# 2007

## Annual Report of the Commission Against Corruption of Macao

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The CCAC Commissioner Cheong U submits to the Chief Executive, Mr. Ho Hau Wah, the Annual Report of the CCAC 2007

# CHAPTER I
# INTRODUCTION

# Chapter I – Introduction

2007 was a significant year in the anti-corruption history of Macao. The corruption case of the former Secretary for Transport and Public Works Ao Man Long, involving huge bribes, was referred to the prosecution and judicial authorities, and eventually Ao was brought to trial. This case attracted great attention from the media and the general worldwide public. Other cases related to Ao's corruption are also under investigation, some of which have been referred to the Public Prosecutions Office. These cases expose the fact that some large-scale public construction projects have been riddled with corrupt practices in recent years, and indicate that some public functionaries and business people have a low esteem of the rule of law and would rather follow their own base inclinations. To address the situation, the CCAC has initiated a series of measures to prevent the recurrence of such incidents in the expectation that the public will maintain their concern and vigilance in regard to such transgressions.

According to the Transparency International report published in September 2007, Macao ranked 34$^{th}$ out of a total of 180 countries and regions in terms of incorruptibility, down from 26$^{th}$ the year before. It ranked sixth in a list of 25 regions or countries in the Asia Pacific Region, maintaining the same ranking as the year before. The report stated that attention should be paid to the slippage in the Corruption Perception Index of Macao. According to the 2007 report by the Political and Economic Risk Consultancy, Macao retained its fourth-place ranking among 13 Asian regions and countries. While both reports give Macao a rather high ranking in terms of incorruptibility in East Asia, the CCAC will nevertheless pay close attention to the warning.

In 2007, the CCAC received a total of 736 complaints and reports, a drop of about 12% year-on-year. Of these 736 cases, 369 qualified for further follow-up, with proceedings commenced in 75 cases. Along with the accumulated cases and those necessitating re-investigation, a total of 125 commenced cases required investigation. The CCAC completed a total of 40 cases in the year, of which 11 were referred to the Public Prosecutions Office. A total of 297 cases not commenced for investigation were handled by informal proceedings and brought to a conclusion. Of the cases inspected and instigated by the CCAC, 6 were brought to verdict by the courts in 2007, including 3 cases related to the Legislative Assembly Election. A majority of the prosecuted were found guilty.

In 2007, the CCAC focused its anti-corruption efforts on high-risk sectors. After uncovering the bribery activities of the former Secretary for Transport and Public Works Ao Man Long in 2006, the CCAC went on to inspect related cases in 2007. In addition, the CCAC also inspected cases involving police officers of the Macao Judiciary Police taking bribes, an inspector of the Labour Affairs Bureau abusing power, an inspector of the Gaming Inspection and Coordination Bureau defying legal proceedings, a prison guard from Macao Prison accepting bribes and a civil servant of the Land, Public Works and Transport Bureau taking bribes.

On the ombudsman front, the CCAC received 236 cases. Along with the cases carried over from 2006, a total of 293 cases necessitated handling. Most of these cases were complaints about the civil service system, municipal affairs and governmental operations, among other things. In order to expedite the solution to such problems, most of the cases concerning administrative complaints were handled via informal and referral approach. Only cases involving serious breaches of law were commenced for formal proceedings. The CCAC received an additional 647 requests for help and consultation.

In regard to researches and examination, the CCAC completed its report on "The Analysis on Land Disposal and its Supervisory System" and "Procurement System of Public Constructions". In terms of researches on operation, the CCAC continued to follow up on the implementation of measures regarding improved operations by government departments. By mid-2007, the CCAC had separately held the "Integrity Management Symposium" with the respective directors and department heads of the office of the 5 secretaries of the government. Some 59 of the 60 government departments had signed the Integrity Management Plan – Protocol of Collaboration by the time this annual report was published, with a view to implementing more specific integrity-management cooperation measures.

In order to upgrade the overall quality of the CCAC personnel, the CCAC has continued to send staff members to participate in special training programmes in other regions and conducted the 6th training programme and recruitment of investigators. In addition, the CCAC stepped up its efforts on information exchange and mutual case assistance. It received 18 requests for mutual case assistance from overseas law enforcement agencies in 2007. The CCAC also received a total of 8,257 property declaration forms - primarily from new public servants and those whose positions had changed.

In 2007, the CCAC continued to initiate general publicity in order to enhance citizens'

sense of public supervision and to elevate the culture of probity in public administration. On the basis of promotional work undertaken in recent years, the CCAC promoted the awareness of integrity via different channels, including organizing seminars and visits for associations, educational institutes and private enterprises. The CCAC hosted 300 seminars in 2007 for a total of 20,120 attendees. In regard to integrity education among teenagers, the CCAC continued to team up with the CCAC branch office, schools and relevant associations to promote a proper attitude on ethics among teenagers. It also published *Integrity Story Salon* and launched a website about integrity for teenagers. In addition, the new CCAC island branch office is scheduled to open in the near future.

Looking forward, the CCAC will keep a close eye on challenges presented by rapid economic development. The Chief Executive announced a proposal to expand the CCAC's jurisdiction over the private sector. The drafting of law is under way and is expected to be tabled by the middle of 2008.

In 2007, Anti-Corruption Bureau investigators of the CCAC were awarded the Medal for Bravery by the Chief Executive as an encourgement, which was a real inspiration for the organization's staff. The CCAC will continue to collect opinions from all sectors of society and will combat corrupt practices without favour nor fear to help construct a society of integrity with the help of its citizens.

# CHAPTER II
# CONSTITUTION & ORGANIZATION STRUCTURE

# Chapter II – Constitution & Organization Structure

## 2.1 Constitution

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

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

The CCAC is not a constituent part of the administrative system. It is an independent public institution responsible for the prevention and fighting of corruption, and for the handling of administrative complaints in accordance with the law.

## 2.2 Functions and Organization Structure

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

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

- Prevent acts of corruption or fraud;

- Instigate investigations and enquiries into acts of corruption and fraud committed by public servants;

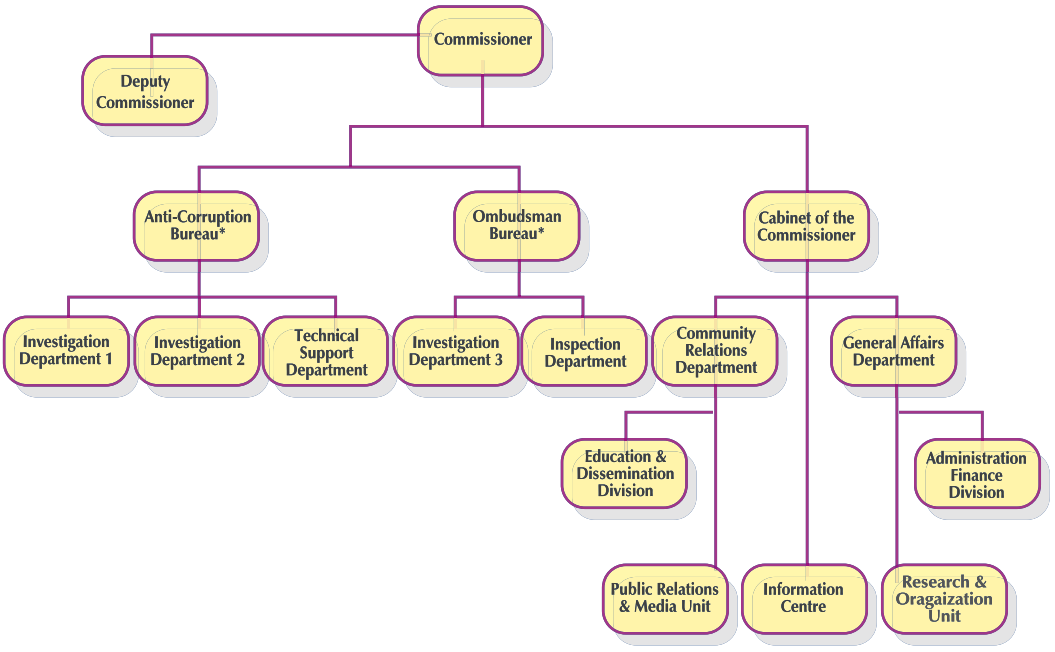
- Instigate investigations and enquiries into acts of corruption and fraud relating to electoral registration and elections;

- Protect the rights, freedom and legitimate interests of individuals and safeguard the

justice, legality and efficiency of the public administration.

The Administrative Regulation of the CCAC – "Organization and Operation of the CCAC" (no.31/2000) promulgated on 21st August 2000 - provides the CCAC with an improved organizational structure and increased manpower. The CCAC consists of the Cabinet of the Commissioner, the Anti-Corruption Bureau, and the Ombudsman's Bureau, with functional, administrative and financial autonomy. The two investigation departments of the Anti-Corruption Bureau are responsible for the investigation of acts of corruption and fraud within the remit of the CCAC while the Technical Support Department provides support for combating corruption and accepting complaints and reports of corruption. The Ombudsman Bureau, consisting of Investigation Department III and the Inspection Department, is responsible for recording complaints, rectifying illegal or unfair administrative acts and conducting studies on the improvement of administrative processes and operation of public departments. The Cabinet of the Commissioner consists of the General Affairs Department, Community Relations Department and the Information Centre. These are responsible, respectively, for the management of finance and personnel, promotion and education, and for the use of information and communication facilities to improve the overall operations of the CCAC.

The Organization Structure of the CCAC




*The deputy commissioner is inherently designated as the director of the bureau.

## 2.3 Monitoring Committee for the Discipline of the CCAC Personnel

On 31st July 2001, the Chief Executive established the "Monitoring Committee for the Discipline of the CCAC Personnel" through order no. 164/2001. Its main functions are to analyse and monitor the non-criminal complaints on the CCAC personnel and make suggestions to the Chief Executive. The Committee comprises of five members with a 3-year-term. They are being appointed by the Chief Executive from among the prominent people in the Macao SAR. Members of the present Committee are Leong Heng Teng (President), Paula Ling, Kwan Tsui Hang, Lei Pui Lam and Philip Xavier.

# CHAPTER III
# GENERAL DESCRIPTION WITH STATISTICS

# Chapter III – General Description with Statistics

## 3.1 Number of Complaints Recorded

The Commission Against Corruption (CCAC) received 736 case reports through various channels, of which 500 involved criminal offences and 236 related to administrative complaints. The figures continue to indicate a declining trend, with a major decrease in criminal cases, and a slight drop in administrative complaints. The decline in the number of reports may be attributed on one hand to the changing nature of corrupt practices, which have become more subtle and difficult to detect; on the other hand, it is also related to the optimising of the complaint mechanism against administrative misdeeds and the increasing transparency of administrative procedures.

Table 1
General trend of complaints recorded from 2000 to 2007

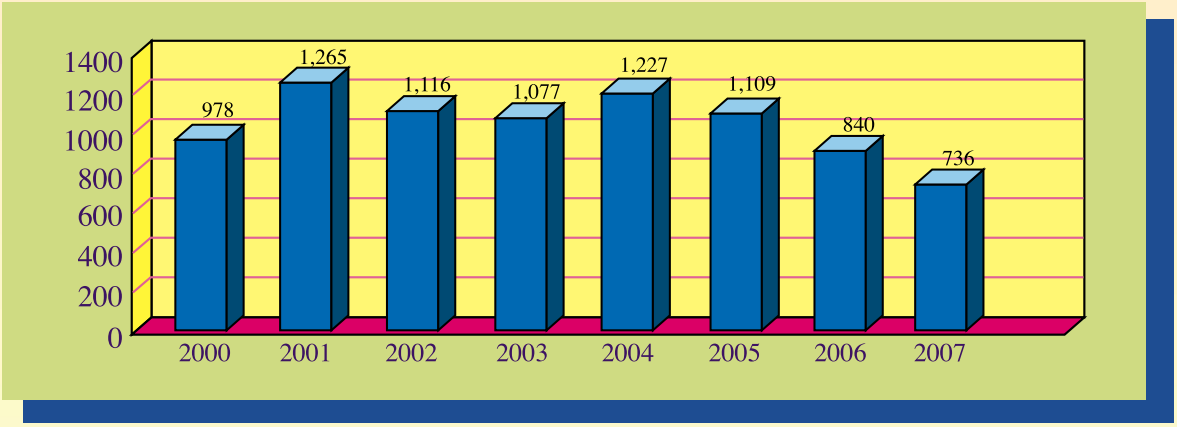
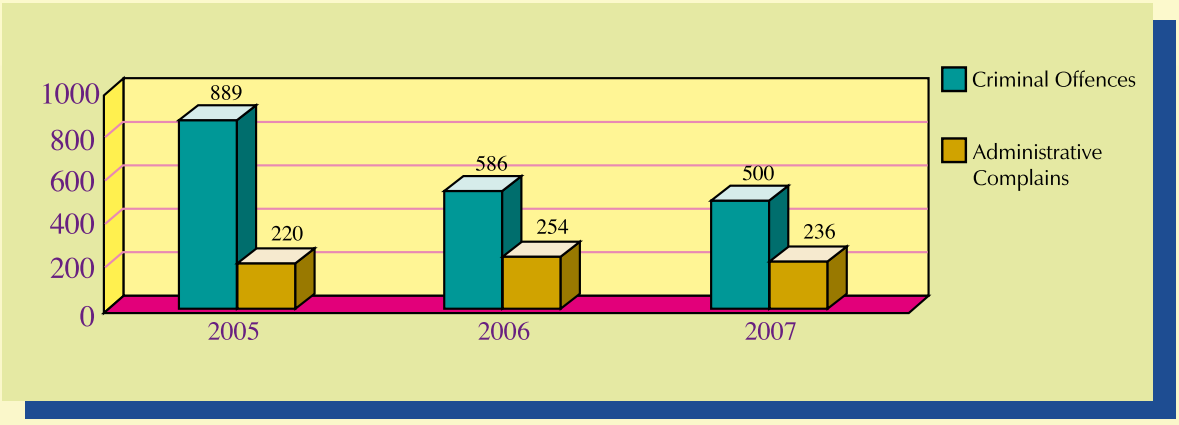



Table 2
A comparison of the number of complaints by type from 2005-2007



Of the 645 reports filed by citizens, 333 were anonymous or requested anonymity; 312 were signed or indicated that the complainants were prepared to provide data on identity. In recent years, signed complaints or complaints lodged with complainants willing to provide personal information have increased, almost equaling the number of anonymous complains filed or those intending to remain anonymous. This indicates that citizens are more determined to report corruption and that the CCAC is gaining the confidence of the public. In addition, the CCAC has received 26 case reports referred to it or filed by other public agencies, plus 18 case reports from overseas law enforcement departments requesting help or assistance, 4 cases were initiated for investigation by judicial institution, while 43 cases have been actively followed up by the CCAC.

Table 3
Comparison of cases recorded from 2005 to 2007 by source

| Sources | | 2005 | | 2006 | | 2007 | |
|---|---|---|---|---|---|---|---|
| | | Number | Percentage | Number | Percentage | Number | Percentage |
| Reports from citizens | Anonymous or requested anonymity | 650 | 58.6% | 437 | 52.0% | 333 | 45.3% |
| | Signed or willing to provide personal data | 403 | 36.3% | 335 | 39.9% | 312 | 42.4% |
| Referred/ reported by public entities | | 25 | 2.3% | 12 | 1.4% | 26 | 3.5% |
| Cases requiring assistance | | 20 | 1.8% | 30 | 3.6% | 18 | 2.5% |
| Referred/ reported by media | | 0 | 0% | 0 | 0% | 0 | 0% |
| Initiated by judicial institutions | | 0 | 0% | 6 | 0.7% | 4 | 0.5% |
| Initiated by CCAC | | 11 | 1.0% | 20 | 2.4% | 43 | 5.8% |
| Total recorded cases | | 1,109 | 100.0% | 840 | 100.0% | 736 | 100.0% |

The CCAC actively encourages citizens to lodge complaints or file reports through various channels, and is prepared to provide means that are convenient to public. Mail is the most popular method of reporting by citizens and public institutions. While telephone or personal tip-off are the next popular. Complaints received via email have slightly increased in recent years. The CCAC undertakes to keep citizens' report data and content strictly confidential. The CCAC encourages citizens to lodge their complaints in person or make signed reports as far as possible in order to expedite investigation.

Table 4
Different components of cases recorded in 2007 by source of reporting method

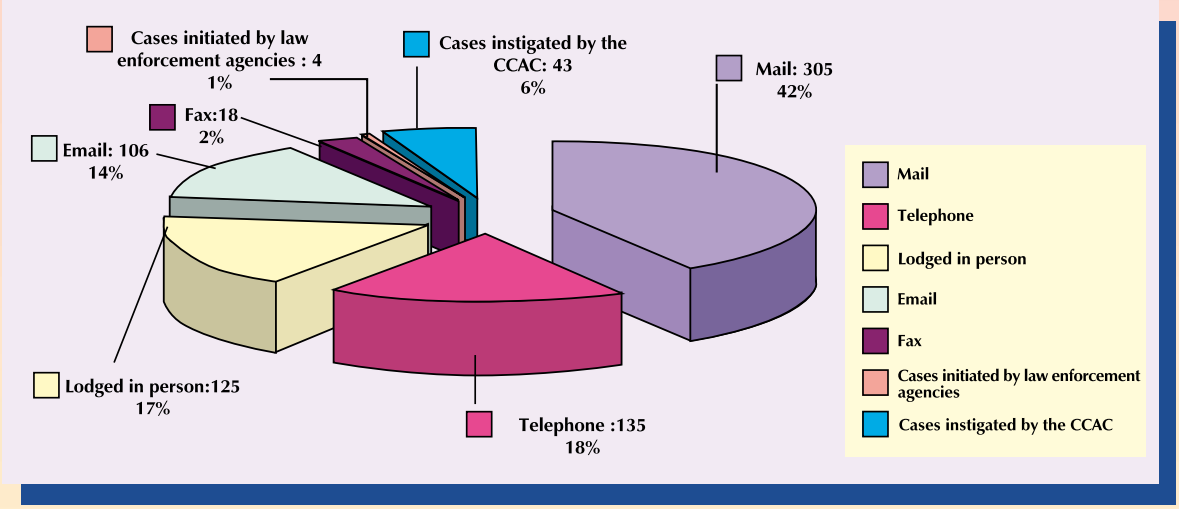



Table 5
Comparison of cases received from 2005 to 2007 by source of reporting method

| Reporting method | 2005 | | 2006 | | 2007 | |
|---|---|---|---|---|---|---|
| | Number | Percentage | Number | Percentage | Number | Percentage |
| By mail | 358 | 32.3% | 288 | 34.3% | 305 | 41.4% |
| By telephone | 377 | 34.0% | 247 | 29.4% | 135 | 18.4% |
| By person | 230 | 20.7% | 138 | 16.4% | 125 | 17.0% |
| By email | 116 | 10.5% | 119 | 14.2% | 106 | 14.4% |
| By fax | 17 | 1.5% | 22 | 2.6% | 18 | 2.5% |
| Initiated by judicial institution | 0 | 0% | 6 | 0.7% | 4 | 0.5% |
| Initiated by the CCAC | 11 | 1.0% | 20 | 2.4% | 43 | 5.8% |
| **Total cases** | 1,109 | 100.0% | 840 | 100.0% | 736 | 100.0% |

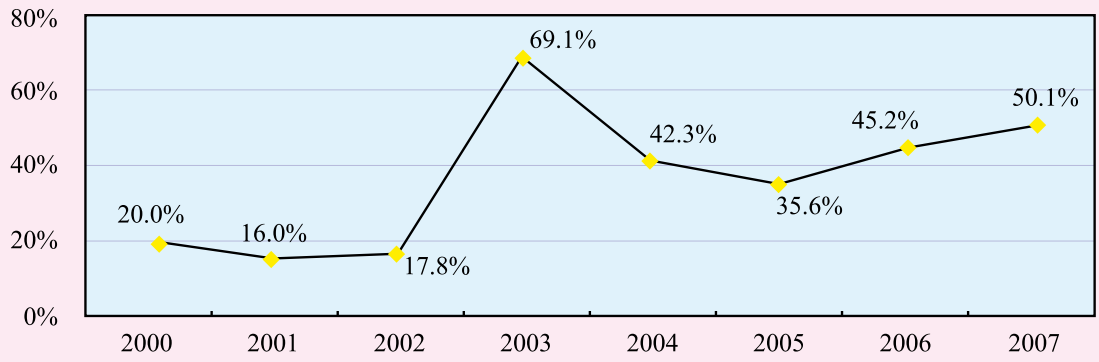
## 3.2 Complaint Handling Methods

Of the complaints and reports received by the CCAC in 2007, some 367 were either unrelated to corruption or did not fall within the jurisdiction of the CCAC, or were inadequate in terms of data for further investigation. 369 cases were qualified to be followed up, which were handled by case commencement, referred to other departments or unofficial channels. The proportion of reports qualifying for investigation exceeded that of the year before, suggesting that the quality of data provided by citizens' reports was improving.

Table 6
Complaint handling methods recorded in 2007

| Handling methods | | Number | Percentage |
|---|---|---|---|
| Qualified | Commencement | 75 | 50.1% |
| | Referred to other departments | 43 | |
| | Unofficial channels | 251 | |
| Non-qualifying cases requiring no further investigation | | 367 | 49.9% |
| **Total** | | 736 | 100.0% |

Table 7
Comparison of cases qualified for handling from 2000 to 2007




The cases that qualified for investigation by the CCAC in 2007 comprised those carried over from 2006 and those newly initiated, which together amounted to 500, of which 125 were commenced cases, while 375 of them were handled by unofficial channels.

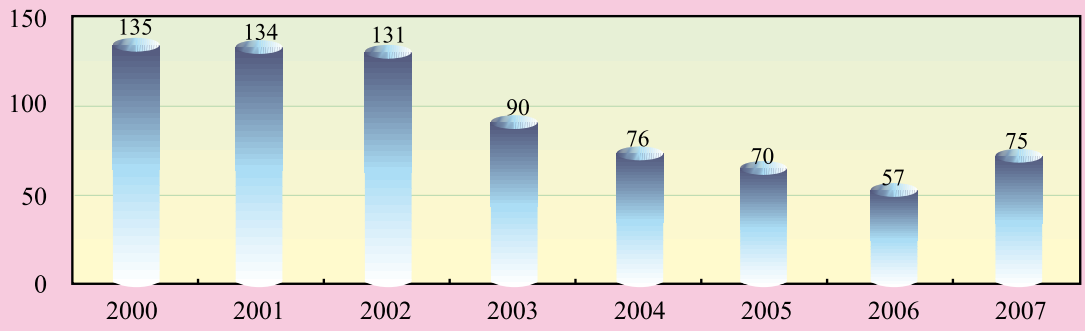
Among the commenced cases, 66 were criminal offences while 9 were administrative complaints, plus two re-opened cases and 48 cases that were carried over from 2006. Cases handled by unofficial channels included 294 cases newly filed in 2007 and 81 cases carried over from 2006. Most of the administrative complaints were handled by unofficial channels and quickly resolved in the interests of the complainants, avoiding time-consuming case proceedings. As a result, administrative complaints comprised the bulk of cases that were not commenced for investigation. In addition, the CCAC had received 647requests for help and consultation.

Table 8
Total number of cases handled in 2007

| Classification of handled cases | | Number | |
|---|---|---|---|
| Cases commenced for investigation | Commenced in 2007 | 75 | 125 |
| | Re-opened in 2007 | 2 | |
| | Transferred from 2006 | 48* | |
| Cases not commenced for investigation | Recorded in 2007 | 294 | 375 |
| | Transferred from 2006 | 81 | |
| **Total** | | 500 | |

*After amendment

Table 9
General trend of cases commenced for investigation in 2000 to 2007




In terms of sources of complaints recorded, the number of cases which were initiated by the CCAC had risen steeply in 2007, constituting the majority of the cases; this year saw the greatest number of cases intiated by the CCAC when compared to the past. This was resulted from the CCAC policy of proactively combating corruption. While a considerable number of reports were filed anonymously or requested anonymity, the ratio of signed reports and those whose filers were prepared to provide data on their identity was also rather high. There was also a noticeable increase in the number of cases referred or transferred by other public institutions among the commenced cases, indicating that those institutions and the CCAC are enhancing co-operation on anti-corruption.

Table 10
Comparison of cases commenced for investigation from 2005 to 2007 by source

| Sources of complaints recorded | | 2005 | | 2006 | | 2007 | |
|---|---|---|---|---|---|---|---|
| | | Total | Percentage | Total | Percentage | Total | Percentage |
| Reported by Citizens | Anonymous or requesting anonymity | 40 | 57.1% | 26 | 45.6% | 19 | 25.3% |
| | Signed or willing to provide personal data | 24 | 34.3% | 16 | 28.1% | 11 | 14.7% |
| Referred/reported by public entities | | 2 | 2.9% | 2 | 3.5% | 7 | 9.3% |
| Referred/reported by media | | 0 | 0% | 0 | 0% | 0 | 0% |
| Cases initiated by judicial institutions | | 0 | 0% | 6 | 10.5% | 4 | 5.3% |
| Cases initiated by the CCAC | | 4 | 5.7% | 7 | 12.3% | 34 | 45.4% |
| **Total** | | 70% | | 57% | | 75% | |

## 3.3 Progress analysis of cases

In 2007, the CCAC concluded 40 commenced cases and 297 non-commenced cases - some 337 cases in all - with 11 referred to the Public Prosecutions Office. 163 cases would be forwarded to the following year – including 85 commenced cases and 78 non-commenced cases.

Table 11
Analysis of handling progress of cases in 2007

| classification | Cases handled in 2007 | Cases concluded in 2007 | Cases carried over into 2008 |
|---|---|---|---|
| Commenced cases | 125 | 40 | 85 |
| Non- Commenced cases | 375 | 297 | 78 |
| **Total** | 500 | 337 | 163 |

## 3.4 Cases handled by the Monitoring Committee for the Discipline of the CCAC personnel

The Monitoring Committee for the Discipline of the CCAC personnel received 4 complaints in 2007, primarily concerning the legality of inspection procedures and information released in press conferences, as well as resentment against staff member's attitude.

The Committee analysed and discussed the cases after receiving the complaints and investigative reports, and made the necessary suggestions to the parties concerned. No CCAC staff member was found to have breached disciplinary regulations.

Members of the Monitoring Committee for the Discipline of the CCAC personnel with leadership of Corrupt Practices Investigation Bureau of Singapore during visit to Singapore in early 2008

# CHAPTER IV
# ANTI-CORRUPTION

# Chapter VI – Anti-corruption

In 2007, the CCAC received 500 reports concerning criminal offences, a 15% decrease on the 586 reports received in 2006. Some 133 of the complaints were qualified to be follow-up; of these, 66 were commenced for investigation following preliminary screening, a 22% increase over that of the previous year. Some 28 cases were proactively initiated by the CCAC, in addition to cases carried over from 2006, which amounted to 113 criminal cases that required processing in 2007. An additional 18 cases were requests of mutual case assistance from overseas counterparts.

The CCAC brought 34 cases to a close in 2007, of which 11 were referred to the Public Prosecutions Office, and chiefly related to corruption by public servants, fraud, solicitation of bribes and abuse of power. 6 cases investigated by the CCAC - 3 of which concerned misdeeds in Legislative Assembly Elections - were subsequently heard by court.

While the number of reports is declining year on year, the criminal cases commenced for investigation by the CCAC in 2007 rose by 22.2% over those of the year before, amounting to some 66. This was due to CCAC's closer attention to social change, making proactive inspections when signs of graft appeared, and following up on new cases related to the Ao Man Long case. The cases proactively established by the CCAC on the two fronts together amounted to 28, the most in recent years.

## 4.1 The Ao Man Long Corruption and Power Abuse Case

One of the most important missions of the CCAC in 2007 was the completion of investigations of the Ao Man Long corruption and power abuse case plus the subsequent referral of the case to the Public Prosecutions Office for court proceedings.

In 2005, the CCAC initiated investigations against companies and persons involved in the Ao Man Long corruption case, and conducted a series of searches, financial investigations and analyses which led to the suspicion that colossal financial advantages were involved in the case. While those investigations revealed that the money had all been remitted overseas via local banks, it proved difficult for the CCAC to identify the eventual destination of the remittances and the identity of the recipients, as they were in places beyond the jurisdiction of

the CCAC. Subsequent investigations revealed that Ao Man Long had established numerous shell companies in the British Virgin Islands, through which he funnelled bribes to bypass the scrutiny of law enforcement agencies.

2 local

CASO SUSPEITO DE CORRUPÇÃO ABALA GOVERNO

Secretário detido após investigação das autoridades das RAE's

Ao Man Long foi detido na noite de quarta-feira por suspeita de corrupção passiva e actividades financeiras ilegais, tendo já sido confirmada por Pequim a exoneração das funções de Secretário. Entam, em conferência de imprensa, Edmund Ho mostrou-se triste por o caso de alegada corrupção envolver um membro do Governo

EMANUEL GRAÇA
TIAGO AZEVEDO

Macau nas bocas do mundo

The CCAC did not for a moment falter in its investigation of the companies and persons involved in the Ao Man Long corruption case. In November 2006, the CCAC received allegations of Ao's corrupt practices, and in early December received a notification from the Independent Commission Against Corruption (ICAC) of Hong Kong, claiming that there had been a suspicious transfer of assets by Ao in Hong Kong. The CCAC promptly directed nearly all of its investigators to initiate an intensive 48-hour analysis on the existing findings and information about identified persons. Initial analysis concluded that Ao Man Long, the Secretary for Transport and Public Works of Macao at that time, was suspected of mega corrupt practices, and that the parties suspected of bribing him were construction companies and its related persons who had been previously investigated. The investigation now seemed to be getting somewhere.

