehicle registration card in person.
2. To establish a complete record system for the “EX” registrations to enhance management efficiency. At present, all fines related to the EX/ES registrations are based on the minimum unspecified fine stipulated by the Road Regulations. It is appropriate to amend the related regulations to fit the practical circumstances and to consider stipulating at the time of law amendments that the vehicle registration numbers must be put in use within 90 days of purchase.
3. To evaluate the current measure that only specific firms can supply vehicle number plates citizens and consider changing the measure for any firms that abide by certain requirements to be suppliers; to penalize firms supplying unqualified vehicle number plates.
4. If vehicle owners state clearly about giving up the vehicle in use during a hearing, it is unnecessary for them to submit another application for cancellation of vehicle registration.
5. The notification deadline for the taxi licence transfer can be calculated by the approval date of the Registry as well as the date when both parties signed the transfer documents.
6. Regarding industrial machines and old engines used in construction sites/workshops, it is appropriate to improve the efficiency of handling consultation or enquiries. The authorities should consider accepting certificates issued by the authentication agency of the country of origin and cancel the measure that the certification of inspection issued legally by the country of origin can be replaced by the statement issued by local commercial associations. From a long-term perspective, it is necessary to revise and amend the related regulations to cater for the practical circumstances of society. For example, if an applicant is approved to get a “T” plate but fails to obtain it even after the certificate has expired, the applicant need not submit another application for cancellation. It is necessary to review the stipulations on approving first-time and renewal applications and the enforcement in practice.

The authorities should also consider enacting externally regulatory dispatches to enhance the efficacy of law enforcement. Current measures should also be reviewed regarding the special inspection that must be performed on heavy vehicles within 15 days of importation. The authorities might consider amending the current regulations to follow the *Road Code* and the Regulations of Inspection and Regulations on Various Specifications of Motorized Vehicles - requiring to submit the inspection application within 24 hours and eliminating the criteria and requirements of exemption from inspection. In future, through externally regulatory dispatches, clear and detailed specifications must be made regarding the application for temporary importation and the issue of the "T" plate.

7. To formulate working guidelines for all kinds of application procedures and standardize the execution procedures and criteria.

### **Follow up on the research on operations**

In regard to the research on operations undertaken in 2004 with the Driver Licence Division of the Traffic and Transportation Department under the Civic and Municipal Affairs Bureau, the following improvement measures have been implemented:

1. All kinds of information were prepared and distributed uniformly. The security measures of personal data were improved, as was the mechanism of recording consultation and complaint.
2. In regard to driving tests, the mechanism of electronic selection of driving examiner and driving test route on the day is currently in operation. Related working guidelines were stipulated for cases of failing to present an identification document prior to the test. The way of recording late arrival for test was improved as well. In addition, the authorities have formulated the Notes for Applying for Driving Test for public reference and Points to Note on Handling Driving Test as internal working guidelines.
3. Regarding the application for exchanging an overseas driver's licence for a Macao driver's license, only a foreign currency draft is acceptable. If applicants do not complete the formalities within 6 months after they are notified of approval to go through formalities, the related procedure will be cancelled.
4. While the front counter service of the Driver Licence Division is included in the Service

Centre of the Civic and Municipal Affairs Bureau, all working procedures and guidelines have been formulated and enforced.

#### *5.2.2.2 Land, Public Works and Transport Bureau*

With regard to the research on operations of the Inspection Division under the Urbanization Department in the handling procedures of illegal construction projects, agreements on the following improvement measures were made:

1. Upon receipt of complaint, the Bureau is to initiate enquiries such as whether the related building has established an owners' association and names and other information of the property management office. The Bureau will follow up with the complainants who leave their contact details. In addition, the Bureau is to refine the management information systems of complaint handling, illegal constructions and old/dangerous buildings and to study the feasibility of the establishment of bar code recording and document tracing systems in order to improve the management of documents and case files.
2. In regard to arranging staff for conducting examinations of illegal constructions, the Bureau is to refine the arrangement of transportation in order to avoid the use of private vehicles during fieldwork. The Bureau is also to adopt the mechanism of workload distribution with flexible zone-divisions and combinations. By recruiting more staff and adjusting the duty scope of engineers and inspectors, the Bureau will seek to solve the problem of insufficient human resources; through training, staff are further enriched with legal knowledge in practice. Before on-site examination is carried out, the Bureau must ensure that it possesses the data of the property owner and the building floor-plan of the illegally-constructed flat so that the handling and prosecution procedure can be expedited. The notifications of both fine penalty and construction legalization or voluntary demolition will be combined in order to save time and cost. Property owners who do not demolish unauthorized construction by deadline will be punished accordingly. The demolition procedure will take place immediately if it affects the building structure and public safety. The staff responsible for this procedure should not be the one handling the related issue of unauthorized construction.
3. Through comprehensive analysis of the current law, the Bureau is to establish the procedures and rules for every work item to strengthen law enforcement, enhance management

efficiency and increase the accuracy of information provision.