At about 11:00pm on 6th December 2006, the CCAC inspectors arrested Ao Man Long on charges of accepting bribes to perform illegal acts, abusing power and unjustified wealth and was then brought to the CCAC offices for interrogation. The following day, Chief Executive of the Macao SAR Edmund Ho hosted a press conference accompanied by the Commissioner and Deputy Commissioner of the CCAC to announce to the media that Ao Man Long had been placed under arrest on charges of accepting bribes, among other offences. The SAR government then notified the central government according to regulations. Meanwhile, the central government announced the removal of Ao from his office and the corruption case was officially made known to the world, shocking both the citizens of Macao and the international community.

On 7th December 2006, the CCAC arraigned Ao's younger brother Ao Man Fu and his wife Ao Chan Wa Choi, his father Ao Veng Kong, local construction broker Ho Meng Fai, Chan Tong Sang, Frederico Marques Nolasco da Silva and others to the Public Prosecutions Office as suspects. On 8th December, Ao was remanded in custody at Macao Prison pending trial by order of the judge of preliminary trial of criminal offences at the Court of Final Appeal.


JORNAL TRIBUNA de Macau

Ao Man Long suspeito de aceitar subornos avaliados em mais de 180 milhões de patacas

Ex-secretário tinha bens avaliados em 800 milhões de patacas

Quando começou a investigação?

The first phase of investigation into Ao's corruption case was completed on 4th April 2007, the conclusion of four months' intensive effort. Findings indicated that while in office Ao abused his power to the benefit of several construction companies in return for huge kickbacks. It was verified that he had amassed assets worth over MOP800 million, including cash, bond certificates, deluxe watches, rare seafood and wines, among other things. His assets amounted to 57 times his total income over his civil service career.

On 6th June 2007, the Public Prosecutions Office initiated legal proceedings against Ao in the Court of Final Appeal on charges of serious bribe-taking, abuse of power, money laundering and unjustified wealth, among other charges. The case was consequently heard by the Court of Final Appeal in accordance with the Basic Law of the Macao Special Administrative Region and other applicable laws. Ao was convicted at his first trial and as a consequence became the first ministerial official to be prosecuted since the handover.

hojemacau

76 VEZES SETE

CASO AO MAN LONG | TRIBUNAL EMITE DESPACHO DE PRONÚNCIA

# Juiz confirma 76 crimes

*Defesa lembra que Ao Man Long não seria o único responsável*

On 1st August 2007, the Court of Final Appeal announced its completion of the preliminary trial proceedings of Ao's case. It declared that there was prima facie evidence for the 76 counts of criminal offence, including bribe-taking, money laundering, abuse of power, illicit financial participation in public affairs, making false declaration of incomes and unjustified wealth.

On 5th November 2007, the first of Ao's corruption trials began in the presence of the prosecutor and defendant plus 100 or so witnesses; some 20 boxes of files were submitted for the court's perusal. The trial lasted for more than one month, concluding on 30th January 2008 when the Court of Appeal passed final judgement. Ao was found guilty of 40 counts of bribe-taking, 13 counts of money laundering, 2 counts of abuse of power, 1 count of inaccuracy of the declared information, and 1 count of unjustified wealth. Ao was convicted of a total of 57 counts of criminal offence, and was liable to 230 years' imprisonment. As the current *Penal Code* provides that imprisonment may not exceed 30 years, Ao was subsequently sentenced to 27 years and subjected to a fine of MOP240,000, while those assets amassed through corruption were confiscated.

**18 Projects for which Ao Man Long received $164.42 million from Ho Meng Fai, as logged in Ao's Notebook**

| | | | | | |
|---|---|---|---|---|---|
| New gymnasium for Macao Polytechnic Institute - $1 million | Phase 1 of Macau Dome - $10 million | Phase 2 of Macau Dome and additional projects - $11.72 million | PO5 Project – $32 million | Site preparation to east of Cotai - $1 million | Phase 3 of Macau Dome - $13 million |
| Phase 1 of Shooting Centre - $5 million | Development of Grande Waldo Hotel - $15 million | Phase 4 of Macau Dome and additional works for previous phase - $15 million | Football field in northeast Cotai - $3.5 million | Development of StarWorld Hotel - $10 million | Road south of wastewater plant in Cotai - $1.5 million |
| Phase 2 of Shooting Centre - $4.2 million | Venetian Macao Convention and Exhibition Centre - $3 million | Galaxy Cotai Mega Resort - $4.5 million | Arts Garden and surrounding roads - $5 million | Expansion of Macao Incineration Plant - $20 million | Fit-out of StarWorld Hotel - $1 million |

**Declared by Ho Meng Fai directly and indirectly via third party bank accounts**

**Between February 2004 and July 2006, Ao Man Long received bribes totalling HKD162,193,000 from Ho Meng Fai via bank accounts controlled by him.**

| | | | | |
|---|---|---|---|---|
| £840,000 (June 2004) | HKD10 million (August 2004) | USD500,000 (December 2004) | HKD28 million (January to February 2005) | |
| HKD18 million (October 2005) | HKD8.45 million (October 2005) | HKD31,983,000 (October to November 2005) | HKD35 million (July 2006) | HKD15 million (June 2006) |

Cited from the public hearing at Court of Final Appeal

Table 12
Penalties for Conviction Counts of Ao's Criminal Offences

| Offences | Counts | Penalties |
|---|---|---|
| Receiving bribes to perform illegal acts | 11 | 7 years' imprisonment on each count |
| Receiving bribes to perform illegal acts | 4 | 6 years' imprisonment on each count |
| Receiving bribes to perform illegal acts | 5 | 5 years' imprisonment on each count |
| Receiving bribes to perform legal acts | 11 | 1 year and 9 months' imprisonment on each count |
| Receiving bribes to perform legal acts | 9 | 1 year and 6 months' imprisonment on each count |
| Money laundering | 13 | 5 years' imprisonment on each count |
| Abuse of power | 2 | 1 year and 6 months' imprisonment on each count |
| Inaccuracy of the declared information | 1 | 1 year and 6 months' imprisonment |
| Unjustified Wealth | 1 | 2 years' imprisonment and 240-day fine at MOP1,000 per day |
| Result: Ao was sentenced to 27 years' imprisonment and subjected to a fine of MOP240, 000 with assets amassed through corruption confiscated. | | |

On 14th January 2008, persons involved in the Ao case - including Ao's relatives, his wife Chan Meng Ieng, businessman Ho Meng Fai, Chan Tong Sang and Frederico Marques Nolasco da Silva – were put on trial at the Court of First Instance. Ho Meng Fai and Chan Meng Ieng were absent and placed on Interpol's "most wanted" list (Interpol Red Notice).

## 4.2 Case Concluded and Referred to Public Prosecutions Office

In 2007, CCAC instigated 66 cases of criminal offence, with 45 cases carried over from 2006 plus 2 cases in which proceedings were re-opened. There were 113 criminal cases to be handled, of which 34 were concluded and 11 referred to the Public Prosecutions Office. Listed below is a summary of cases referred to the latter:

### January

A case of public servant cheating housing allowance was uncovered. On 19th September 2006, a complainant alleged in person to the CCAC that a retired employee of the Civic and Municipal Affairs Bureau named Leong had cheated the Bureau with faked rental documents by claiming that he was renting the complainant's property, thus becoming eligible for the

government housing allowance. His fraudulence resulted in the complainant paying higher property tax, which exposed the case. The case was referred to the Public Prosecutions Office on 12th January 2007.

**March**

During the investigation of Ao's corruption case, the CCAC summoned an inspector of the Gaming Inspection and Co-ordination Bureau to assist investigation. When the CCAC personnel approached the inspector, having identified themselves, and asked him to accompany them to the CCAC office to assist in the investigation the inspector brusquely refused to show his ID and declined to go to the CCAC premises. He pushed the CCAC staff when trying to leave, and even attacked the CCAC personnel despite their warning. His behaviour constituted resistance and coercion and was then sent to the Public Prosecutions Office. In the course of investigating his case, the CCAC found that the suspect, as a civil servant, possessed as many as 50 properties and 3 operating commercial shops. He was consequently suspected of being involved in other crimes. The CCAC then instituted case proceedings against him.

**April**

The CCAC received an anonymous letter in November 2006 alleging that Ao Man Long, the then Secretary of Public Works and Transportation, had accumulated some MOP100 million in bank deposits. The suspicion was that this wealth had been amassed through corruption. The CCAC investigations led to the finding that between 2004 and 2006, bank accounts in Ao's name, and his accounts in the names of overseas companies, had accumulated funds amounting to more than HKD200 million. These funds originated from various construction companies in the Mainland, Hong Kong and Macao was transferred to Ao Man Long via complicated channels as kickbacks for using his power to grant them several of Macao's public construction projects. The projects included the Macau East


JORNAL TRIBUNA de Macau

DE OLHOS POSTOS NA JUSTIÇA

SESSÃO INAUGURAL MARCADA PARA ESTA MANHÃ

Ao Man Long começa hoje a responder em tribunal

Asian Games Dome, Macao Polytechnic Institute gymnasium and new campus building, Macao International Shooting Centre, the design and construction of the third Bridge, construction of an underground parking lot in Cotai for heavy vehicles and additional works, design/development, operation and maintenance of the Special and Dangerous Waste Disposal Station of Macao, and the extension of concession contracts for CSR in Macao.

The CCAC found large sums of cash, including Hong Kong dollars, MOP and USD, and many items of jewellery in Ao's residence. Between 2000 and 2006, Ao and his wife Chan Meng Ieng possessed in their own names or in the names of other people assets totalling more than MOP800 million. Ao's case was referred to the Public Prosecutions Office in April 2007 for legal proceedings.

The day Ao went on trial, reporters flocked to the court to cover the story

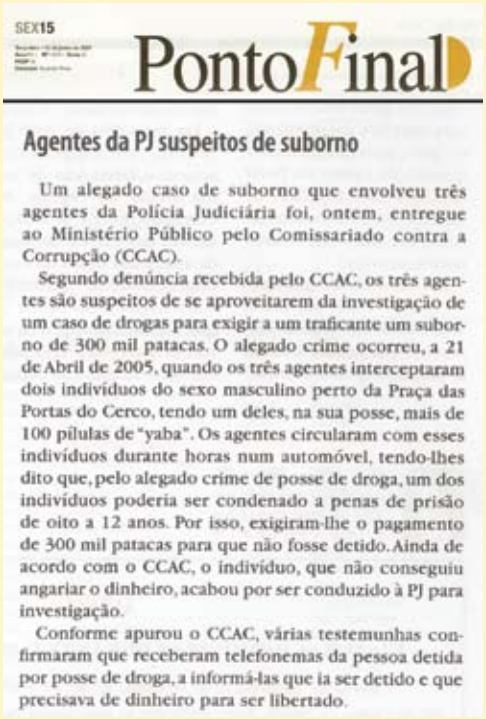
The trials and sentencing of Ao Man Long had attracted attention of the media worldwide

**May**

This case was a side finding in the investigation of Ao's corruption case. The suspects comprised a person named Tang and others who helped Tang bribe Ao Man Long. They did this by using bank transfers, issuing cheques or bearer cheques, or even simply giving cash, similar to the methods used in money laundering. Investigations revealed that between December 2003 and June 2006 several large sums had been transferred from accounts under Tang's control to Ao's accounts in the form of cash, remittances and cheques. Some of the transfers were conducted by Tang's employees and his friends and involved more than HKD43 million. In addition, Tang also promised to give Ao 10% share of a company, 10% of the profits from a government estate management contract, a commercial shop, a villa and $6 million more in cash. Suspects involved in the case included Ao Man Long, Chen Meng Ieng, various construction businessmen plus their employees and friends, a total of 10 persons. The case was transferred to the Public Prosecutions Office on 29th May 2007 for further proceedings.

**June**

Jurdicial Police officers were suspected of receiving bribes in February 2006. The CCAC received a complaint from an imprisoned criminal alleging that on an afternoon in late April 2005 whilst smuggling the drug known as "Yaba" through Macao Immigration he was apprehended by 3 judicial police officers named Ng, Fong and Cheng, who demanded MOP300,000. When this was not forthcoming, the trafficker was taken to the Judicial Police for investigation. The CCAC investigations revealed that there were doubts in the police officers' handling of this drug trafficking case.



SEX15

Ponto Final

**Agentes da PJ suspeitos de suborno**

Um alegado caso de suborno que envolveu três agentes da Polícia Judiciária foi, ontem, entregue ao Ministério Público pelo Comissariado contra a Corrupção (CCAC).

Segundo denúncia recebida pelo CCAC, os três agentes são suspeitos de se aproveitarem da investigação de um caso de drogas para exigir a um traficante um suborno de 300 mil patacas. O alegado crime ocorreu, a 21 de Abril de 2005, quando os três agentes interceptaram dois indivíduos do sexo masculino perto da Praça das Portas do Cerco, tendo um deles, na sua posse, mais de 100 pílulas de "yaba". Os agentes circularam com esses indivíduos durante horas num automóvel, tendo-lhes dito que, pelo alegado crime de posse de droga, um dos indivíduos poderia ser condenado a penas de prisão de oito a 12 anos. Por isso, exigiram-lhe o pagamento de 300 mil patacas para que não fosse detido. Ainda de acordo com o CCAC, o indivíduo, que não conseguiu angariar o dinheiro, acabou por ser conduzido à PJ para investigação.

Conforme apurou o CCAC, várias testemunhas confirmaram que receberam telefonemas da pessoa detida por posse de droga, a informá-las que ia ser detido e que precisava de dinheiro para ser libertado.

First, the three officers did not handcuff the suspect when apprehending him, and when they found the drugs they did not immediately notify their superiors. Instead, they toured Macao, during which time they allowed the trafficker to make several phone calls. It was not until three hours later that they finally returned to the Judicial

Police Headquarter with the trafficker. Through the testimony of several witnesses, and by checking and analysing the border crossing records of the parties concerned plus Ng's telephone call records, it was suspected that the 3 police officers were guilty of soliciting a bribe of MOP300,000 in return for letting the drug trafficker go free. The case was referred to the Public Prosecutions Office on 14th June 2007 for further proceedings.

**June**

A case of Labour Affairs Bureau inspector soliciting bribes was uncovered on 30th April 2007, the CCAC received complaints from the Labour Bureau and a citizen alleging that a Labour Inspection Department inspector named Lei had solicited commission from the complainant in return for Lei facilitating employment in Macao. The case was referred to the Public Prosecutions Office on 15th June 2007.

**July**

A prison-guard was nabbed for accepting bribes. Wong, a prisoner serving his sentence, made a phone call in July 2007 to a cell phone shop owner named Cheang to buy a cell phone, 3 SIM cards and 3 new batteries, at a total cost of HK$3,900 and asked Cheang to download some pornographic videos for him. Wong telephoned another person named Leong to bribe a prison guard named Choi to facilitate the passage of those goods into the prison.

On 20th July 2007, the CCAC arrested Choi and Leong red-handed, and found on Choi the bribe of MOP10,000 from Leong plus the cell phone and the accessories brought to him by Leong. The prison guard Choi was detained on 21st July 2007 and the case transferred to the Public Prosecutions Office on 11th October 2007 for further processing.

**August**

The CCAC cracked a case of construction project manager bribing health inspector. A letter was referred to the CCAC by the Health Bureau on 24th July 2007 alleging that during inspection of a construction site at Areia Preta by the bureau's health inspector at 3:00 pm on 20th July 2007, a female member of staff of the construction company placed an envelop containing MOP5,000 in his right-hand trouser pocket. The inspector suspected that somebody was attempting to bribe a public servant in order to pass the site check as soon as possible. The inspector reported the case to his superior. The case was handled by the Public Prosecutions Office on 1st August 2007.

JORNAL TRIBUNA de Macau

TERÃO TENTADO ALICIAR FUNCIONÁRIOS DOS SSM

CCAC investiga dupla por tentativa de suborno

Dois responsáveis de uma obra na Areia Preta terão tentado subornar fiscais dos Serviços de Saúde de Macau. O caso foi ontem encaminhado pelo CCAC para o Ministério Público

O Comissariado contra a Corrupção (CCAC) encaminhou ontem para o Ministério Público um alegado caso de corrupção activa. A investigação refere-se a dois responsáveis de uma obra, um homem de apelido Tam e uma mulher chamada Loi, que terão tentado subornar três fiscais dos Serviços de Saúde de Macau (SSM).

Segundo uma nota de imprensa, os suspeitos confessaram o crime de corrupção activa, que pode ser punido com a pena máxima de três anos de prisão.

O primeiro suspeito, Tam, com mais de 40 anos, é residente em Hong Kong, sendo responsável pela execução do projecto de construção de um grande edifício na Areia Preta. Por sua vez, Loi, também com mais de 40 anos, residente em Macau, promove a venda de apartamentos do prédio.

Há cerca de duas semanas, um dos indivíduos terá preparado 30 notas de 500 patacas, divididas por três envelopes, aquando da visita à construção dos três fiscais do SSM. Quando um dos fiscais chegou ao topo do edifício, Loi terá metido um envelope com 5.000 patacas no seu bolso. Já noutro piso, a suspeita terá alegadamente dado os outros dois envelopes aos restantes fiscais. No entanto, os dois fiscais terão recusado de imediato. O CCAC suspeita que Loi terá recebido instruções para "tratar bem" os fiscais do SSM.

O primeiro fiscal deu conta do sucedido ao seu superior, que transmitiu a informação ao CCAC.

CCAC

**September**

A prison guard was accused of bribe-taking. Following up on a complaint, the CCAC suspected that a prisoner surnamed Yip had purchased a 3G mobile phone from a phone shop in Areia Preta through his girlfriend. The phone and a bribe of $5,000 was then handed to a prison guard surnamed Leong via a shop staff member as an inducement to the guard to bring goods into the prison. The case was transferred to the Public Prosecutions Office on 14th September 2007.

**October**

A man was caught bribing the driving examiner. In October 2007, the CCAC received a complaint from IACM, claiming that an examinee for a motorcycle driving licence had allegedly bribed a public servant to pass the exam. The CCAC initiated an investigation, finding that the examinee had violated road traffic rules by crossing a solid line and driving on the wrong side of the road when he/she was being tested for heavy motorcycle riding. The examiner then halted the driving test and failed the examinee. However, the examinee immediately offered MOP500 in order to secure a pass, which was rejected by the examiner as the act constituted bribery. The case has been referred to the Public Prosecutions Office.

CCAC ENCAMINHOU CASO PARA MP

Candidato à carta de condução suspeito de corrupção activa

O Comissariado contra a Corrupção encaminhou ontem para o Ministério Público um caso suspeito de corrupção activa, que envolve uma tentativa de suborno a um examinador de condução

Um candidato à obtenção de carta de condução, de apelido Lei, terá oferecido vantagens ao examinador, no decorrer de um exame prático de motociclos, em que ficou reprovado, revela uma nota ontem divulgada pelo Comissariado contra a Corrupção (CCAC). Considerando que se trata de um caso suspeito de corrupção activa, o CCAC encaminhou ontem o indivíduo em questão para o Ministério Público.

De acordo com o comunicado do CCAC, o caso ocorreu na tarde do dia 18 quando cerca de uma dezena de examinandos, incluindo Lei, com mais de 20 anos de idade, participavam num exame prático de motociclos em Coloane.

Por violação do código da estrada no circuito, o referido indivíduo acabou por ser desqualificado do exame pelo examinador. No entanto, acrescenta o CCAC, "ao ver-se reprovado, desembolsou uma nota de 500 patacas e tentou oferecê-la ao examinador, a título de gratificação, pedindo que lhe fosse dada uma oportunidade".

Segundo o mesmo comunicado, a oferta foi imediatamente recusada pelo examinador que, sem demora, comunicou o caso ao superior hierárquico e ao Comissariado contra a Corrupção.

Após investigação, "suspeitou-se que Lei tenha tido a intenção de oferecer uma vantagem ao examinador para que o resultado do exame fosse alterado", salienta o CCAC, notando ainda que está em causa a "oferta de uma vantagem ilícita a funcionário público". No decorrer da investigação foi confessada a prática de corrupção activa, esclarece ainda o CCAC.

Caso ocorreu durante um exame prático de motociclos em Coloane

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**November**

This case constituted a part of the Ao corruption case. In order to assist Ho Meng Fai, Chan Tong Seng and Fredeirico Marques Nolosco da Silva in delivering bribes to Ao, the suspects in this case allegedly transferred bribes to Ao via credit transfer, cheques or bearer cheques, and even by cash. The method was similar to money laundering.

Following an in-depth investigation, the CCAC found that between 2004 and 2006 a number of large sums were deposited into the accounts held by third parties and other overseas companies and opened in banks in Hong Kong. These accounts were controlled by Ao. The amount involved totalled approximately HKD200 million. The sums that the suspect had accumulated came from accounts controlled by Ho, Chan and Silva. In other words, Ho, Chan and Silva anonymously transferred bribes to Ao via 'brokers'.

The 26 suspects included a businessman surname Lam, Chan Meng Ieng, the sub-contractors, staff members and relatives of the construction brokers involved in the case plus individuals who helped Ao receive bribes. The case was transferred to the Public Prosecutions Office on 15th November 2007.

**November**

SEXTA 16.11.2007 hojemacau

Dirigente do ID suspeito de abuso de poder

O Comissariado Contra a Corrupção anunciou ontem que enviou ao Ministério Público os resultados de uma investigação a um caso de alegado abuso de poder protagonizado por um dirigente do Instituto do Desporto, actualmente a desempenhar funções noutra instituição. O caso refere-se a 2002 e 2003, quando o suspeito, segundo o CCAC, dirigia o ID. Ao contrário do que é a prática habitual do CCAC, desta vez o comunicado de imprensa não referia o apelido do suspeito. O Hoje Macau não conseguiu nenhuma confirmação oficial do nome da pessoa em causa.

Segundo o Comissariado, a pessoa em causa terá contratado, entre 2002 e 2003, por meios irregulares, uma massagista que não tinha as habilitações literárias e qualificações necessárias ao exercício de funções na área de traumatologia desportiva. O CCAC diz ainda que o suspeito terá permitido que a massagista prestasse serviços nas instalações do Instituto depois de ela se desligar do serviço.

A investigação, garante o CCAC, iniciou-se a partir de uma denúncia apresentada por um cidadão. O comissariado, no entanto, não revelou em que data recebeu a dita denúncia.

A former leader of the Macau Sports Development Board was suspected of abuse of power. In 2004, the CCAC received a report against a former leader of the Macau Sports Development Board. Investigations revealed that although the leader had known that massage therapist Poon, who was closely related to him, had not obtained an academic certificate for sports injury therapy, he still hired her as a doctor. As a result, Poon enjoyed illegitimate benefits in terms of salary,

working hours and title. At the same time, the leader was able to obtain massaging services from Poon in a more convenient way at a cheaper price. The case was referred to the Public Prosecutions Office on 15th November 2007.

## 4.3 Mutual Case Assistance in Cross-Regional Investigations, Exchange & Training

### *4.3.1 Mutual Case Assistance in Cross-Regional Investigations*

Mutual case assistance is one of the main duties of the CCAC. In 2007, the CCAC was requested assistance in 18 cases from Mainland China, Hong Kong and overseas. Some 21 cases were carried over from the previous year, of which 20 have been concluded. Therefore, the CCAC still has 19 cases to handle. The CCAC also obtained assistance from overseas law enforcement agencies in joint investigations. Co-operation with overseas anti-corruption entities played an important role in the successful solving of the Ao Man Long case. All of the processes of bribery and money laundering were carried out outside Macao. Supported by the overseas departments of law enforcement agencies – particularly the ICAC in Hong Kong - the CCAC managed to obtain key evidence. Moreover, the CCAC presented evidence at court hearings with judicial co-operation between Macao and Hong Kong.

Authorities in Guangdong, Hong Kong and Macao co-organise practical symposiums on the joint investigation of cases in order to review assistance in investigations over the previous year and future arrangements. The 2007 symposium or Mutual Case Assistance - Guangdong, Hong Kong and Macao was held by ICAC in Hong Kong. The CCAC representatives attended the meeting. The representatives of the 3 authorities reviewed and shared their experiences of assistance in investigations and reached a common consensus regarding the reinforcement and control of the system of mutual case assistance, establishment of system of case assistance of urgent cases, procedures of witness's presence in court, systems of exchanging intelligence, enhancement of efficiency of assistance in case investigations, and the standardisation of procedures for handling banking information.


### *4.3.2 Recruitment and Training*

In 2007, the CCAC conducted the 6th recruitment and training programme for investigator. Following the written examination, body fitness test, home visit and interview, the CCAC recruited 15 candidates from more than 2,000 applicants, the largest recruitment of investigators that the CCAC has ever undertaken. Between August and December 2007, the CCAC initiated a four-month training programme; which include law studies, physical fitness, teamwork, inspection skills, firearms and professional conduct. They were also sent to the People's Procuratorate of Guangdong Province and the ICAC to receive training. The instructors comprised experts and scholars from China, Hong Kong, Portugal and Macao. After passing some 20 professional examinations, the trainees officially took up their CCAC posts in January 2008.

In order to continuously advance investigations skills, the CCAC hired local judge Mário José de Oliveira Chaves - the former Chief Judge of the collegate of the Court of First Instance of Macao - to share professional legal knowledge about inspection and court work. Professor Hao Hongkui, the Provost of the Chinese People's Public Security University, was also invited to teach virtual inspection and intelligence science.

In 2007, the CCAC dispatched two groups of investigators to the Chinese People's Public Security University for studies. The CCAC also enrolled some in the inspection training and Chief Investigators' Command Course held by the ICAC. Chief investigation officers were also enrolled on courses such as the Management of Serious Crime Programme (MOSC) organised by the Australian Federal

Trainees visited other places to receive training

Police (AFP) in Canberra in Australia and the Asian Regional Law Enforcement Management Programme (ARLEMP) organised by AFP in Ha Nam in Vietnam.

CCAC personnel participated in MDSC held in Australia

## 4.4 Evaluation of Incorruptibility in Macao by International Institutions

In 2007, the anti-corruption work in Macao caught the attention of the world. As at September 2007- according to the annual report of Transparency International, an international anti-corruption organisation - the Corruption Perception Index of Macao ranked 34th among 180 countries and regions in the world, registering a drop compared with its 26th position the previous year. However, of 25 countries and regions in Asia-Pacific, Macao occupied 6th place just as it had in previous years. According to the yearbook of the Hong Kong-based Political and Economic Risk Consultancy for 2007, the Corruption Perception Index of Macao ranked 4th among 13 countries and regions in Asia. The ranking was the same as the previous year.

## 4.5 Cases Adjudicated by the Court

6 cases investigated by the CCAC were brought to trial in 2007, involving 31 defendants, 14 of whom were found guilty, and three of whom were public servants. Details of the cases are listed as follows:

Table 13
Excerpts of court verdicts in 2007

| Date of Sentence | Defendant/ Suspect | Status of Defendant/Suspect | Verdict |
|---|---|---|---|
| 28/02/2007 | Antonio Luis Cachinho | Chief Inspector of Gaming Inspection and Co-ordination Bureau | The 2 defendants were found guilty of abuse of power and sentenced to 1 year imprisonment with 2 years' probation. The court found them guilty of committing serious offences which adversely affected the reputation of Macao SAR Government, damaging the government's image of altruism and impartiality. |
| | Jaoquim Duarte De Assis | Principal Inspector, Gaming Inspection and Co-ordination Bureau | |
| 09/03/2007 | Lei Seng | Property developer | The defendant was found guilty of employing illegal workers and sentenced to 5 months' imprisonment. The Judge asserted that there were many cases like this in society, therefore the penalty must not be substituted by a fine. However, as the defendant was a first offender and had no criminal record, the court put him on 2 years' probation on condition that he paid MOP5,000 to the Macao SAR Government within 2 months, and case processing fees to 3 judiciary units plus a sum of MOP500 to the public judiciary fund. |
| 27/03/2007, 12/06/2007 | Wu Lin | Candidate No. 3 of United Citizens Association of Macau; President, Community Association from SanShan, Fuzhou | The judges of the Collegiate Bench remarked at the trial that since electoral bribery seriously affected the image of fairness of the Legislative Assembly, such criminal acts should be seriously condemned to protect the public interest and ensure the validity of law and citizens' confidence in the social order. The Collegiate Bench found the 8 defendants guilty of electoral bribery. The first 3 defendants Wu Lin, Sun Ian Kuan and Hoi Fong Heng were the culprits in the case and were convicted of abetting in retention of voter registration cards in repeated offences of electoral bribery in voter registration. As the acts were carried out as collective behaviour, the offences qualified for an aggravated penalty. They were sentenced to 4 years' imprisonment with their political rights deprived for 5 years. Fourth defendant Lam Wing Hong was found assisting third defendant Hoi Fong Heng in collecting and managing voter registration cards, so he was found guilty of repeated offences of retention of voter's registration cards and therefore sentenced to 1 year and 9 months' imprisonment. His political rights were suspended for 5 years. The 15th defendant Wong Wai Heng, the 16th defendant Ng Ut Teng, the 17th defendant Chan Chong Fu and the 20th defendant Wong Meng Tak were accused of passing voter registration cards to other persons. They were convicted of retention of voter registration cards and sentenced to 9 months' imprisonment and 2 years' probation. |
| | Sun Ian Kuan | Deputy Director, Community Association from SanShan, Fuzhou | |
| | Hoi Fong Heng | Deputy Director, Community Association from San Shan, Fuzhou | |
| | Lin Yong kang | Accountant, Chong Nga International Travel Ltd. | |
| | Ip Lai Chan | Head of Women's Department, Community Association from San Shan, Fuzhou | |
| | Lam Pui I | Area Manager, ING Life | |
| | Hoi Fong Kuan | Jeweller,Vennace Watches & Jewellery | |
| | Cheang Ka Neng | Salesperson, Vennace Watches & Jewellery | |
| | Un Seng Peng | Decoration worker | |
| | Wong Pou On | Property agent | |
| | Poon Lai I | Unemployed | |

| Date of Sentence | Defendant/ Suspect | Status of Defendant/Suspect | Verdict |
|---|---|---|---|
| | Pun Lai Kun | Worker, Fashion Knitting Factory | |
| | Ao Wai Leng | Housewife | |
| | Ip Wai Peng | Cleaner, Women's Association of Macau | |
| | Wong Wai Heng | Painter | |
| | Ng Ut Teng | Salesperson, Hoi Tin Tong Herbal Medicine | |
| | Chan Chong Fu | Electrician, Yun San Electrical Appliance Shop | |
| | Wong Lon | Security Guard, Macao Property Management Company | |
| | Tong Mei Peng | Salesperson, Vennace Watches & Jewellery | |
| | Wong Meng Tak | Unemployed | |
| | Maria Assunta, Batalha Sou | Property agent | |
| | Chan Cheok Pan (a total of 22 defendants) | Property agent | |
| 23/03/2007 | Chan Kong Pou | Staff, Accounting Department, Education and Youth Affairs Bureau | The court confirmed the defendant's offence, commenting that as a public servant the defendant had taken advantage of his position to gorge monthly representations on overtime working hours at the expense of the government, and committed the offence 4 times. Since the court defined him as serial offender and his behaviour had damaged government interests, he was found guilty of embezzlement and sentenced to 2 years' imprisonment. As a first offender, the court ordered him to serve 2 years' probation. The defendant was ordered to repay the overtime payments of MOP23,666.70 to the government within 90 days. |
| 10/05/2007 | Wong Tin Hoi | Unemployed | Both defendants were convicted of 47 counts of retaining voter registration cards. The Colligiate Bench ascertained that the accusations were duly proved. Though electoral bribery seriously swayed the impartiality of the Legislative Assembly and the government's image, disturbing harmony in society, the defendants were first offenders. They were sentenced to 1 year's imprisonment and had their political rights revoked for 3 years. |
| | Lai Iat Kuai | Manager of shopping mall | |

| Date of Sentence | Defendant/ Suspect | Status of Defendant/Suspect | Verdict |
|---|---|---|---|
| 07/11/2007 | Mak X X | Candidate, Legislative Assembly Election in 2005 | The judge remarked that the 3 defendants were found abetting members of the compatriot association in wearing a certain campaign uniform comprising short sleeved T-shirts in X colour representing an electoral group, and gathered near the ballot station on election day. But the T-shirts in X colour did not bear or display any expressions related to the group. The law pertaining to such behaviour does not countenance liberal interpretation. Therefore, the 3 defendants were proved not guilty in law. However, the judge pointed out that although the defendants were found not guilty, they deserved criticism for their behaviour and that their acts might involve electoral bribery. The Public Prosecutions Office appealed the case in the Court of Second Instance. |
| | Chan X X | President of a compatriot association | |
| | Lei X | Executive Director of a compatriot association | |

In 2007, the CCAC solved 7 cases related to electoral bribery concerning the Legislative Assembly Election in 2005. 5 of the cases have gone through court trial proceedings. 75 defendants were involved in the 5 cases, and 40 of them were found guilty. Of the guilty defendants, 14 were sentenced to imprisonment without probation. 7 of them were sentenced to imprisonment on probation. The remaining 19 defendants were fined. The most severe sentence was 4 years' imprisonment. One of the convicted defendants was a candidate of the Legislative Assembly Election. The least severe sentence was 9 months' imprisonment. 4 defendants with offence of electoral corruption were subject to 5 years' suspension of political rights. In other words, they were prohibited from participating in the election of the Legislative Assembly and voting in elections for 5 years. In addition, 2 cases related to the election have yet to be heard in court, involving a total of 137 suspects.

## 4.6 Declaration of Incomes and Properties

Paragraph 5, article 4 of Law no. 10/2000 grants CCAC the power to supervise the standard and administrative correctness of any action involving properties and benefits. In this regard, the CCAC received a total of 8,257 property declaration forms from 9,380 individuals in 2007, details of which are listed as following:

| | |
|---|---|
| Appointment | 2,818 |
| Renewal | 2,382 |
| Termination of position | 1,632 |
| Five-year renewal | 487 |
| Voluntary renewal with that of spouse | 289 |
| Pursuit of data-provision duty | 628 |
| Voluntary renewal | 21 |
| **Total** | 8,257 |

In 2007, the CCAC also undertook to explain the procedures of property declaration to Macao's public servants, as well as sharing related experiences to its counterparts from other regions.

# CHAPTER V
# THE OMBUDSMAN

# Chapter V – The Ombudsman

In 2007, the CCAC recorded 236 administrative complaints, a 7.1% decrease compared to the previous year. In summary, the complaints primarily related to the public services system, municipal affairs and governmental operations. The CCAC conducted 6 formal investigations and made recommendations subsequently. In addition, the CCAC recorded 647 requests for help and consultation.

The CCAC completed 2 projects of research and examination on system in 2007, namely *the Analysis on Land Disposal and its Supervisory System* and *the Procurement System of Public Constructions*. The relevant reports were submitted to the Chief Executive. In terms of researches on operation, the Identification Bureau became a new collaborative partner of the CCAC in reviewing the issuance and management procedures of travel documentation. In addition, the CCAC continued to follow up on the implementation of measures designed to improve the operations of the Civic and Municipal Affairs Bureau and the Health Bureau.

In order that government departments and institutions attach more importance and priority to "Integrity management", the CCAC and the 5 government secretary offices jointly hosted 5 sessions of "Integrity Management Symposium" in July 2007, addressing the directors and department heads of respective departments and institutions. At the end of August, the CCAC launched the Integrity Management Plan to continuously promote integrity management in those departments and institutions. By the end of 2007, 56 government departments and institutions had participated in the programme (59 by the time of publishing this annual report) and promised to implement solidly the contents of the scheme while maintaining close collaboration with the CCAC.

The CCAC continued to host several seminars on "Noble Character, Righteous Conduct" in 2007 at the request of various government departments, institutions and private organisations and hosted various forums and workshops on procurement, ombudsmanship and functionary crimes in addition to other themes.

In terms of international exchanges, with the support of the Ministry of Supervision of the People's Republic of China, the CCAC organised the "Ombudsman and Legality in

Administration by law – International Exchanges between China and Portuguese-speaking Countries" conference in October 2007 to accelerate experience-sharing regarding administrative supervision between China (including Hong Kong SAR and Macao SAR) and Portuguese-speaking countries. The CCAC also continued to attend meetings held by the International Ombudsman Institute and Asian Ombudsman Association as well as seminars and conferences on corruption prevention hosted by other international organisations.

In terms of personnel training, the Ombudsman Bureau of the CCAC continued sending staff to investigation courses held jointly by the CCAC and the Chinese People's Public Security University. Local judge Mário José de Oliveira Chaves - once the Chief Judge of the Collegiate Bench of the Court of First Instance - was also invited to conduct internal staff training. Moreover, the CCAC organised delegations to study the operations of Mainland Chinese supervising entities. The Ministry of Supervision of the People's Republic of China also sent experts to Macao to explain to the CCAC personnel the tasks and shared their experiences in promoting systematic prevention.

## 5.1 Investigation

### *5.1.1 Case Intervention*

#### *5.1.1.1 Cases Recorded and Processed*

In 2007, the CCAC handled 236 cases of administrative complaint - a 7% decrease compared to the 254 cases logged in 2006. While the number of complaints regarding the legal system governing public services registered a slight fall it still accounted for 31% of all administrative complaints. Fewer complaints about illegal construction may have occurred because of the release of the report of research and examination on *the Power of Intervention of the Public Administration Concerning the Misuse and Poor Management of Private Premises.*

Meanwhile, the CCAC had co-operated with the Inspection Division under the Urbanization Department of the Lands, Public Works and Transport Bureau to conduct research on operation on the procedures handling illegal construction and had designed relevant remedial measures. As a consequence, citizens can understand the CCAC's stance on illegal construction issues and tasks that could be carried out within the limits

of its authorized function through responses to enquiries and Annual Report of the CCAC. Citizens have realised that making complaints to the CCAC merely may not speed up the demolition of individual illegal constructional works. Likewise, the number of administrative complaints on municipal affairs accounted for a smaller percentage as a result of the ongoing improvements made by the Civic and Municipal Affairs Bureau (IACM) on the handling and following up of complaints. If all government departments and institutions continue to improve their operational flows, increase transparency and improve the complaints handling system, residents would not need to seek the intervention of a third party, which is the long term objective that the CCAC has set, and one of the important goals in promoting the Integrity Management Plan. In addition, a significant number of complaints about occupying public places were received as a result of the authorities' deficiencies in the handling procedures and relevant legal system; the analyses on the related problems are available in *the Analysis on Land Disposal and its Supervisory System*. The number of complaints related to individuals' livelihood - such as imported labour, illegal businesses, tax affairs, and medical and healthcare, etc. - experienced an obvious increase compared to last year.

Table 14
Content classification of administrative complaints in 2007

| Problems involved | Number |
|---|---|
| Legal system governing public services (staff rights and interests, recruitment, internal management, discipline and abuse of power) | 72 |
| Municipal affairs | 18 |
| Illegal construction | 22 |
| Imported labour | 9 |
| Traffic offences | 9 |
| Supervision of property use and construction / occupying public places | 8 |
| Economic / social housing | 7 |
| Illegal businesses | 7 |
| Public procurement | 6 |
| Tax affairs | 6 |
| Medical and healthcare | 6 |
| Disputes between employers and employees | 5 |
| Transportation | 5 |
| Education | 4 |
| Irregularities in other administrative procedure | 47 |
| Beyond the competence of the CCAC | 5 |
| **Total** | 236 |

236 cases of administrative complaint recorded in 2007 were added to the 57 cases forwarded from 2006, with 27 overlapping cases excluded. As a result, a total of 266 complaints were to be processed during the year, of which 211 were completed or archived, accounting for over 79% of the total.

Some of the cases were archived because of the lack of evidence of administrative illegality or malpractice, others because they were handled by the departments concerned through formal or informal intervention by the CCAC. Some cases were close-filed be-

cause they were beyond the competence of the CCAC, inadequate information, etc. Of the 211 finished cases, 7 were handled by formal investigation while the remaining 204 were handled by the departments or institutions concerned via flexible approaches like referral, documents exchanges, consultation and meetings, of which approximately 74% were resolved within 3 months. Evidently, they were handled more efficiently in comparison with the cases in which formal investigation proceedings were initiated, as, in the case of the latter, it would take at least 3 months even in the final stage alone between the issuance of CCAC's recommendation and the departmental response. Of those, some 50 cases - or 24% of the total - were properly handled by the departments concerned following the CCAC's formal or informal intervention, which recorded an increase over the past few years. This suggests that if suitable ombudsman processing approaches are adopted in accordance with the nature of the cases and complexity of issues involved, the incidences of administrative illegality and malpractice can be solved more efficiently. Consequently, the ombudsman can be a more effective tool in defending the legal rights and interests of residents.

Table 15
Administrative complaints in 2007

| Reasons for case filed | Number |
|---|---|
| No sign of administrative illegality or malpractice | 123 |
| Handled by respective departments (by formal or informal intervention of the CCAC) | 50 |
| Lack of information | 28 |
| Beyond the competence of the CCAC | 4 |
| Others | 6 |
| **Total** | **211** |

### *5.1.1.2 Formal Investigation*

In 2007, the CCAC initiated formal investigations in 6 cases of administrative complaint, in which recommendations and suggestions were made. These cases involved re-

cruitment of personnel, prosecution procedures against administrative offences, certificate of sick leave, etc. A summary of the cases can be seen in the appendix.

In the case of "The rights of the absence of pregnant public servants resulting from prenatal care/checkups" (see case summary in appendix of 2006 Annual Report of the CCAC) the relevant authorised department issued unified guidelines to all government departments and institutions in 2007 in that "public servants shall be exempted from duties during the period of prenatal care/checkups during pregnancy".

### *5.1.2 Request for Help and Consultation*

The CCAC recorded a total of 647 requests for help and consultation in 2007, a 14% decrease compared to 2006. This marked a small decline after a nearly 25% sharp increase recorded in 2006, which may be the result of the enhanced consultation channels and clarified guidance given in consultation contents by the departments concerned, in addition to the CCAC's promotion of better government operation and increased transparency.

To sum up, most of the requests for help and consultation registered last year still addressed public service, municipal affairs, traffic offences and illegal construction. At the same time, citizens also paid more attention to government supervision regarding the use of real properties and construction supervision, traffic planning and contracting of public construction works. On the other hand, 83 requests for help and consultation went beyond the competence of the CCAC - a slight fall over the previous year, suggesting an enhanced awareness by citizens of CCAC's functions, even though many believe that the CCAC should be empowered to cope with corruption in the private sector.

Table 16
Classification of requests for help and consultation in ombudsman areas in 2007

| Issues | Number |
|---|---|
| Legal system governing public services (staff rights and interests, recruitment, discipline and declaration of income and property) | 146 |
| Municipal affairs | 69 |
| Traffic offences | 58 |
| Illegal constructions | 48 |
| Guidelines on the Professional Ethics and Conduct of Public Servants | 33 |
| Use of properties and construction supervision / traffic planning / public construction works | 25 |
| Employment Disputes | 23 |
| Economic and social housing | 20 |
| Medical and healthcare | 20 |
| Public procurement | 19 |
| Illegal labour | 10 |
| Tax affairs | 9 |
| Social Security | 6 |
| Illegal businesses | 5 |
| Others | 73 |
| Beyond the competence of the CCAC (private sector and lawsuits) | 83 |
| **Total** | **647** |

## 5.2 Researches and Examinations

### *5.2.1 Researches and Examinations on System*

In 2007, the CCAC completed 2 projects of researches and examinations on system, namely *the Analysis on Land Disposal and its Supervisory System* and *Procurement System of Public Constructions*. The relevant reports were submitted to the administrative authorities, in which the following improvements were recommended:

### *5.2.1.1 Analysis on Land Disposal and its Supervisory System*

Addressing the problems found in the process of the review, recommendations given by the CCAC sought to improve the system of land use and its supervision; in particular, by increasing the transparency and fairness of land disposal procedures in defence of the public interest:

1) Improvements to be made by legislation, revision of law or other regulations:

a) Formulation of urban planning may emanate from district planning, and seek to lay down the blueprint for land use and development of Macao SAR from "a rule of law" perspective. During the process, it is necessary to widely consult various sectors of society and recruit the participation of citizens.

b) Amend the provisions of the *Land Law* concerning the penalising of unauthorised occupants of land in the Macao SAR by increasing the amount of fine, or criminalising the offence to intensify the strength of intimidation.

c) By introducing the new enforcement regulations in the *Land Law*, the administrative authority should strengthen the regulations on land granting requirements or restrictions of the qualifications of applicants, transfer of entitlement of lands granted, change of usage, etc. to establish a more sophisticated land disposal system.

d) Amend the regulations of Decree Law no. 60/99/M concerning the constitution of the land committee and make changes in the current absurd circumstances in which "the majority of committee members are from the same department with subordinating relationship". It is recommended that non-public servants should be included as committee members, reasonably increase the number of members, and recruit distinct scholars and professionals or delegation from the spheres of urban development, transportation, history and culture, and environmental protection, etc.

2) Improvements to be made by issuing regulatory directives and taking other administrative measures by the administrative authorities:

It is true that it takes longer to navigate the process of legislation, revision of law and formulation of other administrative regulations. Therefore, prior to the legislation and amendment of the existing legal system, it is necessary to take certain measures to eliminate the loopholes of the system currently in practice.

a) Duly increase the proportion of non-agreement land disposals and consider introducing the "open invitation for land disposal" for the proper use of land similar to those held on the Mainland. In other words, the administrative authority should publicise in advance through appropriate channels its intention of land disposal, and provide relevant information. For example, the premium payable following the grant of land or relevant calculation method, special requirements for land development, qualifications of bidders and assessment criteria (such as the percentage of each assessment criterion or the minimum score for qualified contractors), etc. should be publicized. In addition, qualified interested parties should only submit development proposals for assessment within a given period.

b) Apart from the legislative means of regulating land use for the entire city or parts of it, the authorities may also use various available channels (such as dedicated websites) to inform the public of the latest information concerning land use in Macao and those regarding the above "open invitation for land disposal" - for example, the location, area, lease term, usage, requirements and restrictions for land development, qualifications and requirements for bidders, etc. The Macao SAR may select the most appropriate bidder for the grant amongst all land development proposals through a fair competition system. On the other hand the authorities may refer to opinions and recommendations made by the public prior to making a decision on land disposal if the public is aware of the status of land use in certain locations or areas in advance, in order to strengthen transparency.

c) A set of objective and fair assessment criteria should be laid down regarding lands disposal via agreement; for example, introducing assessment criteria of the economic and technical competency and credibility of the applicant in the initial application for land use and the transference granted rights. Where the land is granted for a specific purpose, more stringent restrictions must be set to prevent the successful bidder from increasing the profit return on the land at will after winning

the bid at a low price (premium). With regard to the assessment of application for change of land usage, the principle of "serving the public interest" shall be strictly observed, which equally applies to all activities and behaviour conducted by the administrative authorities and under no circumstance shall the authority exercise its discretion solely for the sake of a contractor.

d) As for land disposal applicants with questionable "credibility", such as those who have illegally occupied land in the Macao SAR ("unauthorized occupation of land") or failed to develop land granted or made use of their overdue land grant without justified reason, or failed to develop the land in accordance with the specifications in the land construction licence or corruption, their qualification for land grant will be restricted. Under the system of land grant by agreement, the authorities may exercise their discretion - especially when such grant may compromise the public interest - by rejecting applicants who fail to meet the requirements or qualifications.

e) The current regulations and the terms and conditions specified in the land disposal agreement shall be strictly observed in case of land disposal agreement fail to develop or development overdue by, for example, imposing a penalty or even rescinding the land grant.

f) Devise convenient and effective prosecution procedures to address the illegal occupation of land in the Macao SAR in order that the administrative authorities can deal with offences more efficiently and accordingly.

g) Since the authorities have established the Consultation Committee for Land Development – comprising 3 public servants and 4 non-public servants – then undoubtedly the members who concurrently serve as public servants shall be subject to "the recusal system". Failure to declare the circumstances that require "mandatory" or "self-recusal" will constitute a breach of discipline. Nevertheless, it is necessary to lay down an interest declaration system for non-public service members specifying their obligations and respective consequences on violation in order to prevent the conflict of interest and ensure that all members of the Committee shall voice their opinions objectively and justly on land development issues. It is recommended that the opinions of the Committee be made known

to the public accordingly, or at the very least establish an inquiry system to enable relevant persons' access to the relevant information according to the relevant stipulations of the current *Code of Administrative Procedures*.

3) The authorities should thoroughly investigate suspected offences involving the exchange of land by creating new private ownership and made land disposal decisions without legally renewing urban planning, in order to take suitable remedial measures to meet the requirements of "administration of law".

### *5.2.1.2 Procurement System of Public Constructions*

The procurement for public construction works of the Macao SAR is regulated by Decree Law no. 122/84/M, 63/85/M and 74/99/M and bound by the general principles regulating administrative activities as specified in the *Code of Administrative Procedures*. The first 2 sets of law are outdated and as such are disconnected from reality and the provisions stipulated therein are too general, containing principles without giving specifications and technical issues for enforcement. However, the administrative authority failed to specify the issues mentioned above through administrative rules or other regulatory means in accordance to the law, leading to various breaches of the principles of serving the public interest, fairness, appropiateness and impartiality stipulated in the *Code of Administrative Procedures* are evident in the procurement process.

In fact, procurement of public construction works involves huge financial outlays by the public treasury; some large-scale projects even cost tens or hundreds of millions of patacas, and are generally recognised as being at high risk concerning corruption and abuse of power. The mega-corruption case concerning the former Secretary for Transport and Public Works who was found guilty of abusing public power for personal interest in the process of public construction procurement, for example, was processed by the CCAC last year.

In practice, the CCAC has gathered some facts indicating the various vices in the current fundamental principles governing administrative procedures. The stipulations of the *United Nations Convention Against Corruption* applicable in Macao SAR requires that public procurement shall promote transparency, competition and operate with objective

criteria[1], thus the CCAC decided to undertake a comprehensive analysis of the current contracting system of public construction works and offer remedial advice in order that the authority could take appropriate measures to plug existing loopholes.

Regarding the various problems identified in research and examination, improvements can be made via legislation and amendment of the law. The recommendations are summarised as follows:

1) Administrative authorities shall implement as soon as possible the obligation of "regulating" as specified in Decree Law no. 74/99/M to lay down complementary and technical regulations governing the contracting system of public construction works through administrative regulations or other normative acts, in which the following contents shall be included:

a) As normative requirements, the general principles of administrative activities stipulated in the *Code of Administrative Procedures* should be embedded into specific regulations governing the procurement procedures of public construction designs and supervisory services. In particular, issues such as decisions on exemption from open tender, the number and entities invited for quotation (restricted tender) should be specified. Corresponding explanations, for example, consideration of expenditure involved or the number of qualified suppliers available in the market should be given. Public procurement project that involves massive public expenditure reaching the minimum requirement for public or great public inter-

[1] The *United Nations Convention Against Corruption* came into effect in the Macao SAR on 12th February 2006 and clearly stipulates that "Each State Party to the Convention shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability" (Paragraph 1 of Article 5), "endeavour to establish and promote effective practices aimed at the prevention of corruption" (Paragraph 2 of Article 5), "endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption" (Paragraph 3 of Article 5), thus, apart from developing and implementing anti-corruption policies as well as taking preventive measures, the SAR Government shall undertake to review the current legal system to prevent and fight corruption. In terms of the management of public procurement and finances, the aforementioned Convention also requires that each state party shall "establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption" (Paragraph 1 of Article 9) and "promote transparency and accountability in the management of public finances" (Paragraph 2 of Article 9).

est should be literally required to make known to the public the reasons for the exemption from open tender/only requesting quotations from a limited number of suppliers.

b) Supplementary service or construction work shall be strictly regulated, e.g., where the amount involved exceeds a specific percentage of the original contract amount it shall be deemed a "new construction project". The procurement method shall be determined according to law (e.g. by open tender or written quotation, etc.) In addition, in order to promote the transparency of procurement procedures, the authority should proactively disclose the reasons for the supplementary service or construction work, specific scope and proposed procurement method when the expenditure of the supplementary service or construction work exceeds the specific percentage of the original construction; in particular, exceeding the minimum amount of, for example, the MOP2.5 million requirement for open tender.

c) It is advisable to establish a standard database[2] for qualified professional entities based on the professional categories involved in the public construction works, which details providers of design services, supervision, consultation and construction services. The database should create its own criteria of entry, grading, upgrading and downgrading, for example, determining which grade of providers are invited to quote based on the estimated cost of the procurement project; grading can be adjusted according to performance in implementing the contract as well as dismissal terms such as seriously breaching the terms of the contract or lack of credibility[3]. The database should, of course, be updated from time to time, especially in terms of the experience and qualifications of the contractor entering upon the agreement with the authority.

d) Each scoring item and its respective percentage amongst the whole score - as well as the constitution and percentage of each sub-scoring item (if any) - should be clearly specified and made known to bidders prior to the tender. Should the percentage

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[2] Should a company be qualified for the 3 professional categories, it may be 'listed' in the relevant 3 categories in the database.

[3] For example, with a criminal record for corruption.

of certain scoring items in the procurement project be higher than the stipulated range, the department concerned shall provide explanation and obtain exclusive approval from the bid awarding authority and publish such details in the official gazette. Furthermore, price assessment should follow the statutory principle of "higher scores to lower price". Unless otherwise conforming to the provisions of law may the low price be eliminated. Should the administrative authorities choose not to observe the assessment criteria mentioned above to accommodate special cases, they should establish general rules through external regulations and specify applicable time limits in accordance with the law.

e) A guideline on tender assessment should be laid down for the assessment committee and include the following: require all members of the selection committee to grade the tenders individually; if abnormal scores emerge, the relevant assessor should explain his/her decision to the other members. Members should have the right to adjust their scores for legitimate reasons, and the entire assessment process should be recorded in writing.

f) Establish a system for prevention of conflict of interest for contractors responsible for construction designs, supervisory and consultation services. For example, the contractor and its staff members should be restrained from lending direct and indirect assistance to the construction bidder. The administrative authority should be informed whenever a conflict of interest arises.

g) Should the original procurement project be divided into certain parts for separate procurement - which exclude the project from the requiring open tender due to the decrease in its estimate cost - the authority concerned should inform the public of the reasons for division and the proposed procurement dates of the divided projects, among other things.

h) With regard to the negotiation between the authority and the highest scorer in the bid after tender assessment and prior to awarding of contract, it is advisable to specify a set of clear and concrete working procedures prior to negotiation (including descriptions of the issues, scope and reasons for negotiation) and present them to the auditing authority for approval. Where the awarder fore-

sees a necessity for negotiation with the highest scorer in the bid, the issues to be negotiated can/should be instructed together with the approval of the procurement. The scope and "bottom line" of negotiation should be stipulated in advance. The negotiation process should be unambiguously recorded in writing. Where negotiation is to be entrusted to project consultant and supervisory contractor, the authority should appoint technical personnel to monitor the negotiation.

i) Define the service scope and requirements of supervisory services for public construction works related to matters such as the number and qualification of supervisors assigned to the construction site, supervisory daily log and construction progress report, etc, in addition to other supervisory-related issues and requirements that may be added or reduced by the departments concerned.

2) In the long run, especially when the remedial and improvement measures mentioned above are implemented for a certain period, the administrative authority should, in hindsight, be in a position to redress the inadequacies of the existing procurement laws and regulations by updating them as necessary. The following issues should be taken into account:

a) In order to ensure that the selection committee is not influenced by the price offered by the bidder in the process of analysing technical qualifications, the current stipulations of Decree Law no. 74/99/M, where information regarding the bidding price and technical qualifications are placed in the same envelope, and the announcement of the bidding price on revealing of the tender prices (i.e.) prior to the completion of the tender assessment process, should be reviewed.

b) Review the system that allocates responsibility between the principal and the contractor, including an "insurance mechanism" to ensure that the authority is able to trace and enforce legal liability against the contractor concerned if defects are found after the project contractor is accepted. Where large-scale or special technical construction is concerned, the authority should require the contractor to be insured against future compensation for the loss sustained

by the authority or a third party should construction defects caused by the contractor emerge after a certain period of time when its "security deposit" was returned to the contractor .

### 5.2.2 Researches on Operation

In 2007, the CCAC followed up on the implementation of improvement measures by the Health Bureau and the Inspection Division of the Urbanization Department under the Land, Public Works and Transport Bureau. In addition, the CCAC also reviewed the operations of the Department of Travel Documents under the Identification Bureau.

#### Health Bureau

Following up on the research on operations of the Health Bureau, some improvement measures were recently implemented as follows:

The "Task Group on Personal Data Protection" was established to lay down the operational guidelines and supervise regularly the implementation of the departments concerned. The drafts of "Consent for Operation" and "Informed Consent" have been completed, while the regulations concerning hospitals and their departments are being amended. Telephone numbers related to various enquiries are indicated on the prescriptions notes of private pharmacies. The clinic appointment system for orthoptic and perimetry tests has been computerised based on time slots. A ticketing system has been introduced on the triage mechanism in the emergency department. The "ticket" clearly indicates the triaged group, the time registered and time of appointment, etc, while the waiting time status is clearly displayed on the monitor in the waiting area.

#### Land, Public Works and Transport Bureau

The CCAC followed up on the review on operations of proceedings regarding the procedures in handling of illegal construction works undertaken by the Inspection Division of the Urbanization Department under the Land, Public Works and Transport Bureau in 2006, with the following improvement measures implemented:

Upon receipt of complaint, the bureau initiates enquiries such as whether the related building has an established owners' assembly or names of property management office. The methods of contacting and responding to the complainants have been improved and suitable measures made to ensure the security of personal information.

The bureau obtains the registered data of the property concerned before making the on-site illegal construction inspection. The inspections are conducted by 2 random partners at random districts. The number of automobiles available for field checks has been increased. The bureau has also discussed with relevant departments the entry of illegal-construction data into the Real Estate Registry for reference by individuals intending to purchase real estate, and studied the possibility of introducing measures like "non-transferable registration".(The CCAC proposed in its Annual Report 2006 concerning *the Power of Intervention of the Public Authority Concerning the Misuse and Poor Management of Private Premises* that the authority consider introducing the abovementioned measure against illegal construction into the amendment of the *General Regulations of Urban Construction*. In early 2008, the relevant authority launched a consultation for the reform of the registration and notary system, which proposed the implementation of a register of administrative offences related to real estate. In other words, the transfer of ownership of the real estate involved would be banned from transaction before cancellation of the registered offence against administrative regulations - also known as "nailing the deed"- in order to increase the impact on illegal constructions. The notice of both fine and construction legalisation or voluntary removal are combined in order to save time and administrative costs. The bureau has set up a co-operation system with the estate management industry to prevent and monitor illegal constructions co-operatively.