4. Prior to the amendment of current regulations, the Bureau is to cooperate with the related departments to formulate effective measures in order to fight more forcefully against illegal constructions and increase the deterrent power of penalties. This can be achieved in particular by storing illegal-construction data in the Real Estate Registry to allow consultation by individuals planning to purchase the real estate. In the longer term, the Bureau will consider the possibility of adopting other measures such as “charging order”.
5. The Bureau is to enhance communications with property management companies and owners’ associations to prevent and monitor illegal constructions. The Bureau is also to collaborate with the estate management industry to conduct propaganda on the application for “simple renovation project” to minimize illegal constructions.

#### *5.2.2.3 Health Bureau*

##### **Follow up on the research on operations**

The CCAC continued following up on the research on operations that the Health Bureau conducted in 2001 and 2003. The latest progress is reported as follows:

The internal regulations of every sub-system are being amended and “Written Consent to Surgical Operation” and “Declaration of Consent” are being drafted. Some subsidiary units have enforced the electronic attendance system and are currently preparing the attendance recording programme for on-shift medical staff. All health centres have installed the electronic display screen for patient queuing. Through internal notice, it has been stipulated that the issue of medical certificates must meet the principle of in-person verification and the effective time should begin from the moment a person starts consulting the doctor. The split-flow mechanism of the emergency room has also been in trial use since July 2006.

### **5.3 Formulation of Guidelines and Organization of Seminars/Workshops**

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





"Noble Character, Righteous Conduct" Experience Sharing Session

The CCAC launched its promotion campaign of "Guidelines on the Professional Ethics and Conduct of Public Servants" in 2005. Seminars entitled "Noble Character, Righteous Conduct" were organized for a total of 725 personnel from 7 departments in 2006.

In addition, the CCAC also followed up on the formulation progress of the internal codes of conduct in all departments. By the end of December 2006, 49 out of 55 public departments and institutions had formulated their internal codes of conduct; 4 departments were in the process of formulation; 2 departments were formulating their internal codes of conduct while temporarily using the *Guidelines on the Professional Ethics and Conduct of Public Servants* of the CCAC. It is worth mentioning that some departments conducted self-assessment after their internal codes of conduct had been put into practice for a year. In terms of follow-up, the CCAC got acquainted with the progress of code formulation for every department and, more significantly, analyzed the practical content and provided technical advices.

In order to create more opportunities for departments to exchange experiences on formulation and promotion of their internal codes of conduct, the CCAC organized the "Noble Character, Righteous Conduct – Experience Sharing Sessions". Over 240 directors and chiefs of different departments attended the sessions. The sessions allowed exchanges at both academic and operational levels, while drawing on the experiences of neighbouring regions and learning from their valuable opinions. The sessions were thus inspiring and thought-provoking.



Guest speakers at a “Noble Character, Righteous Conduct” Experience Sharing Session

### 5.3.2 Publication of Books and Organization of Seminars on Special Topics

The CCAC strives to enhance the citizen’s understanding of the operations of government departments and their legal knowledge relating to civic livelihood, as well as to increase public servants’ knowledge of the job-related regulations involved. Of the administrative complaints handled in the past few years, the CCAC selected 31 real cases which were more common and closely related to civic livelihood. With these cases, the CCAC briefly illustrated how the incidents happened, the involved departments, the CCAC’s handling procedure and the outcome. Combining the above cases with related regulations and articles, the CCAC edited and published a book called the *Selected Cases of Ombudsman*.

The CCAC continued organizing symposia entitled “Defend Your Right with Ombudsman” together with community associations so that citizens could better protect their personal legal rights and interests. In addition, talks were held on the topic of “public procurement” and “Noble Character, Righteous Conduct” based on the needs of specific departments and institutions to remind public servants to perform their duties in a fair and impartial way.



## 5.4 Staff Training and Academic Research

### 5.4.1 Staff Training

In 2006, the CCAC continued arranging its staff to attend courses hosted by police forces and anti-corruption organs outside Macao. Courses included short-term training of investigative knowledge held by the Chinese People's Public Security University and a command course for chief investigation officers held by the ICAC in Hong Kong. In order to strengthen the staff's understanding of the close relationship between investigation work and judicial power, the CCAC also invited local experienced judges to conduct training on "investigation and judgement".

### 5.4.2 Academic Research

To encourage research and study on the ombudsman system in Macao, the CCAC and the Macao Foundation jointly organized the "Research Awards on Comparative Studies of Ombudsman Systems in Asia" and accepted public applications. The program aims to explore the functions and roles of ombudsman systems in promoting good governance, so as to enhance public awareness and recognition of the ombudsman system in Macao and to further promote the systems in Asian countries. 3 projects were selected by the jury panel to receive the awards. In addition to Macao, the research topics also cover countries and regions such as Korea, India, Japan, Mainland China, Hong Kong and Taiwan. It is expected that the related research projects will be completed in 2008.