Preparation for appropriate training to enrich practical legal knowledge of staff members has been initiated.

## Identification Bureau

The CCAC co-operated with the Identification Bureau in the review of the issuance and management procedures of travel documents in the third quarter of 2007. The CCAC has completed the initial phase of on-site observation while the studies and analyses are continuously under progress.

## 5.3 Integrity Management in Government Departments / Agencies

### *5.3.1. "Integrity Management Plan"*

The CCAC introduced its "Integrity Management Plan" in August 2007. By the end of that year, 56 of the 60 government departments/institutions had joined the plan (59 as at the time of writing). The term of this voluntary scheme extends to 2 years, and is renewable. Specific tasks are undertaken by the participating departments, while the CCAC provide technical assistance, and both parties appoint personnel on follow-up and periodical review of the programme. The plan essentially embraces the following:

1) Follow-up on the implementation of internal guidelines for departmental integrity and make step-by-step improvements of:

a) Declaration procedures and relevant handling criteria upon receiving advantages by public servants.

b) Enforcement mechanism of recusal system.

c) Strives to make illustrations specified in guidelines easier to understand by department personnel with regard to the range of responsibilities and job nature of the departments.

2) Conducting corruption risk assessment in correspondence to their range of responsibilities and job nature of the departments and progressively formulating specific anti-corruption measures based on assessment results; in particular, stipulating practical guidelines for specific job range.

3) Implementing progressively the principles for opening in public affairs in respect to the range of responsibilities of departments and promoting transparency concerning procedures and criteria of examination and approval.

4) Providing training to new and current staff members by holding seminars and workshops, etc. in order to ensure that all departmental personnel are well versed in their job procedures, guidelines and duly update relevant contents.

5) Strictly implementing the legal obligations to report to the CCAC of suspected functionary crimes or disciplinary offences, and inform the relevant results of disciplinary punishment.

6) Working promptly with the CCAC to review and formulate remedial measures should a departmental staff member be suspected of corruption; in particular, related to the operation of the department.

Furthermore, departments may add the following issues based on their respective responsibilities and internal operation:

Adding the following to Clause 1):

- Establishing a database regarding personnel's outside employment, and relevant basis of approval.

- Formulating corresponding procedures and conditions for reference and handling/ use of data and information with regard to scope of responsibilities of relevant department.

Adding the following to Clause 2):

- Conducting researches on operation for specific job range to improve operational flows and relevant monitoring system.


The CCAC signed "Integrity Management Plan – Protocol of Collaboration" with public departments/institutions

### *5.3.2 "Integrity Management" Symposium*

In July 2007, the CCAC and 5 secretary offices of Macao SAR successively co-organised 5 sessions of "Integrity Management Symposium". In addition to the CCAC personnel, several specialists from Hong Kong ICAC and relevant bodies were invited to address and introduce internal anti-corruption initiatives essential for the management of departments and institutions. This was achieved via case analyses and interactive discussion.

## 5.4 Formulation of Guidelines and Organization of Seminars/Workshops

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

In 2007, the CCAC continuously ran its promotion campaign for *Guidelines on the Professional Ethics and Conduct of Public Servants*, followed by seminars entitled "Noble Character, Righteous Conduct" for some 2,000 public department and institution personnel in Portuguese, Mandarin and English.

In addition, the CCAC followed up on the formulation progress of the internal codes of conduct of all departments. By the end of December 2007, some 57 of the 60 public departments and institutions had formulated internal codes of conduct; of which 40 departments formulated their codes by themselves while the rest fully adopted *Guidelines on the Professional Ethics and Conduct of Public Servants* by the CCAC or partly adopted the *Guidelines* supplemented by complementary regulations.

### *5.4.2 Organizing Seminars/Workshops*

In order to cater to the needs of government departments and institutions and private enterprises the CCAC continuously organises seminars and workshops on specialized topics, such as "public procurement" or "ombudsmanship", etc. with the aim of enhancing the individual's comprehension of the points related to procurement and ombudsman complain procedures. In addition, several workshops were held on the topic of functionary crimes, based on the needs of specific departments and institutions.

Seminar on "public procurement"

## 5.5 Seminars and Academic Research

### *5.5.1. "Ombudsman and Legality in Administration – International Exchanges between China and Portuguese-speaking Countries" Conference*

In commemoration of the 15th anniversary of implementing anti-corruption mission in Macao, the CCAC organised the "Ombudsman and Legality in Administration – International Exchanges between China and Portuguese-speaking Countries" conference in October 2007.The activity was strongly supported by the Ministry of Supervision of China, with the aim to facilitate exchanges between China (including Hong Kong SAR and Macao SAR) and Portuguese-speaking countries on the issue of promoting legality in administration by the supervisory organisations. The activity includes the abovementioned conference and a visit to Beijing.

Delegations from 9 countries and regions were invited to attend the seminars and deliver talks. Speakers included Chen Changzhi, Vice Minister of Supervision of the PRC, Jorge Correia de Noronha Silveira, Deputy Ombudsman of Portugal, Antônia Eliana Pinto, Chief Ombudsman of Brazil, Paulo Tjipilica, Ombudsman of Angola, Carmelita Barbosa Rodrigues Pires, Minister of Justice of Guinea Bissau, Sebastião Dias Ximenes, Ombudsman of East Timor, Ângelo Sitole, Permanent Secretary to the Minister of Justice of Mozambique, Alice Tai, Ombudsman of Hong Kong, and Endy Tou, Deputy Commissioner Against Corruption of Macao. All delegates were received by Chief Executive Edmund Ho.


The Secretary for Administration and Justice Florinda Chan delivered speech at the conference and posed for photos with delegates

The CCAC Commissioner Cheong U delivered opening speech at the conference

Chief Executive Edmund Ho greeted delegation heads

Delegations paid visit to Beijing and met with leaders of Ministry of Supervision on working progress

### *5.5.2 Research Awards on "Comparative Studies of Ombudsman Systems in Asia"*

Jointly organised by the CCAC and Macao Foundation on 16th October 2006, the deadline for application for research awards regarding "Comparative Studies of Ombudsman Systems in Asia" closed on 29th December of that year. A total of 9 research proposals were received. The panel finally selected 3 proposals in January 2007 after assessment. In addition to the ombudsman system of Macao, the research scope included countries and regions such as Korea, India, Japan, Taiwan, and Hong Kong. Based on the criteria set in the relevant rules and regulations, the award winning research report will be delivered in early 2008.

Deputy Commissioner of the CCAC Endy Tou (middle) introduced the work of ombudsmanship in Macao to members of the 3 selected research groups

## 5.6. Institutional Exchange and Staff Training

The CCAC continued to attend seminars organised by the International Ombudsman Institute and Asian Ombudsman Association, etc. and sent staff members to attend the "10th Steering Group Meeting of the ADB/OECD Anti-corruption Initiative for Asia and the Pacific" and "Regional Seminar on Claim of Property and Judicial Co-operation". In

addition, the Ombudsman Bureau of the CCAC organised a delegation to study the operations of Mainland Chinese supervisory entities and invited experts from the Ministry of Supervision of the PRC to explain to the CCAC personnel the operations of the monitoring system and preventive mechanism undertaken by the Ministry.

Representative of Ministry of Supervision of the PRC and Deputy Director of Research Centre Wang Conghai (right) and Division Head of Foreign Affairs Office Zhang Aimin host seminar for the CCAC personnel

# CHAPTER VI
# COMMUNITY RELATIONS

# Chapter VI – Community Relations

In 2007, the CCAC strived to enhance relationships with the community, and conducted a multifaceted publicity campaign to popularise the sense of civic responsibility - particularly with regard to the moral education of teenagers - in order that the concept of integrity would pass into the mainstream consciousness.

## 6.1 Integrity Education

In 2007, the CCAC continued to promote integrity and education by launching various education programmes targeting public servants, students, associations and private entities. Throughout the year, the CCAC organised some 300 seminars for 20,120 participants.

Table 17
Seminars held in 2000-2007

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

### 6.1.1 Public Servants

The CCAC organised seminars on various themes for public servants in different fields. Themes included integrity and observance, public procurement procedures, ombudsman, declaration of incomes and properties, and occupational crimes. Some 88 seminars were attended by 4,731 participants.

Apart from seminars for public servants at large, the CCAC co-organised "Integrity Management Symposiums" targeting directions and department heads of government departments from the offices of the 5 Secretaries in order to enhance awareness of integrity management. In addition to the CCAC leadership, experts from the ICAC and related fields were invited to share their experiences and exchange opinions with participants. The objective was to hold them up as role models and encourage them to improve integrity management in their departments.

Integrity Management Symposiums

Table 18
Seminars and workshops organised for public servants in 2007

| Subject | Department | Participants | Number of Sessions | Number of Participants |
|---|---|---|---|---|
| Integrity Management Symposiums | Offices of five Secretaries and all departments | Directors and department heads | 5 | 417 |
| Symposium of "Noble Character, Righteous Conduct" | Public departments | Staff | 22 | 1,860 |
| Basic Training Course for Public Servants | Public departments | Staff | 33 | 957 |
| Workshops on Integrity Construction | Lands, transportation and public works<br>Civic and Municipal Affairs Bureau<br>Science and Technology Development Fund | Department heads and staff | 9 | 458 |
| Public Procurement | Health Bureau | Staff | 2 | 40 |
| Declaration of Income and Properties | Academy of Public Security Forces | Security trainees of the 6th, 7th and 8th courses and prison guard trainees | 4 | 427 |
| Advanced courses on integrity | Fire Services Bureau | Senior firemen | 1 | 39 |
| | | Deputy Divisional Officer | 1 | 45 |
| | Academy of Public Security Forces | Sergeants | 1 | 17 |
| | Academy of Public Security Forces | Deputy Sergeants | 1 | 27 |
| Integrity and Observance | Macao Customs | Newly recruited customs officers | 2 | 56 |
| | Civic and Municipal Affairs Bureau | New recruits | 2 | 105 |
| | Fire Services Bureau | Firemen | 3 | 240 |
| | Academy of Public Security Forces | Trainees | 1 | 15 |
| Ombudsman' seminars | Macao Customs | Newly recruited customs officers | 1 | 28 |
| **TOTAL** | | | 88 | 4,731 |

Integrity Seminars for trainees of Public Security Forces

## 6.1.2 Teenage Students

### *6.1.2.1 Symposium on Education of Integrity and Honesty for Teenagers*

The CCAC held its "Symposium on Education of Integrity and Honesty for Teenagers"seminar in the conference hall of the Macao Cultural Centre on 24th November 2007 in order to enable local educational workers to draw on the experiences in the enhancement of education on honesty of experts from various places. Speakers included professional educational workers and scholars from Mainland China, Taiwan, Macao and Hong Kong. Some 150 principals, supervisors, teachers from local primary and secondary schools, and delegations from government departments and youth associations attended the seminar. The enthusiastic attendees all believed that the seminar would inspire them in the exploration and reflection of honesty education for teenagers.


Guests of honour and speakers

Attendees listened attentively to speakers

Local educational workers, delegates from government departments and youth associations attended the symposium

### *6.1.2.2 Education on Honesty for Primary Students*

In 2007, the CCAC continued to organise a series of activities entitled "New Generation of Integrity – an Education Programme on Honesty for Primary Students" in the activity room named "Paradise of Integrity" at the CCAC's branch office. The 125 activities promoted honesty and integrity via puppet shows, computer animation and short films. Some 5,234 primary students from 21 schools participated in the activities.

Primary students participated in "New Generation of Integrity" series

The CCAC organised 18 activities before and after Children's Day on 1st June, as they had in 2006, in order to celebrate Children's Day with 671 primary students from different schools. In addition, the CCAC co-organised a bazaar with several government departments at Macau Forum and an activity entitled "Celebration of June 1st Children's Day" with the General Workers' Union of Macao. The activity instilled in the children an awareness and value of integrity and observance through special games.

Children and William celebrated Children's Day

### *6.1.2.3 Education on Honesty for Secondary Students*

Driven by rapid social development over very few years, the changes in vocational structure and career prospect have deeply influenced teenage values; thus the reinforcement of moral education for teenagers is very important. In 2007, the CCAC focused on strengthening the promotion of honesty and education of teenagers.

The CCAC co-organised "Integrity Week" with the Portuguese School of Macao and Macao Baptist College respectively, in order to merge the activity into school activity and routine of ethical education courses. Through sharing experiences, videos, plays and songs, proper values of law-abidingness are instilled to students so as to foster integrity and the characteristics of honesty.

The CCAC Chief of Cabinet Ho Ioc San delivered speech during inauguration ceremony of "Integrity Week" at Macao Baptist College

The CCAC co-organized "Integrity Week" with Portuguese School of Macao


Anti-corruption promotion works created by students from Portuguese School of Macao

In addition to "Integrity Week", seminars on integrity education targeting teenagers took place on an on-going basis. As well as an introduction to anti-corruption works, the seminars thoroughly explored the concepts of money and fairness to further raise the teenagers' consciousness of integrity. Some 19 seminars attracted 6,472 participants in 2007.

Secondary students attend seminars on integrity education

### 6.1.2.4 *Teaching Materials for Moral Education to Secondary Students*

Conducting honesty education programmes for secondary students is one of the most important policy goals this year. Consequently, the CCAC is striving to complete the development of teaching materials related to honesty education for secondary students. The preliminary materials will comprise 8 units, including incorruptibility, clean elections, honesty, fairness, attitude on money, observance, responsibility, friendship and justice. Some of the units are expected to be completed within the 2008-09 academic year.

### 6.1.2.5 *Web Page on Honesty for Teenagers*

In order to cultivate teenagers' consciousness of honesty and observance, the CCAC created "Teen City" (www.ccac.org.mo/teencity ), a website promoting integrity among teenagers which was launched in September 2007. "Teen City" serves as a platform for the CCAC to interact with youngsters so that they have a greater opportunity to actively participate in integrity education programmes. Also, the CCAC co-operated with a number of local secondary schools to link the website to the schools to reinforce the effect of the campaign.


The CCAC's "Teen City" Website

### 6.1.2.6 Other Activities for Teenagers

In 2007, the CCAC organised or co-organized in a number of activities for teenagers, including co-organising "Draw a New World of Integrity" comic drawing contest and "Honesty and Integrity: Chinese Calligraphy Contest for Macao Students" in conjunction with the Chong Wa Student Association of Macao, and also participated in the "Carnival against Crime and Drug Abuse" organised by Junior Police Call.


The CCAC leadership, guests and winners at "Draw a New World of Integrity" comic drawing contest

### 6.1.2.7 Integrity Education for College Students

In 2007, the CCAC held a total of 20 seminars for 1,923 participants on integrity for students from higher education institutes and trainees of pre-job training.

Details about seminars conducted for university and secondary students and trainees of various programmes are listed as follows:

Table 19
Seminars held for university and secondary students and trainees in 2007

| Educational institutes | Participants | No. of Sessions | No. of Participants |
|---|---|---|---|
| University of Macau | Seniors from Department of Government and Public Administration | 1 | 45 |
| Macau Tourism and Casino Career Centre | Trainees of employment training | 16 | 1,208 |
| Macau Millennium College | Trainees of employment training | 3 | 670 |
| **Total** | | 20 | 1,923 |

### 6.1.3 Integrity Promotion Targeting Community Associations and Institutions

Pursuant to the dissemination of the concept of integrity over recent years, the CCAC endeavoured to deepen propaganda for the general public by launching promotional activities in different spheres - such as communities, business sectors and community associations, etc. - targeting different people, making use of different content and presentation method to conduct interactive communications so as to promote social co-operation with more concrete promotion content with practical channels.

In 2007, the CCAC conducted a total of 13 seminars and visits for community association members, totalling 413 participants; plus 17 seminars for private institutions, totalling 676 participants.

Extending the message of integrity to the elderly

"Good Citizen Family" volunteer squads of the Municipal Affairs Bureau visited the CCAC branch office

Table 20
Seminars held for community associations, educational institutes, departments and companies in 2007

| | Community association/educational institute/company | Participants | Sessions | No. of Participants | Sub-total of participants |
|---|---|---|---|---|---|
| Community association, educational institute and others | Mong Ha Community Centre of General Union of Neighbourhood Associations of Macao | Members | 1 | 30 | 413 |
| | Campus Reporter of Estrela do Mar School | Secondary school students | 1 | 20 | |
| | 4th Group of Scout Association of Macau | Members | 1 | 20 | |
| | Municipal Affairs Bureau | Volunteer squads of "Good Citizen Family" | 1 | 12 | |
| | Juvenile Volunteer Association of Macau | Members | 1 | 20 | |
| | Outdoor Cleaning Squads of General Union of Neighbourhood Associations of Macao | Staff and volunteers | 1 | 40 | |
| | Green Island Community Centre of General Union of Neighbourhood Associations of Macao | Members | 1 | 20 | |
| | Elderly Day Care Centre of UGAM | Elderly members | 1 | 100 | |
| | Elderly Home of St.António Centre | Members | 1 | 50 | |
| | Young Offenders Institute | Resident students and staff | 2 | 45 | |
| | Macao New Chinese Youth Association | Youth meeting ambassadors | 1 | 40 | |
| | Richmond Fellowship of Macau | Service users | 1 | 16 | |
| Private entities | Tai Fung Bank | New recruits | 1 | 90 | 676 |
| | CLP Engineering Limited | Staff | 2 | 20 | |
| | T.D.M. | Staff | 5 | 106 | |
| | MGM Grand Paradise Limited | Security Staff | 6 | 240 | |
| | Otis Elevator Company | Manager and staff | 1 | 30 | |
| | The Venetian Macau Limited | Procurement staff and treasurers | 1 | 120 | |
| | Ponte 16 | Staff | 1 | 70 | |
| **Total** | | | 30 | 1,089 | |

To summarise, the CCAC conducted 300 sessions of various seminars, talks and symposiums, attracting 20,120 participants. More information is detailed in the table below:

Table 21
Seminars, symposiums and workshops in 2007

| Participants | Activity nature/topic | Number of Sessions | Number of Participants | Sub-total of participants |
|---|---|---|---|---|
| Public servants | Integrity Management Symposiums for directors and chiefs | 5 | 417 | 4,731 |
| | Symposium of "Noble Character, Righteous Conduct" | 22 | 1,860 | |
| | Basic Training Course for Public Servants | 33 | 957 | |
| | Workshops on integrity construction | 9 | 458 | |
| | Seminars on "Public Procurement" | 2 | 40 | |
| | Seminars on "Declaration of Incomes and Property" | 4 | 427 | |
| | Advanced integrity courses | 4 | 128 | |
| | Seminars on integrity and observance | 8 | 416 | |
| | Seminars on "Ombudsman Functions" | 1 | 28 | |
| Primary students | New Generation of Integrity – an Education Programme on Honesty for Primary Students | 125 | 5,234 | 5,905 |
| | "June 1st Children's Day Special Programme" | 18 | 671 | |
| Secondary students | Education Programme on Honesty for Teenagers | 19 | 6,472 | 6,472 |
| College students | Seminars on "Integrity Awareness" | 1 | 45 | 1,923 |
| Trainees | Seminars on "Integrity Awareness" | 19 | 1,878 | 413 |
| Community associations | "Education on Honesty for Teenagers" Seminars | 7 | 162 | |
| | Seminars on "Integrity Awareness" | 6 | 251 | |
| Institutions | Seminars on sense of integrity | 17 | 676 | 676 |
| Total | | 300 | 20,120 | |

## 6.2 Community Activities

The CCAC strived to enhance communication and co-operation with community associations by extensively liaising with different community associations and institutions, listening to their opinions and suggestions and understanding the current status of all circles in the rapid development of society to further promote the cause of integrity. During the year, the CCAC visited 15 non-government associations in different districts.

The CCAC leadership shared opinion with civil associations

In addition, the branch office of the CCAC frequently organised seminars for community associations on the topics of "Integrity Awareness" and "Education on Honesty for Teenagers". It also participated in activities organized by community associations, thus strengthening community propaganda and working together to promote integrity education in the community. In order to encourage more citizens to familiarize themselves with the services of the branch office, the CCAC made use of posters, buses, newspapers and radio advertisements. The location of the branch office on the islands has been selected and confirmed, and is expected in operation at later time.

In 2007, the branch office received 562 complaints/reports, requests for help and consultation, and simple enquiries. This represented a slight increase compared with the 517 cases of 2006. More information is detailed in the table below:

Table 22
Number of citizens received by the branch office in 2007

| Complaints/reports | | Written Complaints | Requesting help/consultation | Simple enquiry | |
|---|---|---|---|---|---|
| In person | Telephone | | | In person | Telephone |
| 30 | 3 | 19 | 211 | 242 | 57 |
| Sub-total: 52 | | | Sub-total: 510 | | |
| **Total: 562** | | | | | |

## 6.3 Other Research and Publicity

### 6.3.1 Other Research

- "Fighting Corruption – Becoming an Agent of Reform" Seminar

Co-organised by the CCAC, Public Administration and Service Bureau and University of Macau, the "Fight Corruption – Becoming an Agent of Reform" Seminar was chaired by Professor Michael Johnston, an expert in anti-corruption issues and Division Director for the Social Sciences, Colgate University of the United States. He was joined by more than 170 chiefs and department heads from more than 70 government departments and entities.

- Diploma Programme on "Strategic Corruption Control and Organizational Creditworthiness"

Jointly organised by the Macau Inter-University Institute and non-governmental organisation TIRI, the diploma programme lecture on Strategic Corruption Control and Organizational Integrity was delivered by experts from anti-corruption organizations and education institutes of different countries. In addition, the CCAC sent staff to introduce relevant working progress in recent years on the ombudsman system of Macao to the attendees.

### 6.3.2 Regular Promotional Work

The CCAC widely publicises information related to integrity education via:

- Articles in the Chinese press "Clean Administration Forum". Some articles were published in Periodicals of the Association of Adult Education of Macao and Kai Pou, the Macao Prison publication;

-TV information programme "Enquiry and Reply";

-Newspaper advertisements, radio commercials, bus advertisements and indoor lightbox advertisements, etc;

- Publicity gifts for students;

- The Caritas Bazaar of Macao;

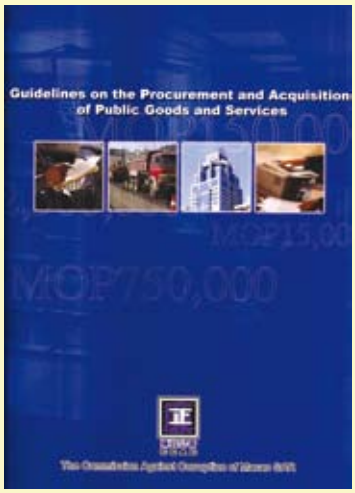
- Publish the Annual Report of the CCAC in Chinese, Portuguese and English; excerpt of reports on ombudsman was publicized in the annual report of 2006;

- The quarterly CCAC bulletin in Chinese/Portuguese and half-yearly bulletin in English;

- Publish the book *Integrity Story Salon*, with the objective of promoting citizens' awareness of integrity in a light-hearted manner to attract the attention of citizens; in particular, teenagers with comics illustrating the theme of integrity, fighting corruption and abiding by the law, etc;


*Integrity Story Salon* comic book

- Published the English version of *Guidelines on the Procurement and Acquisition of Public Goods and Services*;




The English version of *Guidelines on the Procurement and Acquisition of Public Goods and Services*

-Created a new anti-corruption poster - "Don't Take Chances!" - with the objective of reminding residents that "offering or receiving bribes constitutes a crime"; strengthened the advertising impact by distributing posters to government departments, community associations and schools, etc.

Anti-corruption poster - "offering or receiving bribes constitutes a crime"

### 6.3.3 Integrity Volunteer Team

The integrity volunteer team of the CCAC continued playing a role in promoting the concept of integrity - and endeavoured to participate in promotion activities and assist in street questionnaire surveys. In addition, team members demonstrated their involvement in the community; for example, by organizing team members to participate in the Charity Walk for Millions and donation activities.

In order to increase the participation of volunteers and build a good relationship to pave the road for future team co-operation, the CCAC organised the "Winter Outing Gathering" in mid-December, which was joined by dozens of volunteers, the Commissioner Cheong U and Chief of Cabinet of the Commissioner Ho Ioc San. They also discussed and shared their opinions with the volunteers.

Volunteers and the CCAC leadership gathered at outing


Integrity Volunteer Team and the CCAC personnel participate in "Charity Walk for Millions"

## 6.4 Liaison and Exchange

### 6.4.1 Liaison with Media

As ever, the CCAC endeavoured to maintain close links and a healthy collaborative relationship with the media to enhance communication and co-operation. The CCAC also hosted press conferences to announce the latest cases detected and progress on the issue of anti-corruption work.

The CCAC and media directors at annual "Tea Meeting on Clean Administration"

The CCAC leaders host press conference

## 6.4.2 Exchanges with Counterparts Overseas

In 2007, the CCAC continued to strengthen its bonds with the anti-corruption and Ombudsman departments of Mainland China, Hong Kong and other regions. The exchange activities attended by the CCAC included the Board of Directors Meeting of the Asian Ombudsman Association in Vietnam; an inspection tour of Beijing and Henan led by the Commissioner; the Board of Directors Meeting of the International Ombudsman Institute held in Sydney, Australia in early November, with Commissioner Cheong U attending as a member of the Board

of Directors; an inspection tour of the Ministry of Supervision in Beijing and the Department of Supervision in Hangzhou led by the Deputy Commissioner Endy Tou.

The CCAC delegation was invited by Supreme People's Procuratorate of the People's Republic of China to visit Beijing. The Commissioner Cheong U presented souvenir to Vice Procurator General Zhang Geng


The Commissioner Cheong U presented souvenir to Dr. Le Tien Hao, Deputy Inspector-General of Vietnam at Board of Directors Meeting of Asian Ombudsman Association in Vietnam

The Commissioner Cheong U and board members at Board of Directors Meeting of International Ombudsman Institute in Sydney, Australia

The CCAC also received visiting delegations from the Zhuhai Public Security Bureau, the ICAC of Hong Kong, the Canadian Consulate General in Hong Kong, Anti-corruption Authority of Mongolia, Corrupt Practices Investigation Bureau of Singapore, Jiangmen Procuratorate, the Chamber of Commerce of Sri Lanka, Anti-Corruption Bureau of South Korea, attendants of the 1st IAACA Seminar, US Government, Hong Kong Equal Opportunities Commission, Tianjin Supervision Bureau, members of Ministry of Justice of South Korea and former ICAC Commissioner of Hong Kong Bertrand de Peville, and others.

Delegates from different countries attending the IAACA Seminar organised by Supreme People's Procuratorate of the People's Republic of China. Delegation heads posed for photos with the CCAC leadership


The 4th China-ASEAN Prosecutors-General Conference was held in Macao in April. The Commissioner took part in the Conference and invited all delegations for luncheon. The Commissioner had a pleasant conversation with Jia Chunwang, Procurator-General of the Supreme People's Procuratorate during the lunch

Delegation from Anti-corruption Bureau of South Korea visited Macao

Delegation from US Government visited Macao


Delegation from Anti-corruption Authority of Mongolia visited Macao


Delegation led by Chairman of Hong Kong Equal Opportunities Commission Raymond Tang (fourth from left) visited Macao and posed for photos with CCAC leaders

Delegation from Public Complaints Bureau of Malaysia visited Macao

The CCAC leaders organised a series of exchange visits and seminars with individuals in charge of many institutions and associations, including: representatives of the People's Liberation Army Macao Garrison, General Union of Neighbourhood Associations of Macao, General Labour Union of Macau and General Association of Macau Clerical Employees, etc.

In addition, the CCAC also sent representatives to visit the North District Family Services Centre of the Women's Association of Macao, Mutual Help Association of the Neighbours of Bairro Fai Chi Kei, the Branch Office of North District of the General Union of Neighbourhood Associations of Macao, the North District Volunteer Promotion Association of Macao, Deaf Services Centre of Macau Deaf Association, Community Centre of General Union Neighbourhood Associations of Macao, Mutual Help Association of the Neighbours of Green Island, Mutual Help Association of the Neighbours of Bairro Tamagnini Barbosa, of Bairro Abrangendo a Rua do Campo, a Avenida Conselheiro Ferreira de Almeida and Rua da Mitra and of Bairro Mong-Ha, Bosco Youth Service Network, Community Centre of Bairro Tamagnini Barbosa of General Worker's Union of Macao and Family Service Centre at Kin Wa of Church of Macao Methodist.


Commissioner Cheong U exchanged views with the leadership of the General Workers' Union of Macao


Commissioner Cheong U visited General Union of Neighbourhood Associations

# CHAPTER VII
# ADMINISTRATION

# CHAPTER VII – ADMINISTRATION

## 7.1 Budget

### *7.1.1 Legal framework*

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

The budget of the CCAC for 2007 was approved by the Executive Order no. 29/2007 of the Chief Executive and was published in Series 1, Issue 5 of the *Official Gazette of the Macao SAR* on 29th Jan 2007. The budgeted income approved was MOP95,676,000.00 (ninety-five million, six hundred and seventy-six thousand patacas).

After closing accounts of 2006 and settling the related surplus, the CCAC recorded a final management surplus of MOP21,196,770.67 (twenty-one million, one hundred and ninety-six thousand, seven hundred and seventy patacas, and sixty-seven avos), which was MOP6,196,770.67 (six million, one hundred and ninety-six thousand, seven hundred and seventy patacas, and sixty-seven avos) more than than the budgeted management surplus. Therefore, the CCAC in accordance with the law prepared the first supplementary budget. This was approved by the Executive Order no. 146/2007 of the Chief Executive and was published in Series 1, Issue 20 of the *Official Gazette of the Macao SAR* on 14th May 2007.

Considering the surplus was increased by MOP6,196,770.67 (six million, one hundred and ninety-six thousand, seven hundred and seventy patacas, and sixty-seven avos) based on the financial management in the previous year, therefore, the budget for the CCAC to carry out various projects and activities in 2007 totalled MOP101,872,770.67 (one hundred and one million, eight hundred and seventy-two thousand, seven hundred and seventy patacas, and sixty-seven avos).

### *7.1.2 Budgeted income*

The amended budgeted income for 2007 was MOP101,872,770.67 (one hundred and

one million, eight hundred and seventy-two thousand, seven hundred and seventy patacas, and sixty-seven avos). However, the actual income was MOP96,127,914.49 (ninety-six million, one hundred and twenty-seven thousand, nine hundred and fourteen patacas, and forty-nine avos), with a difference of MOP5,744,856.18 (five million, seven hundred and forty-four thousand, eight hundred and fifty-six patacas, and eighteen avos) less than the budgeted income, thus resulting in an execution rate of 94.36%. The reason for the actual income being less than the budgeted income was mainly due to one budgeted transfer amounting MOP5,731,724.60 (five million, seven hundred and thirty-one thousand, seven hundred and twenty-four patacas, and sixty avos) was postponed by the transfer institution and was deposited into the CCAC's account in 2008. Therefore, according to the regulations governing public finance management, the related amount can only be recorded in the accounts of the CCAC of 2008.

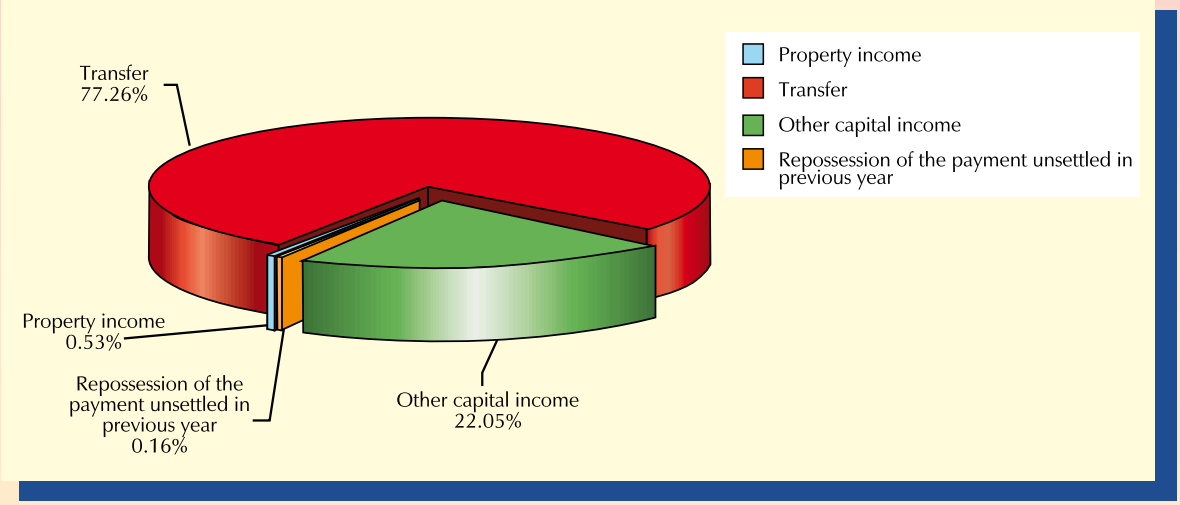
Out of the total actual income of MOP96,127,914.49 (ninety-six million, one hundred and twenty-seven thousand, nine hundred and fourteen patacas, and forty-nine avos), the major part came from the item of "Transfer of the General Budget of the Macao SAR". This was MOP74,266,137.00 (seventy-four million, two hundred and sixty-six thousand, one hundred and thirty-seven patacas), accounting for 77.26% of the actual total.

Another major source of income was "Other Capital Income", which was MOP21,196,770.67 (twenty-one million, one hundred and ninety-six thousand, seven hundred and seventy patacas, and sixty-seven avos), accounting for 22.05% of the actual total.

Table 23
Financial income in 2007

| Codes | Designation | Budgeted income | Supplementary budget | Total budgeted income | Actual income | | Difference | Execution rate |
|---|---|---|---|---|---|---|---|---|
| | | | | | Amount | Percentage | | |
| | Ordinary income | 80,675,000.00 | 0.00 | 80,675,000.00 | 74,778,856.31 | 77.79% | -5,896,143.69 | 92.69% |
| 04-00-00 | Property income | 400,000.00 | 0 | 400,000.00 | 510,917.11 | 0.53% | 110,917.11 | 127.73% |
| 05-00-00 | Transfers | 80,271,000.000 | 0 | 80,271,000.00 | 74,266,137.00 | 77.26% | -6,004,863.00 | 92.52% |
| 06-00-00 | Durable goods sale | 1,000.00 | 0 | 1,000.00 | 0.00 | 0.00% | -1,000.00 | 0.00% |
| 07-00-00 | Sale of services and non-durable assets | 2,000.00 | 0 | 2,000.00 | 1,802.20 | 0.00% | -197.80 | 90.11% |
| 08-00-00 | Other ordinary income | 1,000.00 | 0 | 1,000.00 | 0.00 | 0.00% | -1,000.00 | 0.00% |
| | Capital income | 15,001,000.00 | 6,196,770.67 | 21,197,770.67 | 21,349,058.18 | 22.21% | 151,287.51 | 100.71% |
| 13-00-00 | Other capital income | 15,000,000.00 | 6,196,770.67 | 21,196,770.67 | 21,196,770.67 | 22.05% | 0.00 | 100.00% |
| 14-00-00 | Repossession of the payment unsettled in previous year | 1,000.00 | | 1,000.00 | 152,287.51 | 0.16% | 151,287.51 | 15,228.75% |
| **Total** | | 95,676,000.00 | 6,196,770.67 | 101,872,770.67 | 96,127,914.49 | 100.00% | -5,744,856.18 | 94.36% |

Table 24
Income components in 2007




### *7.1.3 Budget expenditure*

Out of the budgeted total of MOP101,872,770.67 (one hundred and one million, eight hundred and seventy-two thousand, seven hundred and seventy patacas, and sixty-seven avos), the actual amount of expenditure was MOP82,625,936.83 (eighty-two million, six hundred and twenty-five thousand, nine hundred and thirty-six patacas, and eighty-three avos), resulting in the execution rate of 81.11%.

This was because, firstly, some of the projects expected to have been completed in 2007 remained unfinished. For example, the project of the acquisition and installation of facilities for surveillance was uncompleted in 2007. Secondly, some of the expected vacancies in the CCAC were yet to be filled.

Of the actual expenditure of MOP82,625,936.83 (eighty-two million, six hundred and twenty-five thousand, nine hundred and thirty-six patacas, and eighty-three avos), the largest portion amounting to MOP49,286,816.12 (forty-nine million, two hundred and eighty-six thousand, eight hundred and sixteen patacas, and twelve avos) went to personnel costs. This accounted for 59.65% of the total expenditure. The second largest expenditure was on "Acquisition of Asset and Service", totalling MOP19,260,902.55 (nineteen million, two hundred and sixty thousand, nine hundred and two patacas, and fifty-five avos) and accounting for 23.31% of the total. The amount for "Regular Transference" was MOP34,175.40 (thirty-four

thousand, one hundred and seventy-five patacas, and forty avos), accounting for 0.04%. The amount for "Routine Expenditure" was MOP12,060,519.36 (twelve million, sixty thousand, five hundred and nineteen patacas, and thirty-six avos), accounting for 14.60%. In addition, the amount for investment was MOP1,983,523.40 (one million, nine hundred and eighty-three thousand, five hundred and twenty-three patacas, and forty avos), accounting for 2.40% of the actual total expenditure.

As the actual income was MOP96,127,914.49 (ninety-six million, one hundred and twenty-seven thousand, nine hundred and fourteen patacas, and forty-nine avos) and the total expenditure was MOP82,625,936.83 (eighty-two million, six hundred and twenty-five thousand, nine hundred and thirty-six patacas, and eighty-three avos), thus the management surplus in 2007 was MOP13,501,977.66 (thirteen million, five hundred and one thousand, nine hundred and seventy-seven patacas and sixty-six avos).

Since the budgeted management surplus of 2007 was MOP15,000,000.00 (fifteen million patacas) and the actual management surplus was MOP13,501,977.66 (thirteen million, five hundred and one thousand, nine hundred and seventy-seven patacas and sixty-six avos), the related management surplus was MOP1,498,022.34 (one million, four hundred and ninety-eight thousand, twenty-two patacas, and thirty-four avos) less than the budgeted management surplus. The reason for the actual management surplus being less than the budgeted management surplus was mainly due to one budgeted transfer amounting MOP5,731,724.60 (five million, seven hundred and thirty-one thousand, seven hundred and twenty-four patacas, and sixty avos) in December 2007 was postponed by the transfer institution and was deposited into the CCAC's account in 2008.

Table 25
Financial expenditure in 2007

| Code | Designation | Initial appropriation (1) | Supplementary budget (2) | Budget amendment (3) | Amended appropriation (4)=(1)+(2)+(3) | Actual expenditure (5) | Surplus (4)-(5) | Execution rate (5) / (4)x100% |
|---|---|---|---|---|---|---|---|---|
| | **Ordinary Expenditures** | | | | | | | |
| **01-00-00-00** | **Personnel** | 52,345,000.00 | | | 52,345,000.00 | 49,286,816.12 | 3,058,183.88 | 94.16% |
| 01-01-00-00 | Fixed and long-term remuneration | 49,127,000.00 | | 490,000.00 | 49,617,000.00 | 47,363,797.70 | 2,253,202.30 | 95.46% |
| 01-02-00-00 | Extra remuneration | 1,738,000.00 | | (240,000.00) | 1,498,000.00 | 1,105,540.00 | 392,460.00 | 73.80% |
| 01-03-00-00 | Bonus in kind | 20,000.00 | | | 20,000.00 | 15,162.00 | 4,838.00 | 75.81% |
| 01-05-00-00 | Providence welfare | 510,000.00 | | (50,000.00) | 460,000.00 | 337,230.00 | 122,770.00 | 73.31% |
| 01-06-00-00 | Compensation of expense share | 950,000.00 | | (200,000.00) | 750,000.00 | 465,086.42 | 284,913.58 | 62.01% |
| **02-00-00-00** | **Assets and services** | 24,922,000.00 | | 325,000.00 | 25,247,000.00 | 19,260,902.55 | 5,986,097.45 | 76.29% |
| 02-01-00-00 | Durable assets | 480,000.00 | | | 480,000.00 | 169,372.30 | 310,627.70 | 35.29% |
| 02-02-00-00 | Non-durable assets | 1,322,000.00 | | 270,000.00 | 1,592,000.00 | 963,461.10 | 628,538.90 | 60.52% |
| 02-03-00-00 | Aquisition of services | 23,120,000.00 | | 55,000.00 | 23,175,000.00 | 18,128,069.15 | 5,046,930.85 | 78.22% |
| **04-00-00-00** | **Ordinary transfers** | 40,000.00 | | | 40,000.00 | 34,175.40 | 5,824.60 | 85.44% |
| 04-02-00-00 | Private institution | 20,000.00 | | | 20,000.00 | 20,000.00 | | 100.00% |
| 04-04-00-00 | Overseas | 20,000.00 | | | 20,000.00 | 14,175.40 | 5,824.60 | 70.88% |
| **05-00-00-00** | **Other ordinary expenditure** | 13,339,000.00 | 6,196,770.67 | (2,325,000.00) | 17,210,770.67 | 12,060,519.36 | 5,150,251.31 | 70.08% |
| 05-02-00-00 | Insurance | 345,000.00 | | | 345,000.00 | 112,436.60 | 232,563.40 | 32.59% |
| 05-04-00-00 | Miscellaneous | 12,994,000.00 | 6,196,770.67 | (2,325,000.00) | 16,865,770.67 | 11,948,082.76 | 4,917,687.91 | 70.84% |
| | Capital expenditure | | | | | | | |
| **07-00-00-00** | **Investment** | 5,030,000.00 | | 2,000,000.00 | 7,030,000.00 | 1,983,523.40 | 5,046,476.60 | 28.22% |
| 07-03-00-00 | building | | | 2,000,000.00 | 2,000,000.00 | | 2,000,000.00 | 0.00% |
| 07-09-00-00 | Transportation materials | 150,000.00 | | | 150,000.00 | | 150,000.00 | 0.00% |
| 07-10-00-00 | Machinery and equipment | 4,880,000.00 | | | 4,880,000.00 | 1,983,523.40 | 2,896,476.60 | 40.65% |
| **TOTAL** | | 95,676,000,00 | 6,196,770.67 | 0.00 | 101,872,770.67 | 82,625,936.83 | 19,246,833.84 | 81.11% |

Table 26
Expenditure components in 2007

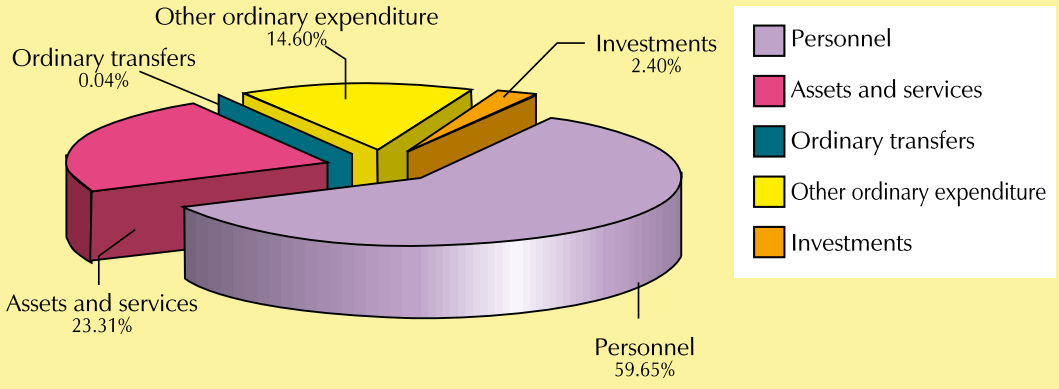
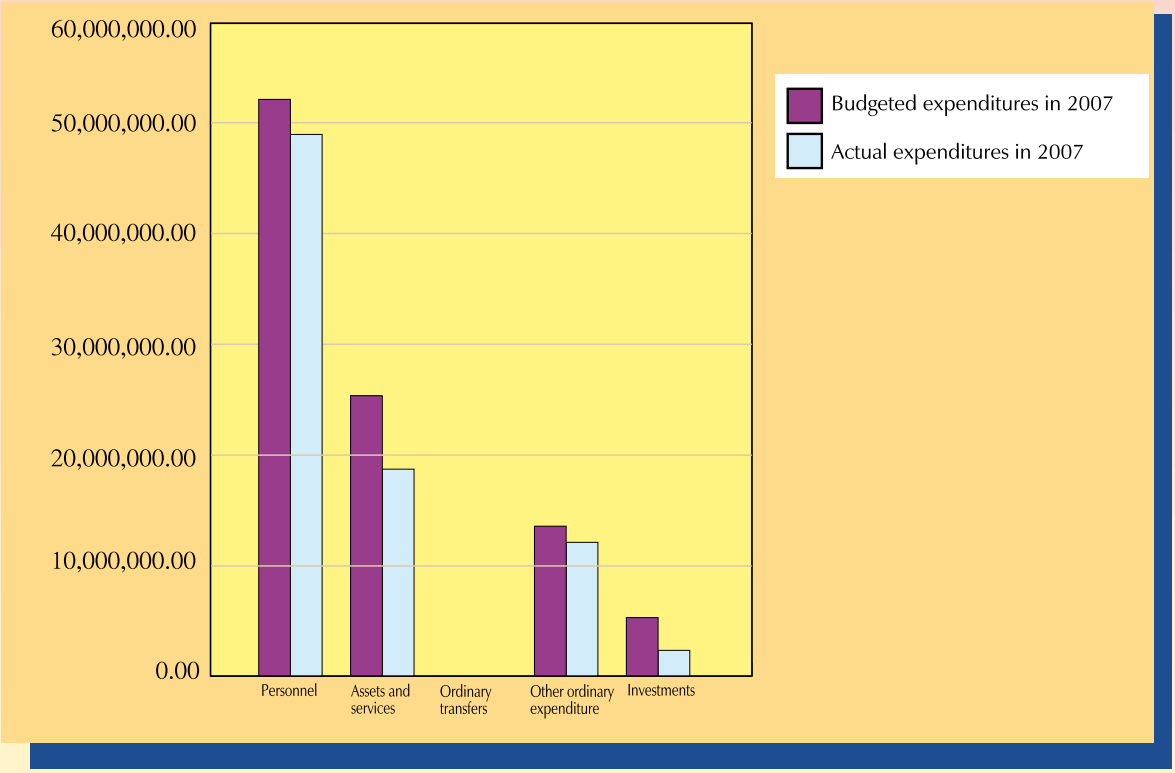


Table 27
Comparison between the budgeted and actual expenditures in 2007




## 7.2 Personnel

To cope with the increasing workload of all CCAC departments, an amendment was made to the "Organization and Operation of the CCAC" related in Article 31 of the Administrative Regulation No. 31/2000 through the Administrative Order No. 28/2003 given on 21st July 2003, thus the total number of staff members in the CCAC was 109. Until 31st December 2007, together with other forms of recruitment, the personnel of the CCAC had increased to 128.

Table 28
Comparison of the numbers of staff from 1999 to 2007

| Posts | 31-12-1999 | 31-12-2000 | 31-12-2001 | 31-12-2002 | 31-12-2003 | 31-12-2004 | 31-12-2005 | 31-12-2006 | 31-12-2007 |
|---|---|---|---|---|---|---|---|---|---|
| Commissioner | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Deputy Commissioner | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| Chief of Cabinet of the Commissioner | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Adviser or Expert | 2 | 5 | 6 | 6 | 6 | 5 | 4 | 4 | 4 |
| Department Head | --- | --- | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Chief Investigation Officer | --- | --- | 2 | 2 | 3 | 3 | 2 | 2 | 3 |
| Division Head | 1 | 1 | 1 | --- | 1 | 1 | 1 | 1 | 1 |
| Senior Officer | 6 | 5 | 4 | 6 | 4 | 3 | 3 | 4 | 5 |
| Senior Information Technology Officer | --- | --- | --- | 1 | 2 | 1 | 2 | 2 | 1 |
| Interpreter | 3 | 1 | 1 | --- | --- | --- | --- | --- | --- |
| Personal Secretary | 2 | 1 | 2 | 2 | 1 | 1 | 2 | 2 | 2 |
| Office Assistant | --- | --- | --- | --- | 1 | 1 | 1 | 1 | 1 |
| Chinese Expert | --- | --- | 1 | 1 | 1 | 1 | 1 | 1 | --- |
| Officer | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Information Technology Officer | --- | --- | --- | --- | 1 | 1 | 2 | 2 | 2 |
| Investigator | --- | 19 | 32 | 35 | 40 | 50 | 49 | 61 | 55 |
| Assistant Officer | 5 | 7 | 6 | 8 | 18 | 16 | 15 | 13 | 18 |
| Public Relations Officer | 2 | 2 | 2 | 2 | 1 | --- | --- | --- | --- |
| Auxiliary Officer | --- | --- | 6 | 7 | 6 | 6 | 6 | 7 | 11 |
| Information Technology Assistant | --- | 1 | 1 | 1 | 1 | 1 | --- | --- | --- |
| Administrative Official | 3 | 3 | 3 | 3 | 3 | 5 | 6 | 6 | 6 |
| Worker and Auxiliary Staff | 12 | 12 | 11 | 11 | 11 | 11 | 11 | 11 | 11 |
| Full-time Temporary Staff | --- | --- | --- | --- | --- | --- | 1 | 2 | 2 |
| **TOTAL** | 41 | 62 | 84 | 91 | 106 | 112 | 112 | 125 | 128* |

* 13 trainees of investigators were not included in this figure

# APPENDIX
# SUMMARIES OF THE CASES COMMENCED FOR FORMAL INVESTIGATION IN THE AREA OF OMBUDSMANSHIP

# Appendix
# Summaries of the Cases Commenced for Formal Investigation in the Area of Ombudsmanship

## File No.: 01/2007

**Subject: Post-revision of Established Recruitment Rules**

In the course of handling a complaint, the CCAC noticed that in the recruitment of contractual senior technicians, Bureau F altered the examination rules without authorisation by adding a second-round written examination after the original examination was held, which is suspected of impairing the rights of the candidates. Further investigation by the CCAC proved that the bureau involved had indeed violated administrative law and consequently impaired the legal rights of the candidates. Since the open recruitment was launched with the approval of Bureau F's supervisory entity, the CCAC first sent a letter to the supervisory entity notifying them of the issue by way of informal advice, urging them to take appropriate measures to remedy the situation. The entity concerned later responded that they completely accepted the proffered advice and promised that they would take it into account when recruiting in the future. However, they explained that the second-round written examination was added to address problems resulting from the first, and as it was meant for recruiting contractual civil servants, the procedures for which were not as strict as those for recruiting permanent staff . As a result, the related assessments were deemed fair and objective. The case was commenced for further investigation as the CCAC considered the stance of the supervisory entity questionable.

1. On 20th June 2006, Bureau F announced in a newspaper that it would recruit 3 senior technicians on a contract basis, indicating recruitment and assessment rules with the approval of the supervisory entity. The rules stated that a written knowledge examination, a professional interview and resume analysis would be required. The written examination was not to exceed 3 hours. Candidates scoring less than 5 out of the full score of 10 would automatically be ineligible for the professional interview. The examination results would be based on the breakdown of 50% for the written examination, 35% for the interview and 15% for the resume assessment.

2. A total of 351 candidates were eligible to sit the written examination held on 11th June 2006.

Of the 206 candidates who actually sat the examination, 56 passed, 138 failed, and 12 were disqualified as they did not complete the paper as instructed.

3. On 17th July, the Examination Committee assessed the results of the written examination, and decided that a second-round written examination would be held for those who passed the first written examination. Only those who also passed the second-round examination would be eligible for interview. The result of the knowledge examination was to be calculated as the average of scores of the 2 written exams, while the total assessment breakdown would remain unchanged.

4. In other words, the Examination Committee decided to add a second-round examination after the first three-hour written examination was held, which in effect changed the original selection rules announced publicly and acknowledged by the supervisory entity.

5. It must be pointed out that even though current regime governing civil service laws does not specify the recruitment procedures of contractual civil servants, the general principles embodied in the *Code of Administrative Procedures* nonetheless apply where the administrative authority decides to recruit staff members through open examination – particularly with regard to the principles of legality, fairness, appropriateness, impartiality, selflessness and good faith.

6. Paragraph 1, Article 3 of the *Code of Administrative Procedures* provides that "civil administrative functionaries shall conduct their activities in accordance to the laws and regulations and within the limits of their conferred powers. Their activities shall be conducive to achieving the purposes for which these powers are conferred".

7. The laws and regulations mentioned here refer not only to the "formal laws" stipulated by due legislators but also as "substantive laws", which means that administrative functionaries shall be bound by all legal norms. In this case, the selection rules established by Bureau F for the purpose of recruitment were confirmed and announced by the authorised supervisory entity, and as such are taken as law applicable to its recruitment procedures and binding upon the administrative authority and candidates alike.

8. Therefore, having attended and passed the three-hour written examination, successful candidates should have been eligible for interview, a right that must be respected and acknowledged by the administrative authority.

9. The second-round written examination decided on by the Examination Committee in effect restricted the rights of the candidates who had passed the first examination since their eligibility for interview would then depend on the results of the second-round written examination. In fact, one candidate originally eligible to attend the interview was found later disqualified for being absent in the second-round examination; his legitimate rights and interests were thus obviously impaired.

10. In addition, the decision to add a second-round examination after the first substantially "shrunk" the total score of the first written examination taken on 11th June, from 50% to 25%, **which not only unreasonably downgraded the scores of some candidates but led to a different assessment result. Candidates who would have been admitted to the post (a candidate surnamed Kou ranked at the top third by the original grading fell to fifth in the revised screening) were eventually disqualified.**

11. Article 4 of the *Code of Administrative Procedures* stipulates that the administrative functionaries are authorised to seek public interest with respect to citizens' rights and their interests protected by law.

12. In other words, while administrative functionaries undertake the responsibility of seeking public interest, they should not disregard the legal rights of an individual in so doing. Just like this case, the right acquired by the candidates to attend interview by virtue of the established rules as well as the advantage won in the first examination by scoring high should be respected and not be impaired by what the administrative authorities may or may not do.

13. With regard to the 138 candidates who failed in the first written examination, their rights were likewise impaired by the same token as they were not given the same opportunity as those candidates who had passed the first written exam.

14. In fact, the Examination Committee applied different selection criteria to the same batch of candidates – for those who passed the first written examination, their final result was the average of the results of the two written examinations by virtue of the revised standard; for those who failed in the first written examination, they were simply eliminated by virtue of the established criteria - they were deprived of their right to sit in the second-round examination, which accounted for 50% of the two written examinations and 25% of the total of the revised standards, thereby lost their opportunity to score higher in the second

round in which their average total may have qualified them for interview.

15. The Examination Committee's resolution, moreover, was also unfair to the 145 candidates who were absent in the first written examination on 11th June.

16. This is because, those candidates who gave up the first examination held on 11th June chose to do so on the basis of the established recruitment and assessment rules announced by the Examination Committee with the approval by the supervisory entity. If they had been informed in advance that there would be a second-round examination opened to all candidates, they might have chosen to sit in the first examination held on 11th on account of the newly altered examination rules. Therefore, the decision by the bureau to alter recruitment criteria after the first examination was obviously disregarding to the candidates' trust in the screening rules originally publicized, thus violating the principle of good faith.

17. It is worth noting that the Examination Committee held a meeting on 9th June (before the first examination was held) during which it was pointed out that the 3 hours' time announced for the written examination may not be adequate for assessing a candidate's professional and written competency, and second round written examination for candidates who have passed the first, to test their writing skills may be held when necessary". However, it was not until after the first examination on 11th June that it was decided necessary to hold a second written examination, in which candidates who had passed the first examination would be eligible. This should have been done before the first written examination.

18. This approach naturally indicates that the authority did not treat all parties concerned with impartiality and selflessness.

19. While the functionaries have the authority to devise "rules" in choosing the right candidate, and it is understandable that amendments may sometimes be necessary to address inadequacies therein, it does not mean that the authority involved could make amendments at any time in the name of public interest, otherwise the principles laid down in the *Code of Administrative Procedures* for all administrative activities would become nominal.

20. In this case, therefore, should the Examination Committee deem it necessary to assess the diversified competency of the candidates through 2 written examinations they should revise and announce (or at least inform all qualified candidates) the amended assessment

standards before the first examination which held on 11th June, rather than overhaul the established criteria already in force. Once such assessment standards are confirmed and come into force (as in this case after the first written exam was held), the authorities could not make any amendments. The Examination Committee's decision to add a second examination after the first was thus held to constitute "a breach of law".

21. The examination hosting entity's amendment of its established recruitment procedures after it came into force constitutes a breach of the principles of legality, fairness, appropriateness, impartiality, selflessness and good faith; thus the examination results should be revoked as a result of the flaws in the relevant procedures.

In view of the fact that the supervisory entity of Bureau F had earlier indicated to the CCAC that they did not consider the recruitment procedures a breach of law and considered the examination results just and objective, they did not intend to make any correction. The CCAC therefore decided to inform the Chief Executive of the issue in accordance to our organisational law. Moreover, since it was still in the period in which the examination results could be revoked through judicial proceedings the CCAC referred the case to the Public Prosecutions Office, which has the due judicial power to bring the matter to court.

Eventually, the supervisory entity revoked the said recruitment examinations and its results before the prescription for judicial prosecution expired and later terminated the appointment of the candidates recruited.

## File No.: 07/2007

**Subject: Certificate of Sick Leave**

While handling the case dealing with the sick leave of an employee of a higher educational institute, the CCAC noticed that where public departments and institutes had their own personnel regulations and accepted their employees' sick leave certificates other than legally designated format, their employees are subject to different disciplinary rights and obligations, giving rise to unfair situations. Therefore, the CCAC initiated an investigation.

1. Article 102 of the *General Regulations Governing the Staff of the Public Administration of Macao* (hereinafter referred to as the *General Regulations*) provides that where a sick civil

servant needs not stay in hospital but needs to rest at home - as indicated in the "doctor's note" to be submitted by the sick civil servant - the chiefs of the department concerned may ask a doctor on duty or a doctor from the Health Bureau to visit the civil servant at his or her home to verify his/her condition. If the employee is found absent from home without a proper explanation deemed acceptable by the employee's superior, his or her sick leave may be considered unjustified.

2. The "measure of home verification of sick employee" in the personnel regulations of the two institutes of higher education - P and M - are identical to Article 102 of the *General Regulations*, while institute F applies the *General Regulations'* measure supplementarily.

3. The 3 institutions accept the non-standard sick leave certificates, which are not conformable to the designated format (the "doctor's note" approved by directive 65/99/M), issued by Kiang Wu Hospital and Macau University of Science and Technology Hospital. Unlike the legally designated format, there are no options as "the patient needs to rest at home" and that "the patient cannot work but need not stay at home", to be ticked by the doctor. In other words, the 3 public entities have no means of judging whether the sick staff member needs to stay home for rest or not just by examining the information on the non-standard sick leave certificates submitted.

4. As a result, the "mechanism of home verification of sick employees" and its subsequent disciplinary provisions would have no effect upon the staff submitting the non-standard sick leave certificates. The measure is thus rendered non-applicable.

5. However, the "mechanism of home verification of sick staff" is still applicable to the sick employee who submit the standard sick leave certificates. For those who are instructed by their doctors "to rest at home" are found to be absent from their homes during their sick leave, they have to provide justification. If their explanation is not accepted by the departments or entities concerned, they are liable to disciplinary consequences.

6. Such a situation gives rise to unfair situation: employees who work for the same department or institution under the same condition are subject to different disciplinary requirement only because of the different formats of their sick leave certificates they sumbitted. This unfair situation needs to be eliminated.

7. Apparently, it is not within the authorities' powers to press private hospitals to change

their formats of sick leave certificates to indicate certain details. However, it is within their power to amend their internal rules.

8. Therefore, the CCAC suggested that higher education institutes P and M and institute F amend their internal rules so that the aforementioned discriminatory situation can be avoided.

The institutions concerned all accepted the CCAC's suggestion, and took various remedy measures: F and P decided to accept only the legally designated sick leave certificates in the near future. M decided to amend its internal personnel regulations by adding a rule that "where the certificate does not indicate whether home stay is required, it will be regarded as necessary". In addition, M required that when employees attend Kiang Wu Hospital to see a doctor they should apply for a legally designated doctor's certificate when applying for a sick leave certificate.

## File No.: 13/2007

**Subject: Prosecution Procedures Concerning Acts Against *Foreign Trade Law***

In the course of handling a complaint, the CCAC found that officers stationed at South Sampan Pier had misinterpreted the current law and internal instructions, which have resulted in some contravention of the *Foreign Trade Law* regarding inspection and penalties. An investigation was thus commenced. In the course of investigation, the CCAC also collected from Department A case files information of administrative offence apropos of *Foreign Trade Law* for analysis:

1. According to Paragraph 1 of Article 12 and Paragraph 1 of Article 21 of the *Foreign Trade Law* all foreign trade activities conducted in ports other than those officially designated shall constitute a criminal offence.

2. On the other hand, according to the stipulations of Article 9 and 10 of the *Foreign Trade Law*, all foreign trade activities in Macao must be conducted with relevant import-export licenses or import-export declaration forms, except for those specified by law. Otherwise, the authority shall prosecute such trade conducted without licence or declaration form for administrative penalties in accordance with Paragraph 1 of Article 36 or Paragraph 1 of Article 37 of the *Foreign Trade Law*.

3. This shows that Paragraph 1 of Article 12 and Paragraph 1 of Article 21 of the *Foreign Trade Law* seeks to restrict the locations for foreign trade activities to officially designated ports. While foreign trade not conducted in official designated ports, whether or not the conducting parties have the required licence or declaration form, shall constitute a criminal offence. On the other hand, the stipulations of Article 9, Article 10, Paragraph 1 of Article 36 and Paragraph 1 of Article 37 of the *Foreign Trade Law* aim at classifying the conditions under which foreign trade transactions at the statutory ports shall be conducted with a licence and those that require the declaration form. Thus, if trade is conducted without the requisite licence or declaration form, it will result in an administrative penalty.

4. According to the stipulations of Paragraph 1 of Article 12 of the *Foreign Trade Law*, Article 3 of *Foreign Trade Regulations* and Article 1e) of Notice 1/2004 issued by the Maritime Administration, the South Sampan Pier is officially designated by authorities as a venue for the cut flower trade only, it is not a port officially designated for the foreign trade activities for any other kind of good. In other words, **nobody is permitted to conduct any foreign trade other than that of cut flowers at the South Sampan Pier**, in contravention of which shall constitute a criminal offence of importing or exporting goods at non-statutory port.

5. However, Department A, **charged foreign traders license holder conducting non-cut flower trade with the stipulations of Article 36 or 37 of the *Foreign Trade Law***, for the lack of licences or declaration forms. Department A's practices were **administratively illegal and distorted the stipulations of the *Foreign Trade Law*.**

6. It is necessary to point out that an administrative offence is subject to an administrative penalty since the offender fails to act in accordance with the law. The requirements of the relevant law are preventive in nature and as such do not contain criminal elements.

7. For persons who violate the stipulations of Article 9 or 10 of the *Foreign Trade Law*, the authority impose penalties in accordance with Paragraph 1 of Article 36 or Paragraph 1 of Article 37 of the *Foreign Trade Law*, on the grounds that such persons fail to comply with the preventive regulations of the *Foreign Trade Law* by conducting foreign trade activities without a "licence" or "declaration form".

8. In other words, where Department A charges persons involved in conducting foreign trade (exporting goods from Macao) other than that of cut flowers at the South Sampan Pier for

the abovementioned regulations, it implies that such persons should apply for a "licence" or file a "declaration form" for their non-cut flower trade, and that they are subject to administrative penalty because of their failure to do so.

9. However, according to the current *Foreign Trade Law* and the regulations of Circular Notice 1/2004 issued by the Maritime Administration, the South Sampan Pier may only be used for the cut flower trade, which means that even if the persons involved have applied for a licence or filed a declaration form, the departments responsible (including Department A) have no authority to allow such conduct. In other words, applying for a licence or filing a declaration form for such trade in such a place is impossible in law.

10. Thus, how could Department A charge the parties concerned for failure to comply with some requirements that are legally impossible or even illegal and subject them to penalty?

11. On the contrary, if Department A's practice on charging persons for failure to apply for a license or file a declaration form were correct, then it would follow that the application for a licence or filing of a declaration form may be granted or approved had they been made accordingly, so that foreign trade on other than cut flowers at the South Sampan Pier would be legal. This inference obviously contradicts the intention of the *Foreign Trade Law* and the provisions of Circular Notice 1/2004 issued by the Maritime Administration concerning the designated function of the pier.

12. **Thus, Department A's practice of charging trading licensees for conducting foreign trade other than cut flowers at the South Sampan Pier for the stipulations of Article 36 and Article 37 of the Foreign Trade Law is obviously constituted an administratively illegal.**

13. **It must be emphasised that from the perspective of foreign trade policy or practical operational needs, if the authorities considered that laying criminal charges against persons conducting foreign trade on goods other than cut flowers at the South Sampan Pier is not feasible, then Department A should pay more attention to the issue and take proper measures (such as considering amending the law) in order to close the loopholes in the law due to policy considerations, so that both penalisation and prevention may be effective.**

14. On the other hand, Department A issued an instruction (Memo 02/ADG_SIN/2001) for

officers performing duties at South Sampan Pier in 2001 which instructs front line officers to strictly execute the regulations of the *Foreign Trade Law*, and where trade licensees leave Macao with over 3 cartons of cigarettes (200 cigarettes each), 2 bottles of wine (1 litre each) or any similar goods valued over MOP2,000, they shall be required to register before they may pass.

15. Nevertheless, according to the statements of the commander in charge of the management of the Inner Harbour Customs and the 2 officers who have been on duty there (second-in-command to the commander and responsible for referring orders to the subordinates), they had divergent interpretations and practice regarding **the abovementioned instruction concerning the declaration and let-pass procedures.** Some of them claimed they should demand those carrying goods worth over MOP5,000 to register their goods while others indicated they should not let those carrying goods worth over MOP5,000 pass the customs, and still others said they would seize the goods worth over MOP5,000. Moreover, different interpretations existed over the circumstances under which trading licensees should be charged in accordance with Article 37 of the *Foreign Trade Law*, as some indicated they would charge the trading licensees whether they concealed their goods or not, as long as their goods are found to be worth more than MOP5,000, while others said they would bring charges only if the licensees are found deliberately smuggling the goods.

16. **In view of the abovementioned circumstances, it is doubtful whether the front line officers are able to duly execute proper measures in line with the objectives of the instructions (monitoring the goods exported by the trading licensees and preventing them from violating the laws of Macao) and requirements (strictly implement the Foreign Trade Law by subjecting licensees to registration under necessary circumstances for the purpose of monitoring).**

17. According to the data in the Register of Good for Personal Consumption of Foreign Trade Licensees at South Sampan Pier provided by Department A, the total value of goods carried by some foreign trade licensees, even on a daily basis, grossly exceeded MOP5,000. From the quantity of goods and frequency of the same products trafficked, it would be hard to conclude that these goods were meant for personal consumption. The goods were, obviously, designated for cross-border trade. However, Department A considered these as goods for personal consumption and let them pass after simple registration.

18. This is because, according to the commander of the Inner Harbour Customs, the trade licensees can usually produce the invoices indicating that the value of the goods they are carrying does not exceed MOP5,000, whose authenticity is always confirmed by the issuing shops when Department A seeks verification. Department A thus has no evidence to allege otherwise.

19. As a matter of fact, where invoices are questionable, Department A may, by virtue of the *Foreign Trade Law*, evaluate the value of the goods based on the following criteria:

    i) the average price of the most recently imported or exported goods, of the same or similar type and quantity and origin;

    ii) the average selling price of the same or similar products in 3 business premises of Macao SAR, excluding of the gross business profit and tax on consumption. Prices of one and two premises are also accepted if a third premise is not available; If the prices are retail, then gross business profit deducted from the prices shall not exceed 30%.

    In other words, where Department A doubts the value of goods indicated in the invoice, it is not impossible for further verification.

20. In addition, it is provided by the *Foreign Trade Law* that, the statement-making party is required to indicate the types, quantity and prices of goods imported or exported on the licence or declaration form, of which one copy is to be filed by Department A, thus Department A is supposed to have a record of prices regarding goods imported and exported. According to the information obtained from Department A, there have been *Foreign Trade Law* violation cases where the pre-examiner has adopted the abovementioned methods of enquiring 3 sellers to ascertain the value of goods involved.

21. Therefore, the explanation of the commander of the Inner Harbour Customs is not convincing enough - on legal and practical grounds - especially, according to the data shown in the abovementioned Register, that goods carried by the relevant trade licensees are by no means "rare" in Macao.

22. **It should be emphasized that according to the regulations of Article 86 of the *Code of Administrative Procedures*, authorities have the duty to determine the facts. Once it is known that certain facts are helpful in making a correct and swift resolution the authorities concerned should strive to investigate such facts and use all evidence**

**permissible by law. Otherwise, such administrative authorities might have violated the *Code of Administrative Procedures.***

23. **Nevertheless, even when Department A believes it is really difficult to conduct the said measures of investigation and evaluation stipulated in the *Foreign Trade Law*, for the sake of "administration of law", the department should study and propose the legal amendment of law to facilitate law enforcement or establish practical law enforcement (evaluation) standards, rather than "revising laws" by allowing "incidental enforcement of law".**

24. With regard to the standard by which a person carrying goods that "constitute part of an overall trafficking activity of value over MOP 5,000" resulting in violation of Paragraph 1b) of Article 10 of the *Foreign Trade Law* should be judged, the commander of the Inner Harbour Customs said that it is in Department A's practice to judge the total value of goods carried by the same person in the same day.

25. However, according to this rule anyone who transports goods of the same kind out of Macao valued at less than MOP5,000 **once or more than once a day** (e.g. with an invoice indicating the value of goods at MOP4,999) - even though he may do this for a month - may not be seen as exporting goods in a piecemeal manner. Such an interpretation encourages traders to "break up" foreign goods to circumvent the law.

26. **Certainly, it is necessary for Department A to lay down a set of feasible and reasonable rules for supervising foreign trade that front line personnel can implement accordingly, and know under what circumstances they should consult their superiors so that they may not be accused of abusing their power by extending favours to certain persons.**

27. Apart from that, the CCAC also found that the personnel of Department A did not identify themselves when logging in the Register of Good for Personal Consumption of Foreign Trade Licensees at South Sampan Pier, and that register data was not digitally processed.

28. In fact, even if the registering party is required to identify themselves when entering registering data (such as staff number), it is not substantial enough to conclude that it increases workload. On the contrary, given the identity data, it will definitely help the internal management of the department, particularly in tracing the handler of a specific case.

29. **Furthermore, data management by digital means will, on one hand, simplify the registration procedures of front line personnel, and on the other hand provide systemic information on the goods exported via certain trading licensee, which will help law enforcement officers in determining whether the goods involved should be categorised as for "personal use or consumption" or "part of an overall activity worth over MOP5,000".**

30. **Therefore, if Department A is able to employ information technology to effectively analyse information over goods exported by trade licensees it will not only help the application of the above evaluation standard but also strengthen Department A's law enforcement credibility**.

31. Finally, while the CCAC was investigating this case it also studied the files of the *Foreign Trade Law* violation cases provided by Department A where administrative illegalities and malpractices were spotted therein.

32. For one thing, the procedures of handling the cases concerning administrative offences by Department A were very slow in which some of the cases even expired the prescription for prosecution. According to the Head of Intellectual Property Department responsible for dealing with administrative offences, this was due to the shortage of pre-examiners in handling such cases, this issue has been referred to the management board.

33. However, according to stipulations of Article 11 (The Principle of Decision Making) and Article 12 (The Principle of Non-bureaucracy and The Principle of Efficiency) of the *Code of Administrative Procedures*, Department A is obliged to follow up and handle administrative offence cases within the prescription to comply with the primary principle of administration of law. Where there is indeed a shortage of manpower, a case handling system **in written form** shall be devised to determine the priority and urgency of cases, especially those whose prescription for prosecution are about to expire, and those cases involving serious offences such as those involving huge sums of money. The authorities should formulate a criteria and mechanism to establish the priority for processing the cases, to ensure that citizens' faith in the government and maintain the credibility of authorities, as well as avoiding being suspected of deliberately sheltering offenders by allowing the prescription for prosecution to expire.

34. On the other hand, the CCAC noted that in some cases pre-examiner mistakenly applied

Article 25 of the *Foreign Trade Law*, which states, "when the goods involved is of a petty value and such offence is committed on rare occasions, the offender may be subjected to a reduced penalty or be exempted from the penalty herein stipulated". This resulted in letting offenders off without penalty on some occasions.

35. It is necessary to point out that Article 25 of the *Foreign Trade Law* can only be applied under two conditions: **1) the goods involved are of petty value and 2) the offender commits the offence on rare occasions**.

36. Though Article 25 of *Foreign Trade Law* does not specify how much value is "petty", according to the opinion presented on a general and a specific review of the draft of *Foreign Trade Law* by the Second Standing Committee of Legislative Assembly, the legislator intended to use the definition of Article 196 of *Penal Code*, i.e. less than MOP500, to define "petty" as provided in this Paragraph.

37. The abovementioned stipulation in Article 25 of *Foreign Trade Law* is legislatively devised as a penalty exemption for various kinds of administrative offences and penalties. Whether it can be applied to specific cases will depend on whether they meet the two criteria, i.e. **1) the goods involved are of a small value and 2) the offender commits the offence on rare occasions.** For example, if a person transports some uninspected fresh meat worth less than MOP500 into Macao, and it is his first instance of offence, the authority may apply the abovementioned exemption Paragraph stipulated in Article 25 of the *Foreign Trade Law*.

38. However, where an offender commits an offence by transporting **goods worth over MOP5,000 into Macao** without a duly submitted declaration form, then **the exemption Paragraph in Article 25 of the *Foreign Trade Law* will not be applicable** because the **value of goods involved (at least MOP5,000) definitely exceeds MOP500.**

39. It is worth noting that this Paragraph is not specially devised for goods which are impossible to be of petty value, bear in mind that law interpreters cannot deny that "the solution devised by the legislators is the most appropriate, and that the legislators know how to convey their intentions in appropriate language" (Paragraph 3, Article 8 of *Civil Code*). Thus, in cases where statutory requirements concerning penalty exemption are impossible to be met completely, law enforcement officers must not assume that when a case meets "any one of the conditions" the offender may be exempted from penalty.

40. Actually, if the exemption Paragraph as stipulated in Article 25, "the goods involved are of petty value **and** the offence is committed" could be interpreted case by case as "the goods involved are of petty value or the offence is committed", then the wrong conclusion would follow, that as long as it is the first or occasional instance of offence of importing goods without declaration regardless of the value of goods - which may total hundreds of thousands or even millions of dollars, the provisions of Article 25 of the *Foreign Trade Law* regarding penalty exemption may well be applied.

41. Moreover, if it were appropriate to apply a looser standard in terms of Article 25 of the *Foreign Trade Law* then the phrase "the goods involved are of petty value" might be interpreted as the portion of the transported goods exceeding the statutory quota rather than the total value of transported goods. In other words, in cases where goods valued over MOP5,000 are transported without making the required declaration, when judging whether the goods' value qualify for the exemption Paragraph, the "petty value" may be construed as referring to the portion of goods in excess of the statutory quota (goods worth MOP5,000) under which no declaration is required. Even against this looser standard, the exemption Paragraph stipulated in Article 25 of the *Foreign Trade Law* would apply only when the total value of goods involved is no more than MOP5,500, and only if the offence is very occasional.

42. However, the CCAC discovered that in some cases handled by pre-examiner whereby the exemption Paragraph of Article 25 of the *Foreign Trade Law* has been applied the value of goods involved obviously exceeded MOP5,500 and in several cases reached the definition of "enormous value" as defined by Article 196 of the *Penal Code*.

43. **Therefore, in order to avoid the incorrect application of the exemption Paragraph, it is necessary for Department A to establish standards for the pre-examiners to follow regarding the application of the exemption Paragraph as stipulated in Article 25 of the *Foreign Trade Law* so as to avoid pre-examiner from being suspected of abusing their authority because of their mistaken application of the legal provisions thereof, and protect the credibility of the administrative function.**

44. To address the above issues, the CCAC decided to issue a formal recommendation to advise Department A to adopt the following measures:

**(1) In terms of customs duties:**

**A. In general, customs officers should be provided with a clearly written operational guide, particularly with regard to the standards used to judge goods transported into or out of Macao should be considered as personal use, and standard for considering goods as part of the a piecemeal valued over MOP5,000.**

**B. Customs duties at South Sampan Pier:**

**a. Halt the practice of charging trade licensees conducting foreign trade activities other than the cut-flower trade at the South Sampan Pier under Article 36 or 37 of the *Foreign Trade Law*. If it is established that the feasibility of imposing criminal charges against the trade licensees is questionable in terms of practical operation, the law concerned should be revised to facilitate the policies or effects of punishment and warning.**

**b. Review and rectify the confusing enforcement of the existing operational instructions at South Sampan Pier, particularly with regard to the standards for pass on registration, seizure for prosecution. If the Department decides to continue the existing registration measures, the measures must be improved.**

**c. Where the value of goods is apparently greater than that indicated by the invoice presented, the Department involved should seriously and actively investigate and collect evidence as stipulated in the current *Foreign Trade Law*. If the measures provided prove inapplicable the Department involved should consider amending the law by due process and establish a transition mechanism prior to the amendment of the law.**

**(2) As to charging and penalising administrative offences under the *Foreign Trade Law*, the Department should:**

**A. Devise an importance-and-urgency-based processing mechanism in writing to address the problems arising from the shortage of labour.**

**B. Establish standards for pre-examiner regarding the application of the exemption Paragraph stipulated in Article 25 of the *Foreign Trade Law*..**

In response to the recommendations listed above, Department A explicitly promised

that it would handle the administrative offences on an importance-and-urgency basis and that it would strictly enforce the provisions of Article 25 of the *Foreign Trade Law*. They made no response, however, as to whether the abovementioned system would be committed to paper. No definite response was made regarding the other recommendations, thus the CCAC sent a letter to the Department and is awaiting reply.

## File No.: 15/2007

**Subject: Deferring Unused Annual Leave After a Public Servant is Suspended From His or Her Job**

This case involved a public servant who was denied the right to transfer his/her unused annual leave for 2 consecutive years after being suspended from his or her job. The CCAC found that the stance of the supervisory entity of Department P differs from the opinions of the Public Administration and Civil Service Bureau (SAFP) and the Financial Services Bureau. In order to ensure that administrative functionaries adopt the same rules regarding this issue and to safeguard the legitimate rights and interests of public servants as specified in law the case was filed for formal investigation.

1. Regarding the right to annual leave in this case, both the SAFP and Financial Services Bureau held that according to Paragraph 2 of Article 39 of *General Regulations Governing the Staff of the Public Administration of Macao (Regulations)*, suspended public servants are not entitled to annual leave in the first year of their reinstatement, whereas Paragraph 4 and 5 of Article 83 of the *Regulations* only provides that a public servant may reallocate their unused annual leave (a maximum of 11 working days) to the next year. Even if it is because of the bureau's work, the unused annual leave of up to 11 days may be transferred to the next year but not to the year following that or 2 years later. Therefore, if a public servant's suspension straddles 2 calendar years, when he or she has not taken his annual leave before suspension, while ineligible to claim annual leave during suspension and for one year following reinstatement, and since the *Regulations* mentioned above provides that annual leave cannot be transferred over 2 consecutive years, unused annual leave may become unusable. Moreover the law does not provide compensation for this. Thus, civil servants involved in similar cases may not receive compensation, monetary or otherwise.

2. However, the supervisory entity of the department involved argued that annual leave is

a right that may not be infringed and that in principle the execution of the disciplinary penalty should not result in depriving the public servant's right to annual leave. If the public servant is unable to use or carry forward unused annual leave due to suspension from duty, he/she should be entitled to corresponding compensation.

3. First of all, it must be admitted that public servants are entitled to rest after working for a certain period of time, to the benefit of both the public servant and the department for which he/she works. As a matter of fact, the entitlement of annual leave is deemed a fundamental right of an employee in both national and international law. According to the provision of Paragraph 7d) of Article 40 of the Basic Law of the Macao Special Administrative Region (Macao Basic Law) the International Covenant on Economic, Social and Cultural Rights applicable to Macao shall remain in force, and definitely protect an employee's right to regular paid annual leave.

4. Article 303 of the *Regulations* classifies 3 levels of job suspension according to the gravity of relevant offence - with the first level set at 10 to 120 days, the second at 121 to 240 days and the third at 241 days to one year - and Paragraph 2 of Article 309 of the *Regulations* also provides that a public servant suspended from his or her job may not take annual leave within one year on his or her reinstatement. The restriction on the use of annual leave should not result in the public servant being completely unable to enjoy his originally entitled annual leave since the right to annual leave during the period of suspension and the first year after reinstatement is only temporarily suspended, and should resume upon the expiration of one year. After the expiration of the prohibition against enjoying annual leave, if the public servant is still denied of his right to enjoy the unused annual leave which he/she was entitled to before suspension, then the consequence will be more serious than the penalty stipulated in Paragraph 2 of Article 309 of the *Regulations* concerning the prohibition of taking annual leave one year after reinstatement.

5. It should be noted that according to Paragraph 1 of Article 308 of the *Regulations*, "disciplinary penalties should only produce the effect specified by law". Since the law does not provide that public servants suspended from their jobs shall be deprived of their right to the unused annual leave previously accrued, the administrative authorities should not allow their disciplinary measures to result in public servants' loss of their right to annual leave.

6. The Court of Second Instance noted in Verdict No. 97/2006/A on 20th April 2006 that allowing public servants to use the due and unused annual leave after a span of reinstatement normally would not be "detrimental" to the department concerned. Therefore, the department should have the power to approve the taking of annual leave by the applicant, taking into account the basis of the department's operations and other conditions. On these grounds, the Court of Second Instance sustained the request of the petitioner in the verdict and order to suspend the effect of the job suspension, i.e., the prevention of the petitioner from taking annual leave one year from reinstatement, so that the petitioner may apply for the use of the due annual leave.

7. What follows is that the bottom line of applying the restrictions stipulated in Paragraph 2 of Article 309 of the *Regulations* is that public servants suspended from duty should not lead to a complete deprivation of the unused annual leave accrued since such a consequence of loss is not proscribed by law.

8. One solution to the difficulties arising from meeting the "bottom line" mentioned above is to suspend the effect of the job suspension in order to enable personnel concerned to apply for the use of due and non-transferable annual leave within one year of reinstatement. Another feasible solution is to allow the person concerned to use the due annual leave prior to suspension.

9. According to the understanding of the SAFP and Financial Services Bureau, public servants should not receive any monetary compensation for their unused annual leave accrued before job suspension as this is not proscribed by law. Obviously, the understanding was based on the fact that "such provision is not expressly specified by law". This logic leads to the questionable consequence that public servants concerned should be deprived of the right to use their remaining annual leave to which they were otherwise entitled after one year of their job suspension. However, this consequence is not proscribed by law, especially when Paragraph 1 of Article 308 of the *Regulations* stipulates that "disciplinary penalties shall produce only the effects proscribed by law". Therefore, if it is reasonable for the administrative authorities concerned to prevent suspended public servants from receiving any compensation for deprivation of their unused annual leave accrued before suspension on the premise that no such provision is proscribed by law, then likewise the administrative authority shall not allow the penalty to lead to a consequence of deprivation of their right to annual leave.

10. Another facet of the consideration is that when public servants are penalised by mandate retirement they are still entitled by law to receive corresponding compensation for the due and unused annual leave accrued prior to termination. Relatively speaking, does this not mean that the consequences of the penalty of duty suspension are more severe than that of mandate retirement, as those involved in the former penalty will not be able to take due and non-transferable annual leave after reinstatement or receive any compensation? Does it mean that the rationality of the legislator is misinterpreted by the interpreters of the law?

11. Obviously, it does not follow that a public servant's right to annual leave must be compensated in the form of money; therefore it is necessary to revise the civil service regime to prevent public servants from bearing consequences that are not proscribed by law as a solution to the administrative problem. In this regard, the CCAC suggests that:

    A. New provisions be introduced in revising public service regime entitling public servants to use due annual leave prior to job suspension, or be given corresponding monetary compensation in cases where he/she is unable to take such annual leave.

    B. Before the public service regulations are revised, a public servant should be allowed to take entitled annual leave prior to suspension to which he or she is subject; alternatively, suspend the effect of "prohibition from enjoying annual leave one year after suspension" in order to enable relevant personnel to take due and non-transferable annual leave within one year of reinstatement.

    The CCAC briefed the Chief Executive, the Offices of the Secretaries, the departments and organisations reporting to the Chief Executive and Secretaries of the advice and suggestions mentioned above. The Chief Executive sent a reply prepared by the Office of the Secretary for Administration and Justice, and an analytical report on Paragraph 2 of Article 309 of the *Regulations* in response to the advice proffered by the CCAC. However, we noted that while the Office of the Secretary for Administration and Justice basically agreed with the CCAC's view that a public servant's right to annual leave should be protected, they misunderstood the stance of the CCAC and the grounds on which the advice was given.

    The CCAC subsequently drafted a report and sent it to the Chief Executive with a copy

to the Office of the Secretary for Administration and Justice and relevant departments involved, such as the supervisory entity of Department P, in order to clarify the CCAC stance. It was emphasised that while CCAC respects the interpretation of public service regulations made by the SAFP, it also holds that the legitimate rights and interests of public servants should be protected. The CCAC therefore adopted the legal interpretation which is not in direct conflict with that of the SAFP on condition that the legitimate rights and interests of civil servants may still be practically protected and finally issued the recommendation without completely negating the stance of SAFP.

## File No. 43/2007

**Subject: Prosecution and Penalty Mechanism Concerning Unlicensed Meat Roasting Factory**

The CCAC received a complaint about an unlicensed meat roasting factory which operated in a business unit on the ground floor of residential premises for quite some time. However, Bureau E seemed to have neglected checking the shop. Initial enquiries with Bureau E appeared to confirm the situation. The CCAC retrieved the relevant case file from the bureau for analysis, which suggested that Bureau E was administratively illegal. The CCAC consequently instigated formal investigation:

**A. Bureau E's administrative illegality and malpractice**

**(a) <u>When referring the case to another administrative authority, Bureau E failed to fulfil its legal responsibility to inform the party concerned</u>**

1. On 15th November 1995, a citizen submitted to the predecessor of Bureau E an application to set up a meat roasting factory in a shop within a residential premise. Bureau E's predecessor determined that the shop's primary business was the direct sale of food it produced, hence on 17th January 1996 it referred the application to a department that had the authority to assess and approve such applications (the former Macau Government Tourist Office).

2. However, since the predecessor of Bureau E failed to fulfil its responsibility pursuant to Article 34, Section 1 of the *Code of Administrative Procedures* then in force to inform the person concerned of the authority's opinion when referring the application to the former

Macau Government Tourist Office. Consequently, the applicant could not make any representation to the Bureau regarding its qualification of the facility. Bureau E executives admitted that its predecessor had indeed mishandled the case.

3. Therefore, Bureau E should have taken appropriate measures to avoid such situations arising from its failure to inform the persons concerned, who were subsequently unable to exercise their right of defence effectively.

**(b) <u>Failure to execute the operation suspension order of the Acting Director in 2001</u>**

1. On July 26th 2000, Bureau E found that the unlicensed meat roasting factory was still in operation. Following an investigation, the Acting Director announced a directive fining the shopkeeper MOP10,000 and demanded that he/she cease operating immediately on 31st August 2001. The notice of the decision was sent to the shopkeeper on 17th September 2001. On October 15th, the shopkeeper filed a judiciary appeal against the decision with the Administrative Court. However, before the court reached a verdict declining the appeal, Bureau E neither followed up on its order nor executed the penalty stipulated. Bureau E neither sent personnel to the site to ascertain whether the factory operation had been suspended nor collected the fine when the due date of voluntary payment had expired claiming that, "the related judiciary appeal has yet to be processed".

2. According to the *Code of Administrative Procedures and Code of Administrative Litigation*, the aforementioned penalty decision became enforceable the moment it was made known to the offender. Even if the alleged offender filed a judiciary appeal, the appeal did not have the effect of suspending the penalty decision; in addition, the alleged offender had not requested the court to suspend the effect of the decision on raising the judicial appeal. Therefore, Bureau E's excuse that the related judiciary appeal has yet to be processed for not enforcing the penalty decision is administratively illegal.

3. On 13th May 2002, the Administrative Court ruled that the plaintiff's appeal was groundless. Consequently, Bureau E sent a notice to the Tax Enforcement Division to urge coercive collection of the fine but no action was actually taken to check whether the operation of the factory had been suspended or not. An inspector from the Investigation Department even suggested closing the case merely because the alleged offender had paid the fine on 22nd July 2002. Based on the aforementioned, Investigation Department officers - the team leader, the division head and the department head - had all been collectively negligent

by not checking whether the factory had complied with the bureau's order to suspend operations. The case was closed on 26th July 2002 merely because the alleged offender had paid the fine. That very act violated the general procedures and constituted administrative misconduct.

4. On 22nd July 2002, while paying the fine, the shopkeeper sent a letter to Bureau E requesting an industrial licence for the factory. At that time, Bureau E was, in fact, well aware that the shopkeeper had been fined and that he had been instructed to suspend operations forthwith for running an unlicensed meat roasting factory at the location. As the factory was equipped with all kinds of equipment and facilities for meat roasting, Bureau E should have realised the high probability that the shop was still in operation. For that reason, unlike other simple applications for industrial licences. Thus, Bureau E should have utilized its internal communication system properly and sent personnel to the shop, having received the offender's application for licence, in order to establish as soon as possible if the shop had been operating without a licence, and handled the case accordingly.

5. In fact, after receiving the licence application, Bureau E only wrote to the Land, Public Works and Transport Bureau to ascertain the information contained in the building utility licence. Bureau E was then informed that the premises where the factory was located on a building where most individual flats were residential. The bureau rejected the application because no operation of an industrial nature is permissible in such a location, but it never sent inspectors to check the site and the operation continued unlicensed for years.

**(c) <u>Failure to verify or clarify the promise "while the fine must be paid, the operation of the factory may continue"</u>**

1. Coincidentally, when the unlicensed meat roasting factory at the aforementioned site was found to be operating again on 23rd February 2006, the alleged offender insisted that the department head of Bureau E had promised that "while the fine must be paid, the operation of the shop may continue". This defence seemed to have been substantiated by the fact that the bureau had never sent a staff member to check the site or follow up on the case after the alleged offender had paid the fine. It was indeed conducive to the belief that an official promise had been made. What is baffling is that although staff members of Bureau E had already submitted a written report of the case, Bureau E neither initiated investigative proceedings nor followed up. Neither did Bureau E make any clarification or

response to the alleged offender. The Acting Deputy Director merely stated that he had orally checked the point with the Director, the department head and other staff members, although all of them denied this. Therefore, the Acting Director did not take any notice of the case.

2. Regarding the aforementioned promise alleged by the alleged offender, Bureau E should have initiated formal investigations in order to ascertain the facts and make a written report of the explanations of Bureau E's personnel and the findings of the investigation, to ensure the seriousness and fairness of the procedures. If any signs of functionary crimes were found, a report should be made to the CCAC. In addition, the alleged offender repeatedly mentioned the promise in later meetings with bureau staff. If the bureau had reached a conclusion via investigation or had taken a stance on the case, they should have made a clarification or response so that people (including the frontline bureau personnel) might not suspect that the bureau had already "tacitly acknowledged" the promise. Over the four years since the operation of the factory was ordered to stop on 31st August 2001, the bureau in effect did not "realise" that the unlicensed operation was continuing. Such circumstances undoubtedly aroused suspicions that the unlicensed factory was able to operate because it was shielded by bureau personnel.

**(d) <u>Failure to commence procedure of administrative penalties and implement preventive measures upon finding that the same unlicensed factory was still in operation</u>**

1. When Bureau E found that the operation of the factory had not been suspended on 23rd February 2006, the four-year prescription of the penalty pursuant to Article 81 of Decree Law no. 11/99/M should not yet have expired. Therefore, the aforementioned violation should have been considered in breach of the supervision order issued by the bureau in 2001. Consequently, the bureau should have taken preventive measures against the factory under Article 86 of the Decree Law, to prosecute and penalize the alleged offender according to Article 82a of the Decree Law. However, the chiefs and department heads of the bureau had neglected such objective facts.

2. It should be noted that when Bureau E found that the operation of the factory was continuing on 23rd February 2006, it neglected the relationship between the ongoing unlicensed operation and the former Acting Director's suspension order, or mistaken that the four-

year prescription of the penalty pursuant to Decree Law no. 11/99/M to have expired and granted the alleged offender an ordinary grace period for the voluntary suspension of operations, as if the alleged offender was only found to be operating an unlicensed business for the first time. Even so, the period offered by the bureau should not be longer than the previous one offered to the alleged offender when the unlicensed operation was first discovered.

3. Nevertheless, the grace period offered to the alleged offender to voluntarily suspend operations on 10th August 2000 lasted for 15 days, whereas a more lenient 20-day grace period was offered on 24th May 2006 more puzzling. The Acting Director's explanation starting from the day the bureau sent out the registered administrative notice the 15-day grace period would have almost expired, by the time it reached the addressee the period. Thus, the grace period was generally extended by the bureau from 15 days to 20 days. In fact, the law prescribed that the grace period should start from the day the alleged offender received the notice. The problem stated by the Acting Director probably would not exist.

4. What is even more puzzling is that following the granting of the initial 20-day grace period for voluntary suspension, on July 14th 2006, the bureau offered the alleged offender an additional 60-day transition period to meet official requirements. The Acting Deputy Director explained that the alleged offender had submitted an application for an operation licence for a meat roasting factory in that shop to the predecessor of Bureau E in 1995. However, since the Portuguese Macao authorities did not handle the case properly, the licence was issued before the new law came into effect. Under the new law, the alleged offender was not qualified for an industrial licence, and hence resulting in the somewhat "pardonable" situation. In addition, the alleged offender was emotionally unstable and claimed that he/she owed many debts and had children to support so the suspension of factory operations would leave him or her without a livelihood. In order to prevent situations as "inspectors being attacked by a citizen with a knife", Bureau E adopted a more conciliatory approach, offering 60 days to the alleged offender to move the operation elsewhere, provided that the factory compiled hygiene, fire control and safety regulations.

5. In fact, the alleged offender's application for the licence was rejected in 2002 because the location did not qualify. When the alleged offender was discovered conducting an unlicensed operation on 23rd February 2006, four years had passed in which the alleged

offender could have got ready to meet the condition that "if you want to legally operate a meat roasting factory you must move to an industrial property and submit another application for a licence". Therefore, the alleged offender had no valid reason to ask for more time to arrange for relocation. As to the other reasons presented by the alleged offender for non-compliance with the law, Bureau E should not have accepted them without verification.

6. In addition, a lenient approach should not be adopted merely because of the emotional reaction of the person concerned. Prevention of "inspectors being attacked by a citizen with a knife" should rely on the bureau's crisis management mechanism rather than via the practice of selective law enforcement by giving way to violence. If the bureau really deemed it necessary to have a "lenient" approach it should have established a set of objective criteria for law enforcement in advance so that all parties concerned would have been treated fairly and the exercise of discretion would not be boundless or even abused.

7. In the letter to the alleged offender regarding the granting of 60 days grace, the Investigation Department of Bureau E should have clearly alerted the alleged offender to the adverse consequences that he or she would incur regarding non-compliance with the law. In particular, an explicit warning should have been made that once the operation of the factory had been found unsatisfactory per the bureau's requirements the bureau would no longer allow it to remain in business and an immediate prosecution would follow. However, the bureau did not make these points in its letter to the alleged offender.

8. The Acting Director told the CCAC that when he learned that the Acting Deputy Director was going to offer the alleged offender a further 60-day grace period he clearly indicated the Acting Deputy Director that if the alleged offender failed to move the business elsewhere by the end of the 60-day transition period administrative penalty proceedings should be initiated against the alleged offender. However, on 28th November 2006, when the alleged offender had indeed failed to comply by the end of the 60-day period, the Acting Director did not approve the motion as suggested by the head of the Investigation Department to initiate penalty proceedings and preventive measures. The Acting Director explained that he did not approve because he did not want to be "ruthless" and because the alleged offender had in fact purchased an industrial property; the shop had not moved into the new place because the original owner of the new premises had not moved out;

thus, it required four more months for the alleged offender to move, a delay not due to the alleged offender, who was doing what he or she could to comply.

9. However, records showed that the alleged offender only orally claimed that he or she had purchased an industrial property unit at Edf. Industrial da Ilha Verde as the new factory facility – what he or she submitted to the bureau was nothing more than an unsigned lease; no evidence of purchase of the industrial unit was ever submitted. Information from Property Registration Database also indicated that the ownership of the aforementioned industrial unit had never been transferred to the alleged offender or his/her spouse. When Bureau E finally approved the industrial license to that industrial unit, the holder was neither the alleged offender nor his/her spouse. The alleged offender later informed the bureau that the licence holder of the industrial unit was his/her new business partner, but he or she had never submitted any proof that a partnership existed.

10. In other words, the Deputy Director aborted the proceedings of administrative penalty against the alleged offender on the basis of his/her oral claim and a lease without the landlord's signature. Without taking verifying measures, the bureau was too hasty in taking the alleged offender, who had run the business without a licence for many years, as "sincerely intended" to move away as required, especially in view of the fact that the alleged offender had never formally submitted an application for a licence.

11. Afterwards, Bureau E realised that the alleged offender was only making excuses for the delay of relocation, and initiated proceedings of administrative penalty against him or her on 24th January 2007. In view of the seriousness of the offences, the team leader and the division head of the Investigation Department suggested to raise the fine to MOP20, 000 and ordered the alleged offender to suspend operations forthwith. However, on 7th May 2007, the department head instructed the inspection team to investigate the current status of the shop but made no legal explanation as to why he did not adopt the suggested measures. In this case, even if the alleged offender did take corrective actions or even if the operation was indeed halted and the factory moved elsewhere thereafter, made no grounds for exempting the alleged offender from penalty for his/her past offences. The Investigation Department indeed had no reason to compromise the previous administrative measure against the alleged offender. The department head's delay in adopting penalty measures against the alleged offender was indeed administratively illegal.

12. On 30th May 2007, the team leader and division head of the Investigation Department suggested fining the alleged offender MOP20,000 and ordering the latter to suspend the operation of the factory. The department head pointed out that after the alleged offender obtained a temporary industrial licence for the new factory, he/she had not moved to the new factory and continued operating in the old premises. However, the department head only suggested fining the alleged offender and his/her spouse (both of whom ran the factory) MOP10,000 in total. The suggestion was approved by the Acting Deputy Director on 1st June 2007. In other words, the bureau fined the alleged offender the lower penalty as if the act was a first offence, instead of punishing him/her more heavily. For the offender, such punishment could be interpreted as a "cheap" cost for the unlicensed operation over the years. Such conduct would not prompt citizens to obey the law, let alone suppressing repeated offences.

13. After that, the alleged offender filed an essential petition to the bureau but without providing any evidence to disprove the bureau's accusation against him/her. Also, there was no sign of relocation. Therefore, the team leader and the division head of the Investigation Department suggested rejecting the petition on 2nd July 2007, but the department head only issued a directive to initiate a further check on the factory instead of immediately agreeing to reject the petition. In fact, the punishment to be exerted by the bureau was the lowest limit of the fine pursuant to Section b, Article 82 of Decree Law no. 11/99/M, so there was no room for alleviating the penalty. Moreover, Decree Law no. 11/99/M did not empower Bureau E with the discretion to exempt the alleged offender from punishment. In addition, when the bureau was deciding whether or not to reject the petition, it was unnecessary to consider whether the alleged offender would move away after being fined or whether he/she had obtained a licence for the new factory.

14. As the essential petition had the effect of suspending administrative measures taken against the petitioner, the authorities should have decide whether to accept the petition within 30 days upon receiving the petition. If further inspection and complementary measures were necessary, the time limit for decision making would be extended to a maximum of 90 days. In this case, the head of the Investigation Department conducted meaningless investigations or ineffective complementary measures. As a result, the bureau took almost 90 days (on 11th September 2007) to make the decision. In other words, the conduct substantially deferred the execution of punishment against the offender, thus allegedly violating the

general principles of administrative procedures – the principles of legality and efficiency.

15. On 22nd October 2007, the Investigation Department sent its personnel to check the factory, which they found was still in operation with no sign of equipment being moved. The bureau prosecuted the alleged offender under Section b, Article 1 of Decree Law no. 11/99/M but did not adopt immediate preventive measures. Although the fine under Section a, Article 82 of Decree Law no. 11/99/M has been increased from MOP20,000 to MOP200,000 there was a certain time lapse after the bureau filed the prosecution and issued the penalty. The bureau's failure to adopt preventive measures that could effectively halt the operation of the factory. As a result, the previous suspension order to the alleged offender was rendered "nominal".

16. It was true that the chiefs of the bureau thought that Decree Law no. 11/99/M was unreasonable and unfeasible as it required that all home-based workshops move to industrial properties. Therefore, they refrained from executing the 'rigid' decree law. The bureau adopted any preventive measures against unlicensed factories or workshops.

17. However, the CCAC holds that as the supervising and enforcing authoritative organ of execute Decree Law no. 11/99/M, the bureau should not abandon its responsibility to legal enforcement merely because the law was evil. Otherwise, the bureau might violate the principle of legality - the most basic principle that all administrative functionaries should comply with. Even though the authorities thought that it was difficult to execute the decree law thus adopting "revised measures" in accordance with factual situations, the measures should be impartial and known to citizens. However, while Bureau E required that the workshop operate in an industrial property they did not punish an unlicensed factory operating in non-industrial property. Such an approach was indeed unfair to legitimate operators who obtain industrial licences. This obviously violated the principle of fairness.

**(e) <u>Failure of Bureau E to correctly understand and enforce the "warning" measures provided in Article 84 of Decree Law no. 11/99/M</u>**

1. During the course of investigation, the CCAC found that if the reported unlicensed factories were not qualified for an industrial licence because of the location of the factories (e.g.) in residential properties, Bureau E generally offered those operators a period of time – about 15 to 20 days - to suspend operations voluntarily. However, bureau personnel variously

interpreted the criteria and basis for the offer. Some of them thought that the offer was based on law, while some asserted that the offer did not have any legal basis but was rather a general policy for the purpose of giving offenders a chance to comply voluntarily. Some personnel maintained that regardless of whether the offenders were found in their first instance of offence or not, they were offered the period to voluntarily suspend their operations. By contrast, other personnel said that only first-time offenders or those who did not commit the same offence again within two years were offered the grace period.

2. In fact, under Decree Law no. 11/99/M, all industrial activities are prohibited in properties primarily comprised of residential flats. Therefore, if the reported unlicensed factories were located in such residential properties, it was impossible to have such an offence amended; and even impossible to offer the period pursuant to Article 84 of the decree law. In this case, the law did not allow Bureau E the discretion of offering offenders a chance to voluntarily suspend unlicensed operations.

3. For the sake of precise adherence to the law, once Bureau E received the complaint about the unlicensed factory, they should have taken measures to verify if an industrial licence was applicable to the location of the reported unlicensed factory, in addition to sending personnel to check the factory. If the location was unfit for an industrial licence, the bureau should have made an on-site record of the offence and initiated proceedings of administrative punishment against the offending party.

4. If the bureau thought that there were difficulties in the strict enforcement of the law, they should have initiated amendments to the law. As to legal enforcement during the transition period before the amendment had not been completed, they should have established relevant criteria through due process and informed public. In any case, the bureau should not offer sites legally incapable of getting industrial licenses with longer "warning" (grace) periods than those with such capability!

5. Moreover, the operation of an unlicensed factory in a residential property may constitute improper use due to the change of purpose of a property. Therefore, once Bureau E had received such a complaint they should have immediately informed the Land, Public Works and Transport Bureau in order that the latter could adopt measures to follow up and investigate the matter. At the same time, Bureau E should inform the party concerned.

**B. Problems arising from Department I's handling of document delivery, receipt and archiving**

1. In the process of investigating this case, the CCAC found that after the predecessor of Bureau E had received an application for a licence for operating a meat roasting factory in 1996, they categorised it as an application for a licence for catering facilities. On 17th January 1996, therefore, Bureau E referred the application to the former Macau Government Tourist Office. When the latter received the file they no longer had the power to issue licences for catering facilities or regulate such facilities due to the introduction of new regulations. Consequently, they referred it to the predecessor of Department I on 17th June 1996 and informed the party concerned.

2. Department I, however, was now unable to locate the file delivered by the former Macau Government Tourist Office in 1996, and claimed that no data was available to trace the process of the original delivery and receipt of the file. Since this was not the only case which involved the transfer of files from one functionary to another as a result of functional transference, there were reasons to be concerned about whether the predecessor of Department I had properly verified the files received from the former Macau Government Tourist Office at their transfer, and whether Department I (or its predecessor) had lost any of the files.

3. To prevent such things from happening again the CCAC held that Department I should take measures to improve its internal supervision mechanism in order to better control the process of file transfer when exchanging documents with other departments in case of functional transference.

**C. The CCAC solution**

Thus, the CCAC adopted the following measures within its power:

1. The CCAC advised Bureau E to undertake a thorough review of how they implemented Decree Law no. 11/99/M, especially their precise application of the rules pursuant to Article 84 of the above decree law. In particular, CCAC wanted to know how the bureau would implement a reporting mechanism against the improper use of properties with the Land, Public Works and Transport Bureau, the setting up of a supervisory mechanism verifying whether a banned, unlicensed operation was actually suspended or not, and standardize

the conditions under which preventive measures may be taken and their implementation, in order to enhance the legal enforcement of their staff. If the bureau thought that Decree Law no. 11/99/M was "too stringent" and hard to implement it should "amend the law". As to how legal enforcement should be enacted during the transition period of law amendment, they should establish relevant criteria in due process and informed citizens accordingly. At any rate, the bureau should not have offered a longer "warning" (grace) period for unqualified applicants for an industrial licence than qualified ones.

2. The CCAC advised Bureau E that if there were accusations that its public servants had made illegal promises, it should initiate internal investigative proceedings and report to the CCAC any suspected functionary crimes. Also, it must clarify such accusations and respond to the public when necessary.

3. The CCAC suggested that Department I take measures to improve its internal supervision mechanism for better control of file transfer process when exchanging documents with other departments, in terms of document receipt and archiving, when such transfer is necessary for functionary transference.

Bureau E fully accepted CCAC's advice and responded that it would take its suggestions into account when amending Decree Law 11/99/M in the future.

## File No.: 05/2007

**Subject: Prosecution of Illegal Hotel Proprietors and Unlicensed Tourist Guides**

According to information provided by residents, and files concerning illegal hotels obtained from Bureau T during the examination on systems conducted last year on the *Power of Intervention of the Public Administration Concerning the Misuse and Poor Management of Private Premises*, Bureau T was found to have allegedly committed a series of administrative illegalities and malpractices in its handling of cases concerning breaches of administrative regulations and their penalties. A formal investigation was initiated to further analyse how Bureau T handled such administrative penalty cases. The CCAC retrieved data from Bureau T regarding the administrative breach cases against several unlicensed tourist guides.

I. **Bureau T personnel responsible for monitoring the lawful operation of the tourism**

**industry were found to have misapplied the law and to have held shifting positions, lacked of reasoning and standards in case handling.**

1. In early 2004, Bureau T identified consecutively 2 cases of illegal hotel operation in which the same offender was involved. Investigations were completed at the end of January 2005 and the offender ended in 2 separated fines of MOP60,000 and the orders to close the business premises. The offender subsequently appealed to Bureau T. In April 2005, 2 pre-examiners analysed the case for appeal and recommended in sustaining the 2 original penalties of MOP60,000 fine and closure of premises. The acting department head of the Licensing and Inspection Department, however, accepted the plea **that the offender was a divorcee and had to care for her 4 children**, and suggested in late May that the execution of the penalty be suspended according to the provisions of Paragraph 1 of Article 65 of Decree Law no. 16/96/M, which states that "The execution of penalty may be suspended if there is a reasonable explanation, provided that such suspension be no less than 6 months and no more than one year". This recommendation was eventually approved by the Director of Bureau T.

2. **However, the offender had repeatedly violated the regulations concerning unlicensed hotel operations and owned at least 8 apartments in a certain building. Under such circumstances, the acting department head exercised his discretion to suspend the penalty based merely on the aforementioned explanation was farfetched. Furthermore, the head involved may have incorrectly applied the law.**

3. The puzzling thing is, one month after Bureau T decided to suspend the penalty decision - in late June 2005 – the bureau displayed inconsistency in its handling of a case involving another offender. The pre-examiner once again recommended the suspension of a penalty decision on the similar grounds that the offender was a first-time offender, was elderly and uneducated, and of limited financial resources. However, the above acting department head and his superior - who was a Deputy Director especially responsible for directing the duties of inspection and procedures of administrative offences in the bureau - rejected the recommendation. Nevertheless, at the end of May 2005 the acting department head and Deputy Director involved in fact approved the suggestion of penalty suspension by the pre-examiner in yet another case concerning unlicensed hotel operations, in which a similar plea was put forward that it was a first offence and that the offender was out of

work and lived on subsidies from the Social Welfare Bureau and Social Security Fund.

4. **In other words, bureau staff assumed absolutely different positions in applying provisions of Article 65 of Decree Law no. 16/96/M in the span of just one month.**

5. A similar situation arose in the handling of cases concerning unlicensed tourist guides with regard to breaches of administrative regulations.

6. In March 2004, Bureau T inspectors identified Leong as an unlicensed tourist guide while he was taking a tourist group arranged by a travel agency to a restaurant. According to Decree Law no. 48/98/M then in force, if the unlicensed tourist guide was proved rendering services to a travel agency, the agency involved should also be fined.

7. In handling the case of Leong, the pre-examiner recommended in mid-August that the travel agency be penalised because it must have known that Leong was representing them. However, the Deputy Director of Bureau T questioned the judgement of the pre-examiner and in late August ordered him to hear the explanation made by a licensed tourist guide that the agency claimed was the originally scheduled tourist guide involved in the case. Accordingly, it was evident that the Deputy Director believed that the declaration by this licensed tourist guide constituted important evidence in judging whether the unlicensed tourist guide had rendered services to the travel agency.

8. In another case concerning an unlicensed tourist guide identified on the spot whilst guiding a tour group for another travel agency some 10 days after the Deputy Director gave the aforementioned instructions, the travel agency likewise claimed that they had originally arranged a licensed tourist guide, Chio, to guide the group and were ignorant as to if and how an unlicensed tourist guide had been involved in their tour. However, the Deputy Director echoed the challenge made by the pre-examiner that "**how could he (the unlicensed tourist guide) have got on the tour bus and guided the group arranged by that travel agency without the approval of the travel agency?**" He consequently declared that the travel agency should be punished as the unlicensed tourist guide was arranged by them.

9. It is worth noting that in the case decision mentioned above - in which the Deputy Director **disapproved the penalty against the travel agency** - the unlicensed tourist guide surnamed Leong, was caught by Bureau T while he was guiding the group to a restaurant.

If the aforementioned question by the pre-examiner was applied to this case, one should arrive at the same doubt as "whether Leong, the unlicensed tourist guide, could have been guiding the tour group without the approval of the travel agency", with which the testimony of the licensed tourist guide could have been overthrown by the same logic. In this way, it should not be necessary for the Deputy Director to order the pre-examiner to hear the testimony of the licensed tourist guide Chan once more.

10. If, according to the abovementioned point (8), the Deputy Director's rejection of the explanation that the "travel agency was ignorant of the replacement of the unlicensed tourist guide" was made after the instruction for "leniency" for another travel agency on August 2005, logically he should have stuck to his ground in enforcing the law by likewise rejecting any further explanation. However, within a fortnight the Deputy Director involved approved again the exemption of the travel agency from the penalty in the case of Leong, the unlicensed tourist guide, by accepting the claim of the licensed tourist guide, Chan, that the tour agency was ignorant of the replacement by an unlicensed tourist guide.

11. Quite evidently, the Deputy Director shifted his stance several times within a short period of time regarding the circumstances under which a travel agency may be penalised.

12. In handling another case in October 2005 in which an illegal transportation service was involved, the Deputy Director issued a "warning" penalty to the tourist guide as well as the travel agency in the absence of any recommendation from the pre-examiner, acting division head or acting department head and without stating the reasons for penalty in accordance with the provisions of Articles 113 to 115 of the *Code of Administrative Procedures*.

13. The abovementioned cases undoubtedly confirm that Bureau T incorrectly applied the regulations regarding penalty suspension by making totally inconsistent decisions on similar cases within a short period of time, and even taking the "initiative" to penalise the parties concerned without giving reason. On one hand, this led to doubts about whether public servants are discharging duties in an uncorrupted, impartial, objective and neutral manner; on the other hand, it makes it impossible for pre-examiners to identify the principles upheld by the bureau in handling such cases.

14. In view of the fact that the tourism industry is a mainstay of Macao's economy, and that impartial and standardised supervision is the basic means of ensuring the orderly develop-

ment of the local tourism industry and maintaining Macao's image as an international tourist destination, it is deemed necessary that the administrative authority conduct a thorough review of the situation and adopt a better management approach.

**II. Bureau T's chaotic procedures in handling administrative offences, lack of appropriate and effective progress in supervision mechanism**

1. We noticed that the pre-examination proceedings concerning the illegal operation of a lodging house in early 2004 lasted for 1 year and 8 months. Primarily, the case took so long because of confusion in notifying the suspect to submit a defense, collecting penalty notice, etc. In particular, where the suspect repeatedly failed to attend appointment, the pre-examiners continued to attempt to contact the suspect by telephone in order to schedule another appointment. According to the bureau personnel, this was the normal practice by the pre-examiner.

2. In fact, should a suspect intend to disrupt the legal process by rejecting the notice from the authority (e.g. by failing to collect official notice or refusing to receive letters from the authority), then such acts obviously violate the Principle of Good Faith stipulated in Article 8 of the *Code of Administrative Procedures* and may have abused his of rights. The authority should have foreseen that adopting the contact measures provided by Article 72 Paragraph 1 of the *Code of Administrative Procedures*, by contacting the suspect in person or by post, etc, would not be successful. Public announcement as stipulated in Article 72 Paragraph 2 of the *Code of Administrative Procedures* should be used if necessary to ensure the efficacy of the administrative process.

3. According to Bureau T personnel, the Bureau have adopted new measures regarding administrative offence cases concerning illegal lodging, which may make simultaneous use of public announcements and registered letters when it is deemed necessary to notify the suspect.

4. However, the new measures in handling cases also stipulate that when the authority receives the on-site record, it will appoint an individual pre-examiner for each case. But when it comes to other pre-examination procedures - such as holding written hearings, analysing statements in written hearings and giving advice on formal charges and so forth - an inspector would be appointed to handle matters such as conducting a hearing with

the parties involved, analysing statements presented in written hearings, giving advice on legal charges or keeping the case on file, etc, on a "10 cases as a batch" basis following up by pre-examiners. This arrangement evidently violates the provisions of Article 93 to 95 of Decree Law no. 16/96/M as the investigation and evidence collection measures for the verification of administrative offences - including a series of pre-examination procedures such as analysing offender's statements in the written hearing, advising on prosecution and proposing on a final decision, etc. - shall be conducted by the appointed pre-examiner. The new measures currently adopted by Bureau T will make the functions of the pre-examiners "nominal".

5. The inspector assigned to "follow up cases on a batch basis" is neither the pre-examiner nor a superior (such as the head of Inspection Division). It then becomes questionable as to what capacity the inspector undertakes his task and the commensurate responsibilities. On the other hand, should the case be handed to an official pre-examiner who finds that the "inspector" has failed to weigh and process the case properly, should he be responsible for advising the superior to remedy the situation? Or if the pre-examiner chooses to "pass the buck" should he or she take responsibility for failing in his or her duties (as a pre-examiner)?

6. Moreover, even if Bureau T decided to adopt the "new measures" above to standardise the operational work by, for example, notifying offenders identified within the same period to defend themselves through the same public notice or with registered letter. There is no good reason for this measure since the same result can be achieved with the statutory measure of appointing a pre-examiner as long as there is proper co-ordination between corresponding managerial and operational entities.

7. In addition, if Bureau T allows a small number of inspectors to handle pre-examination for a long period of time, it will largely increase the risk of individual inspectors illegally manipulating pre-examination proceedings and subsequent results. Should Bureau T believe that only a small number of inspectors are qualified to serve as pre-examiners because of their competency and experience, then it is necessary for the bureau to specify the qualifications for the job and offer training to unqualified personnel so that they may qualify for the position of pre-examiner.

8. **At any rate, even if it was indeed necessary to have the cases handled on a batch basis, Bureau T should officially appoint the pre-examiner to undertake such duties; it should**

**also take measures to reduce the risk of manipulation and increase the predictability of the procedure. Regardless of the number of pre-examiners utilizing such functions, standardised criteria should be introduced for handling such cases.**

9. Furthermore, in 2 other cases of administrative offence involving illegal tourist guides in 2004, the CCAC found that a Bureau T inspector responsible for pre-examination failed to notify the offender in time of the penalty decision made by the bureau in one case and no follow-up action in another, resulting in the expiration of the prosecution prescription period. Since the cases involved breaching of discipline, the CCAC alerted Bureau T, which initiated disciplinary proceedings regarding the cases.

10. The CCAC found many incidences where reports documenting the on-site record or penalty advice by the appointed pre-examiners were sent back to the Inspection Division some three months after being presented to the auxiliary office of the Chief in October 2004, without giving any instructions.

11. A worse situation was uncovered in still **another case where reports documenting penalty advices were submitted for decision in early August 2005, only to be returned without instruction in mid-November 2006, one year and three months later. By then the prosecution prescription had already expired. This administrative inadequacy directly resulted in the inability to prosecute the offender**.

12. The CCAC contacted the Deputy Director of Bureau T responsible for inspection and procedures of administrative offence to clarify the reason for the above situation. According to the Deputy Director, the testimonial transcript and penalty advice report of the case were submitted to the senior officer when he was on a business trip or leave, thus he was unable to give timely instructions.

13. According to Bureau T personnel, should a Deputy Director be on leave or on a business trip, his caseload would be transferred to the Director of Bureau T, in which case the proceedings of the cases concerned would lie dormant because the Director was too busy.

14. Although it is not inferred in the cases mentioned above that there were personnel(s) responsible for the pre-examination being "frozen", **it is evident that the supervisory system of Bureau T had gone seriously awry in that nobody followed up on the case even though it had lain dormant for several months or more than a year.**

15. According to Bureau T personnel, although starting from one or two years earlier the Inspection Division was required to submit a progress chart to the head of Licensing and Inspection Department and Deputy Director indicating name of case, date of commencement and current status (such as stages of interview, response given by person(s) involved, report writing and notification, etc). However in terms of practical operations, it was conceded that these "stages" were too general and were not good for supervisory purposes. So, **Bureau T should improve its monitoring measures for pre-examination procedures forthwith.**

16. In addition, it is obvious that the file keeping of Bureau T is seriously problematical because a **proposal concerning punishment written by the acting head of the Licensing and Inspection Department were missing without a clue**.

17. **In a case happened in October 2004, the CCAC discovered that a pre-examiner had failed to include the record of an offender's previous offences in his written report of May and July 2005, which resulted in the repeated offender being treated as a first-time offender.**

18. As far as the CCAC is aware, the Inspection Division of Bureau T has a computer system for tracing a suspect's offences record. However, the system is not good enough, and pre-examiners have to rely on their memory or query colleagues, manually check case files. This inevitably increases the opportunities for wrong reference and analysis in the offender's record. Thus, personnel find themselves in a minefield of potential malfeasance. Consequently, **the bureau involved must not ignore the situation and should initiate a system for checking previous offences record without delay.**

19. A case filed in October 2005 involved an unlicensed transportation guide. Bureau T originally charged the person involved as illegal tourist guide and as such summoned him to defence. After further analysis, the pre-examiner considered the offender an unlicensed provider of transportation services and suggested a penalty accordingly. However, **the pre-examiner did not inform the offender about the change of allegation as a result of change in illegal facts discovered in prosecuting procedures. He also failed to follow up with the necessary hearing. Consequently, the relevant penalty was invalidated because it breached the *General Regime of Administrative Offences and the Respec-***

***tive Procedures.***

20. Simultaneously, **although no penalty was suggested by the pre-examiner, the Deputy Director arbitrarily decided to impose a "warning" penalty upon the travel agency responsible for organising the groups as well as the original scheduled licensed tourist guide. Neither of the two parties involved was informed about the allegation or summoned him to defend. In other words, the penalties imposed by the Deputy Director in this case were also illegal and invalid.**

21. In addition to the illegality of the abovementioned issues, **although the deputy director decided upon the "warning" penalty for the licensed tourist guide, the pre-examiner failed to notify the tourist guide involved: this meant that the penalty was decided but not notified, reflecting in the bureau's acute leak in its notification procedure.**

22. During the course of investigation, the CCAC noticed that there was a lack of effective communication between Bureau T's superiors and their subordinates, who did not have enough support from the former when they found difficulties in their work. (An officer claimed, for example, that it was difficult to follow some cases because of language barriers, yet the superior failed to offer support or solution; another officer complained that proceedings dragged on as the superior often raised problems and questions irrelevant to the case during the pre-examination process.)

23. According to the stipulations of Paragraph 2b) and d) of Article 279 of *General Regulations Governing the Staff of the Public Administration of Macao* regarding the obligation of zeal and loyalty, Bureau T personnel, including pre-examiners, heads and chiefs, are obligated to ensure that offence cases followed up by the Bureau are handled as soon as possible within the prosecution prescription. If not, it will result in the authority's efficacy being questioned and expose them to suspicion of rendering "favours" to certain violators, thus impairing the reputation of the administrative authority, the above relevant personnel may have to bear disciplinary consequences or even criminal responsibility.

24. Finally, **should Bureau T suffer from a shortage of manpower as the flooding emergence of illegal lodging cases while their duties in other inspection tasks (such as inspection activities for restaurants and tourist guide services) were still ongoing, a case handling criteria must be devised in writing to determine the priority or urgency of the cases. For example, those cases which are large in scale or cause more serious social**

**harm, or whose prosecution prescription is about to expire, should be prioritised and brought to the attention of the handling officers and the public in order to avoid the authorities or their personnel from being suspected of shielding offenders.**

25. To sum up, the administrative functionary should pay close attention and take appropriate measures to remedy the situations mentioned above regarding its various illegalities, inefficiency in processing cases, chaotic procedures and lack of effective supervision, etc. They should formulate working guidelines and instructions in written form for bureau personnel and establish an effective system for monitoring the handling of cases.

**III. In investigating and deciding on cases of illegal lodging houses, Bureau T did not verify whether the operator provided inherent services to lodgers**

1. According to information about handling cases concerning illegal lodging services provided by Bureau T and statements made by its personnel, Bureau T relied upon checking the method of their rental payment, be it daily or monthly, but did little in investigating and analysing whether the operator had provided related services to lodgers such as room cleaning or towel supply. Some of its inspectors even claimed that it was difficult to verify these things.

2. Summarizing the provisions stated in Decree Law no. 16/96/M and the *Commercial Code*, a **hotel and lodging contract is considered a transaction of commercial activities in supplying accommodation and other related services; facilities supplying such services are naturally subject to the *Commercial Regime of Hotel and Similar Facilities.* Any person engage in such commercial activities of providing lodging services without the required licence commits the offence of operating illegal lodging.**

3. Real estate tenancy contract, on the other hand, is a civil activity that does not involve the commercial activities of providing lodging. Such a contract generally only concerns the lease of a property to a tenant and does not usually include the supply of related services. Therefore, such non-commercial, purely civil lease contracts are naturally out of the scope of the *Commercial Regime of Hotel and Similar Facilities*.

4. What should be noted here is that in such cases, whether the person concerned pays rent on a daily or monthly basis **does not constitute an essential criterion for determining whether a contract is a tenancy contract for civil residential purposes hotel lodging**

**contract**, since the rent stipulated in the tenancy agreement for residential purposes can also be computed on a daily basis. Consequently, the rental payment method alone is insufficient in proving that an individual is operating a hotel lodging service, or operating it illegally.

5. Relatively speaking, whether the accommodation provider offers inherent hotel services to lodgers is an important factor in determining whether the accommodation provider operates a lodging house or merely leases his or her property to a third party for residential purposes. By commonsense or referencing the regulations of other jurisdictions, a hotel business is understood to provide not only accommodation to guests but inherent services.

6. **In summary, the CCAC does not endorse Bureau T's practice of disregarding of whether lodgers have been supplied with related hotel services, nor its judgement on such poor grounds as rental payment method in determining whether the illegal operation of a lodging house is applicable.**

7. **It may be true that it is hard to obtain evidence in practice, especially in determining which conditions should be considered as providing related hotel services. If so, Bureau T should amend its regulations to further clarify the issue. Before making the amendment, however, it is advisable for the bureau to refer to current regulations, in particular the stipulations of the *Commercial Code* regarding services that must be provided by the accommodation provider, and issue a guide to inspection personnel in writing to clarify the standard of law enforcement.**

8. **Under no circumstances can the bureau rule out the existence of illegal lodging services on the basis of the fact that their facilities, partitions or related services fail to meet the minimum statutory standards that qualify a lodging house for an operation license. If a lodging house were illegal, then it would be normal that their services and facilities fall below statutory standards. It is because they are unlicensed that their services and facilities are not guaranteed to meet statutory standards.**

9. **In addition, in view of the fact that the police are often the first to detect such instances, it is necessary for Bureau T to communicate and co-ordinate with the Public Security Police Force on the criteria for judging the existence of an illegal lodging house, so that the police can effectively collect firsthand evidence. For example, consulting lodgers**

**and recording "live" evidence may help Bureau T enforce the law and successfully prosecute illegal lodging house owners.**

**IV. Responsibility of travel agencies regarding unlicensed tourist guides**

1. Both the former (Decree Law no. 48/98/M) and the current law revised and re-promulgated by Executive Order no. 42/2004 provide that a tour group arranged by the travel agency shall be escorted by a tourist guide, otherwise the travel agency shall be subject to fine. In addition, it is stipulated that a tourist guide shall hold the required licence or be subject to penalty. Once an unlicensed tourist guide is proved to be providing services to a travel agency the agency involved shall also be subject to penalty.

2. Past cases indicate that tour groups which claimed to be serviced by licensed tourist guides were found to be serviced by unlicensed individuals. In such cases, the travel agency concerned and/or the licensed tourist guides usually claimed that the unlicensed tourist guides were personally hired by the licensed tourist guide, and that the travel agency was totally ignorant of the arrangement, so that the travel agency would escape penalty.

3. **Such a defence should not, of course, be accepted without analysis or investigation. As pointed out by a pre-examiner of Bureau T, a tourist guide not working for the travel agency would not have been authorised to guide the tour group on board the tourist bus or to the restaurant reserved by the travel agency, or even pay the bill in the name of the travel agency. Consequently, it is necessary for the authority to devise clearer guidelines for law enforcement and how to judge the defence made by licensed tourist guides and/or travel agencies in the case of unlicensed tourist guides. This would prevent the recurrence of "non-standard and inconsistent" treatment of cases mentioned above, which provably damage the image of Macao as an international tourism destination and impair residents' faith in the government's administration of law and impartiality.**

4. On the other hand, **should the authority find the existing law not effective enough to tackle unlicensed tourist guide cases, or it requires improvement in terms of procedures of evidence collection and prosecution, the authority should amend its regulations in order to fully utilise penalty measures. However, certain appropriate measures should be taken prior to amendment in order to prevent the recurrence of "inconsistency and**

**non-standardisation" of law enforcement.**

## V. Measures adopted by the CCAC

1) To address these administrative illegalities and malpractices, the CCAC issued a formal recommendation and Bureau T to adopt the following remedial measures:

### i. Inspection

a. Formulate working guidelines and instructions in written form for bureau personnel, especially with regard to the duties enacted by Bureau T, the workflow of inspection and pre-examination proceedings, and the standards in handling cases, etc.

b. Improve the monitoring mechanism for inspection and pre-examination progress.

c. Improve the computer information system regarding reference to the offence record.

d. Devise a priority-and-urgency-based processing mechanism.

e. Enhance communication between superior and subordinates.

### ii. Handling of illegal lodging cases

a. Amend the current approach and standards of evidence which neglect the verification of provision of hotel inherent services by the suspected business operator. If it is hard to obtain evidence especially in determining which situation should be regarded as provision of inherent hotel services, Bureau T should amend its regulations to further clarify the issue. Before making the amendment, however, the bureau can refer to current regulations, in particular to stipulations of the *Commercial Code* regarding the services that must be provided by the accommodation provider, and issue a guide to inspection personnel in writing to clarify the standards of law enforcement.

b. Since the police are often on the frontline of law enforcement, it is necessary for Bureau T to communicate and co-ordinate with the Public Security Police Force on the criteria for judging the existence of an illegal lodging house, so that the police can effectively collect firsthand evidence, such as by consulting lodgers and recording "live" evidence which may help Bureau T enforce the law and successfully prosecute the illegal lodging operators.

c. **Through experience, if Bureau T regards it necessary to process illegal lodging house cases via pre-examination conducted on a batch basis, it may appoint one pre-examiner to handle a batch of cases but should do everything possible to reduce the opportunities for individual manipulation and predictability with regard to the appointment mechanism.**

**iii Handling of unlicensed tourist guide cases**

a. Clarify how law enforcement officers should review the explanation made by licensed tourist guides and/or travel agencies in the case of unlicensed tourist guides - namely, that such unlicensed tourist guides are only assistants personally hired by the licensed tourist guide without the approval and knowledge of the travel agency, so as to avoid "inconsistency and non-standardization" in the approach to such cases.

b. Should the bureau find the current law impracticable in tackling unlicensed tourist guide cases, especially in terms of collecting evidence and prosecution, it should, in addition to setting up the instructions mentioned above, amend the law concerned.

2) The tourism industry is a mainstay of Macao's economy. The impartial and standard supervision of the sector is an important means of ensuring its orderly development, as well as maintaining its image as an international tourist destination. This case revealed that Bureau T officials responsible for supervising the lawful operations and management of the tourist industry were administratively illegal and inappropriate in misapplying the law and were inconsistent in their approach and handled cases without proper reason and criteria. Hence, the CCAC referred its findings to Bureau T's supervisory entity for a more in-depth review of the situation and rectification may be undertaken.

With regard to the advice mentioned above, Bureau T responded as follows:

**I. Inspection**

Bureau T accepted most of the recommendations proffered by the CCAC but stressed that the existing manpower, in particular its inspection personnel, was inadequate to match up with the workload. It believed that the problems mentioned above might be resolved by re-structuring the bureau, reallocating some of its offices and recruiting more personnel.

**II. Handling of unlicensed tourists guides cases**

1. With regard to the cases of the unlicensed tourist and transportation guides, Bureau T maintained that they have always acted according to the law by verifying case facts and whether the unlicensed tourist guides and transportation guides actually conducted services on behalf of the travel agency or on their own. In fact, while unlicensed tourist guides and transportation guides may be penalised if no travel agency proves to be the organizer of the group they guide because the current law provides that only licensed travel agencies are authorised to organise and operate tour services;

2. Bureau T claimed that the verification of facts was based on the evidence documented in the case file, including statements made by the relevant travel agency, tourist guide and parties involved.

3. Bureau T claimed that the facts of 2 unlicensed tourist guide cases indicated in the report attached to the recommendation sent by the CCAC (hereunder referred to as "Recommendation Report") were not identical: in the first case, the travel agency appointed a tourist guide to service a tour group but was ignorant of the latter's commissioning of a third party (an unlicensed tourist guide) to guide the tour group, while in the second case the travel agency involved arranged for a licensed guide to service a tour group but was ignorant of the appearance of an unlicensed tourist guide servicing the group on the tour bus.

4. Bureau T emphasized that it has always handled cases in accordance with the law and to the same standards. It further claimed that as tourist guides are freelance service providers unaffiliated to any specific travel agency facts may not be what it seems at first glance. Bureau T promised that it would step up its inspection of popular tourist spots and travel agencies to break up unlawful operations, and would foster promotion to tourists and co-ordinate with relevant local departments, the tourism industry and its Mainland counterparts to tackle and clear up illegal operations that might compromise the image of Macao tourism, so as to maintain the normal operations of the market.

**III. Handling of illegal lodging house cases**

1. As to the CCAC's opinion, Bureau T personnel were found misapplying the *Commercial Regime of Hotel and Similar Facilities* per Article 65 of Decree Law no. 16/96/M concerning penalty suspensions, and being inconsistent in their approach

to similar cases within a short period of time, Bureau T claimed that the 3 cases concerned quoted in the Recommendation Report by the CCAC were rather different in fact and thus qualified for different decisions. Bureau T insisted that in 2 of the cases penalty suspensions were applied based on sufficient documented evidence that the offenders satisfied the requirements for suspensions. The third case did not qualify for penalty exemption since the documents presented by the offender were inadequate to conclude a suspension – she was unable to prove that her husband was in poor health (the doctor's report indicated nothing abnormal) or that she was in reduced financial circumstances.

2. Bureau T claimed in its analysis of the cases of illegal lodgings that it not only considered whether rents were paid on a daily or monthly basis but took into account whether the partitions of the house had been changed, particularly whether rooms were provided with exclusive toilets, and whether the landlord and tenant had entered into a tenancy contract with rental declared to the Financial Services Bureau, etc.

3. While Bureau T agreed that the provision of hotel related services such as cleaning and laundry services was an essential aspect in judging whether a lodging house operation was involved, it also pointed out that most illegal lodging operation cases did not provide such services because of the very low rates they offered customers.

4. Bureau T also commented that most of the illegal lodging house cases were first detected and handled by the Public Security Police Force. By the time the bureau was committed to the investigation, much of the original evidence or clues first collected by the police no longer existed.

5. Bureau T also pointed out that in several law suits on illegal lodging houses operation the administrative court ruled against the bureau because the court considered that the activities involved were not subject to the provisions of Decree Law no. 16/96/M. As of now, no specific law is in place for regulating such behaviour. The stance of the courts has encouraged the private sector to be unscrupulous and a vicious circle has evolved. Bureau T claimed that it was necessary to solve the problem through the amendment of the law. The bureau is studying the possibility of revising Decree Law no. 16/96/M and Directive no. 83/96/M but such amendment might also lead to the revision the *Civil Code* and other relevant regulations.

6. In conclusion, Bureau T indicated that it would assign a pre-examiner to handle each case in rotation.

In respect to the CCAC analysis we found part of the response by Bureau T lack justification per the following:

**Handling of unlicensed tourist guide cases**

1. The 2 cases Bureau T mentioned above refer to Case File no. 24/2004 (person involved: unlicensed tourist guide Leong; travel agency involved: Travel Agency H) and Case File no. 52/2004 (person involved: unlicensed tourist guide Lei; travel agency involved: Travel Agency C).

2. The information provided by Bureau T does not lend convincing weight to its response. The two cases mentioned above are very similar: In particular, the unlicensed tourist guides involved were both discovered by the Bureau T inspector "at the scene" while they were guiding a tour group; they both denied that they had been engaged by the respective travel agencies to service their tour groups; both the originally engaged licensed tourist guides claimed that they had enlisted the services of unlicensed tourist guides without the travel agencies' knowledge; the travel agencies claimed ignorance of the licensed tourist guides appointing third parties to serve the tourists (See Comparison & Analysis in Appendices 1 & 2).

3. However, Bureau T treated the 2 cases mentioned above in entirely different ways. In Case File no. 24/2004, in view of the fact that the travel agency had claimed that they asked the licensed tourist guide, Chan, to arrange an assistant ("helper") as requested by a Mainland China travel agency, the pre-examiner decided that the travel agency was aware that the assistant was an unlicensed tourist guide named Leong and therefore suggested that Travel Agency H be penalised. However, the Deputy Director of Bureau T challenged this assessment. He subsequently ordered the pre-examiner to hold another hearing with the licensed tourist guide, Chan (the licensed tourist guide originally scheduled by the travel agency), who re-iterated in the second hearing that Travel Agency H realised that the assistant was an unlicensed tourist guide only after the incident occurred. Consequently, the pre-examiner adopted such explanations and concluded in his following reports that Travel Agency H was innocent and recommended that the case be closed, which was approved by the Deputy Director.

4. In Case File no. 52/2004, the pre-examiner inferred that Travel Agency C should have known the tour group was guided by the unlicensed tourist guide because otherwise "Lei - the unlicensed tourist guide who was neither an employee of the travel agency nor known to the licensed tourist guide (Chio) - could not have got on the tour bus and guided the group arranged by that travel agency without the approval of the travel agency", and therefore recommended that the travel agency be penalised. The Deputy Director raised no objection made, and no instruction for second hearing with Chio (the licensed tourist guide originally scheduled by the travel agency). The Deputy Director endorsed the proposed penalty immediately.

5. As noted in the CCAC Recommendation Report, the inference made by the pre-examiner in Case File no. 52/2004 can also be applied to Case File no. 24/2004 (i.e. whether unlicensed tourist guide Leong could guide the tour group to a restaurant without the authorization of Travel Agency H), and on that basis concluded that Travel Agency H was aware that the unlicensed tourist guide Leong was representing it. However, the Deputy Director agreed, per the conclusion in Case File no. 52/2004, to penalise Travel Agency C. Yet, within the space of a fortnight, he disregarded the inference made in Case File no. 24/2004 and agreed to exempt Travel Agency H from punishment by accepting the statement made by the licensed tourist guide. Based on these facts, the CCAC concluded that Bureau T were guilty of adopting "inconsistent standards and approaches" in enforcing the law.

**Handling of illegal lodging cases**

1. The cases quoted by in the CCAC Recommendation Report indicate that Bureau T had incorrectly applied Article 65 of Decree Law no. 16/96/M concerning the penalty suspension, and been inconsistent in its approaches:

| Date of decision made by Bureau T | Case | Reasons for penalty exemption for one year | |
|---|---|---|---|
| | | Pre-examiner | Head of Bureau T |
| 23/5/2005 | Ms. Wong (Flat A, Floor 6, Tower 2, Building K) | (No recommendation made to suspend penalty) | Ms. Wong was a divorcee raising four children, but did not considered that she was a repeat offender, and owned several properties. |
| 23/5/2005 | Ms. Wong (Flat G, Floor 6, Tower 2, Building K) | (No recommendation made to suspend penalty) | Ms. Wong was a divorcee raising four children, but did not considered that she was a repeat offender, and owned several properties. |
| 26/5/2005 | Mr. Chong (Flat D, Floor 10, Building I) | Offender's first offence and unemployed. Lived on Social Welfare Bureau and Social Security Fund subsidies | Agreed with recommendation made by pre-examiner to suspend penalty |
| 28/6/2005 | Ms. Hong (Flat A, Floor 14, Building K) | First report:<br>First offence. Poor financial condition, elderly and uneducated. Previous cases can be used as reference | No recommendation made |
| | | Second report:<br>No recommendation made to suspend penalty | Agreed to fine with immediate effect |

2. Indeed, in the case in which Bureau T did not grant penalty exemption to the offender (Hong), the information provided by the offender was insufficient to substantiate the poor health of her husband and poor economic circumstances.

3. **However, it should be emphasized that the CCAC did not hold that the offender should have been granted suspension, but rather that Bureau T had incorrectly applied Article 65 of Decree Law no. 16/96/M to the case of Wong, and the approaches adopted were different to that of other cases.**

4. A simple comparison between the case of Chong and that of Wong, and an analysis of the reasons for which the offenders in the cases were granted penalty suspension, would suffice to indicate why the CCAC claimed that the bureau had incorrectly applied the law in the case of Wong.

5. First of all in the case of Chong, based on the information presented in the administrative offence file by Bureau T, the offender proved to be a first-offender, was unemployed and was receiving training allowance from the Social Security Fund. For these reasons Bureau T applied Article 65 of Decree Law no. 16/96/M to grant penalty suspension and raise no great disagreement.

6. In the case of Wong, however, although she had submitted her divorce certificate and relevant documents certifying that her three minor children were still attending school and that she had once sought employment, these documents proved only that she was a divorcee raising three children and had once sought employment.

7. **The fact that the offender was a divorcee raising three children and once sought employment did not necessarily mean that the offender was a first-offender or that she was in reduced financial circumstances** because a wealthy person can also be a divorcee, raise children and seek employment.

8. As pointed out in the CCAC's Recommendation Report, Wong was not a first offender as she was charged with operating an illegal lodging house and had been penalised by Bureau T in early 2001 (Bureau T also granted penalty suspension for 1 year). On this occasion – while facing multiple charges for operating illegal lodgings within this period of suspension. **It is worth noting that the pre-examiner did mention her previous cases in the report to the bureau chiefs. In order words, the acting head of Licensing and Inspection Department was aware of the facts mentioned above but nonetheless advised suspending the penalty applied to Wong**.

9. Furthermore, the CCAC clearly pointed out in the Recommendation Report that **according to the report written by the pre-examiner, Wong was the holder of eight apartments in Building K. However, the acting head of Licensing and Inspection Department did not analyse her financial status when recommending suspension. The CCAC noted that Wong was the owner of at least seven apartments in Building K between 2001 and 2005 (when Wong had divorced, raising her three**

**children). The bureau's conclusion that Wong was in dire economic straits, without substantial proof, was clearly groundless**.

10. In Wong's case, there was absolutely no discernable reason for exempting her from penalty. In Bureau T's response to the CCAC's Recommendation Report by, no further reasons were offered, although Bureau T insisted that Wong's case satisfied all requirements for suspension of penalty.

11. As regards the issue of how to correctly interpret and apply the stipulations of Decree Law no. 16/96/M, the CCAC has made an in-depth analysis in the Recommendation Report.

12. Finally, as admitted by Bureau T, instances of illegal lodgings tend to be found first by the Public Security Police Force and that some traces or clues no longer exist when Bureau T follows up, it is advisable for Bureau T to take measures suggested by the CCAC to improve co-ordination and communication with the Public Security Police Force, so that the police know better how to collect "on-site" evidence that will help Bureau T in its follow-up work on illegal lodging operations.

The suggested issues raised by the CCAC on which Bureau T holds different views without plausible substantiation have been referred to the supervisory entity of the bureau – namely, the Secretary for Social Affairs and Culture - in the expectation that they will be seriously noted and followed up on.

Appendix Table 1
Tackling Unlicensed Tourist Guides Cases by Inspector of Bureau T

| Case File no. 24/2004 | Case File no. 52/2004 |
|---|---|
| "On 10th March 2004 at 12:10, (Bureau T) personnel approached a tour bus (plate#: MX-XX-XX) parked in front of Restaurant X Un located at No. X, Rua da Fernandes. The outer carriage of the tour bus identified CH Travel Agency Ltd. A man was found guiding a tourist group. (Bureau T personnel) approached him and, after identifying themselves, asked Leong (the unlicensed tourist guide) to produce his tourist guide license, which he failed to do… He claimed that there were 34 tourists in his tourist group… which was organised by CH Travel Agency." | "On 25th June this year (2004), (Bureau T personnel) having been notified by the police, conducted a joint field check and arrived at Golden Lotus Square. The abovementioned (Bureau T) personnel stopped a passing tour bus MX-XX-XX, marked Agência de Viagens e Turismo XXX for an ad hoc check. They requested Lei, an unlicensed tour guide on the bus, to produce his tourist guide license, which he failed to do so. When asked which travel agency organised the tourist group, he said that it was organised by Travel Agency C." |

Appendix Table 2
Statements by Various Parties Involved

| Case File no. 24/2004 | Case File no. 52/2004 |
|---|---|
| "(Unlicensed tourist guide Leong) claimed that he 'was not an employee of any travel agency.' He further claimed that he was not guiding the tourist group on the day concerned. He was there to find the friend of a family member after learning that they were in the tourist group mentioned above. (Bureau T) Personnel asked the declarant Leong why he told the (Bureau T) personnel that the group was organised by CH Travel Agency, to which he answered that he actually had no idea about which travel agency had organised the group at that time, and he only said so because he saw the name printed on the tourist bus. Leong said that he knew Chan was the licensed tourist guide of the group since they were acquaintances."<br><br>"Travel Agency H was totally ignorant of what happened on that day and the incident was only related to the tourist guide and him . . ." | "(Unlicensed tourist guide Lei) claimed that his friend, Chio, a licensed tourist guide (and staff member of Travel Agency C) called him on the day concerned and asked him to go to Kun Iam Statue located near Dynasty Plaza to guide a tourist group on her behalf (licensed tourist group guide Chio). She told him that the group was organised by Travel Agency C. As soon as he arrived at Kun Iam Statue, having taken over from Chio, he was apprehended while taking the group to Restaurant L."<br><br>Lei claimed that "On the day concerned, I received a call from my friend Chio, who is a licensed tourist guide. She told me that she was unable to guide the tourist group due to an emergency and asked if I could guide the group on her behalf . . ." |
| "Declarant (licensed tourist guide, Chan) claimed that she was the tourist guide originally arranged by the company mentioned above for the tourist group. She privately asked a friend to guide the group since she had to return to the mainland, which arrangement was not known to the Travel gency H." | "(The licensed tourist guide, Chio) claimed she was a tourist guide of Travel Agency C…… she was really tired from receiving quite a few tourist groups around those days and wanted to take a rest, but she was not allowed to take a leave, so she called her friend, Mary to receive the tourist group mentioned above on her behalf once she received the tourist group mentioned above, however she had no idea about the appearance of the unlicensed tourist guide, Lei."; "(Licensed tourist guide, Chio) claimed that she had not informed the travel agency that she had found Mary to help guiding the tourist group on her behalf……" |

| Case File no. 24/2004 | Case File no. 52/2004 |
|---|---|
| The unlicensed tourist guide, Leong was not an employee of any travel agency and he was only a "helper" invited by the licensed tourist guide responsible for taking care of the tourist group.<br>"We arranged a helper for the tourist guide in taking care of the tourists getting on and off the bus and going for the meals etc, as it was requested by the travel agency from Shanghai. We informed Chan, who was originally arranged to escort the tourist group. According to the licensed tourist guide, Chan, she then asked an unlicensed tourist guide, Leong to help her."; "We were totally ignorant of this matter."; "Leong was the unlicensed tourist guide arranged by Chan and she privately appointed the unlicensed tourist guide to guide the group without informing us." | "The company arranged three tourist buses and tourist guides (respectively Chio / Chan / Lei) to take care of tourist groups."; "After the unlicensed tourist guide was checked, Chio informed the travel agency and claimed that she asked her friend to go to the Golden Lotus Square and take the group on her behalf to Restaurant L, because she had other urgent things to attend and would return to the restaurant to resume her duty afterwards.";"They didn't know the unlicensed tourist guide, Lei and he was not the staff member of Travel Agency C."; "They were not given advanced notice by Chio that she has arranged the unlicensed guide, Lei to guide the tourist group and were informed only after the case was detected in an inspection." |