



CHAPTER V
OMBUDSMAN

Chapter V – Ombudsman

The CCAC recorded 243 cases involving administrative complaints in 2008, a slight increase compared with the previous year. Also, the number of requests for help and consultation reached 639. To sum up the cases, most of them were related to the legal system governing public services, illegal construction, traffic offences and supervision of property use.

As to the research and examination on system and operation, the CCAC completed a project of system examination entitled *Analysis of Current Regulations on Use of Property and Relevant Supervisory Mechanism*. The report has been submitted to the Chief Executive. Meanwhile, regarding the examination on operation, the CCAC cooperated with the Labour Affairs Bureau for the first time to examine the procedures of the handling of labour dispute and combating of illegal employment. Also, the CCAC continued to partner with the Identification Bureau to examine the procedures of issuing and managing residents' identification documents. Moreover, the CCAC followed up the implementation of improvement measures taken by the Department of Travel Documents of the Identification Bureau and the Inspection Division of the Urbanization Department of the Land, Public Works and Transport Bureau.

The CCAC has already signed the "Integrity Management Plan – Protocol of Collaboration" with all the 61 public departments since the plan was implemented in August 2007. Some of them have carried out further improvement based on their initial experience, while the CCAC provided them assistance. In general, the departments have further alerted their staff to the problems concerning recusal, handling of advantages received and outside employment and have improved the mechanisms regarding procurement process.

In response to the requests by government departments/institutions and private associations/bodies, the CCAC organized workshops on different topics, including public procurement, ombudsman and enhancement of integrity awareness.

As to external exchange, the CCAC sent delegations to the conferences co-organized by the Ministry of Supervision of the People's Republic of China, the ICAC of Hong Kong and the CCAC itself and continued to participate in the symposia and conferences organized by international ombudsman associations and corruption prevention organizations. Regarding personnel training, the Ombudsman Bureau of the CCAC sent staff to participate in the course organized by the China National School of Administration and the Chinese People's Public Security University in Beijing and dispatched delegates to observe the operation of supervisory bodies in the Mainland China.

5.1 Investigation

5.1.1 Case Intervention

5.1.1.1 Cases Recorded and Processed

In 2008, the CCAC handled 243 cases involving administrative complaints, a 3% increase compared with 236 cases in 2007. The significant increase in complaints over the supervision on property use was related to the deficiencies and loopholes in the mechanisms of supervision on use of property adopted by the authorities and the current regulations on the purpose of property. Therefore, the CCAC has completed the project of research and examination on the system, entitled *Analysis on Current Regulations on Use of Property and Relevant Supervisory Mechanism*, and has made recommendations for improvement to the authorities. Moreover, the complaints over labour dispute also increased. Most of them involved the competent department's treatments which were unfair or beyond the prescribed limitation. Therefore, the Labour Affairs Bureau suggested cooperating with the CCAC to commence an examination on operation through signing the Integrity Management Plan in 2008.

The cases of administrative complaints in 2008 still primarily involved the legal system governing public services, illegal construction and traffic offences. The cases handled in

informal way but have raised public concern involved: 1) a member of the leadership of a higher education institute had violated the regulations on recusation repeatedly by participating in making resolutions linked to his interest; 2) a higher education institute illegally allowed the operator of a canteen to raise the price and subsequently granted catering subsidies to the students and hired some students to distribute the coupons; 3) the rules of the Conceptual Design Competition of the New Macao Central Library did not restrict the participation of the advantaged entities and individuals who had obtained more relevant information, such as the consultancy company which was previously awarded a contract of constructional planning of the Central Library and its staff, thus resulting in unfairness.

Table 14
Content classification of administrative complaints in 2008

| Problems involved | Caseload |
|--|------------|
| Legal system governing public services (rights and benefits of staff, recruitment, internal management and discipline) | 60 |
| Illegal constructions | 28 |
| Traffic offences | 21 |
| Supervision of property use | 17 |
| Labour disputes | 11 |
| Municipal affairs | 9 |
| Medical and healthcare | 9 |
| Social / economic housing | 8 |
| Access of information | 8 |
| Rights of abode | 6 |
| Illegal businesses | 5 |
| Investment residency | 4 |
| Irregularities in other administrative procedures | 57 |
| Total | 243 |

243 cases of administrative complaint recorded in 2008 were added to the 50 cases forwarded from 2007, excluding 24 cases which concerned same problems, a total of 269 cases were processed during the year, of which 207 were completed and archived, accounting for over 77% of the total.

Some of the cases were archived because they showed no signs of administrative illegality or irregularity, were properly handled by the departments concerned (via the CCAC's transference and informal intervention), beyond the competence of the CCAC and lack of information. Among the 207 completed cases, 8 of them were handled by formal investigation while the remaining 199 were handled by means such as referral, document exchanges and meetings, of which 73% were resolved within 3 months. The numbers of cases in which the CCAC found no signs of illegality after initial analysis or were properly handled by the departments concerned following formal or informal interventions were 121 and 50 respectively, similar to that for the year of 2007.

Table 15
Administrative complaints in 2008

| Reasons for cases archived | Caseload |
|---|------------|
| No signs of administrative illegality or irregularity | 121 |
| Properly handled by respective departments (following formal or informal interventions of the CCAC) | 50 |
| Lack of information | 24 |
| Beyond the competence of the CCAC | 2 |
| Others | 10 |
| Total | 207 |

5.1.1.2 Summaries of the 3 cases which have been handled in informal way and raised public concern

5.1.1.2.1 Case no. 188/C/2008

During the course of following up a reported case, the CCAC discovered that a member of the leadership of a public education institute had 3 times committed acts contrary to the regulation on mandatory recusation under the *Code of Administrative Procedure* by participating in the resolution making procedures related to the promotion of his own teaching position. However, after being informed of the infringement, the authority only carried out warning measures without initiating any disciplinary procedure in accordance with law. Moreover, the supervisory body agreed not to initiate disciplinary procedure against the staff concerning one of these cases.

In fact, under the legal system governing public services, once a public servant is suspected to have committed a disciplinary offences, the case shall be processed with disciplinary procedure. Therefore, there were deficiencies in the decision of not initiating disciplinary procedure. However, since the decision has been made for over 1 year, the deficiencies were thus “redressed”. The staff could still be held liable for the 2 remaining disciplinary offence according to the law. By declaring the stance of the CCAC to the authority, the latter decided to initiate disciplinary procedure against the staff concerning these 2 cases. Finally, the staff was ordered to pay a fine equivalent to his 3-day salary.

5.1.1.2.2 Case no. 0017/E/2008

The CCAC received a complaint alleging that a public higher education institute subsidized the students through offering coupons, which is the same as using public fund to subsidize the outsourced canteen in the campus. Therefore, its regularity was questioned.

Following the investigation, it was discovered that the institute contracted out the canteen’s operation to a private operator through open bidding and the leasing rules indicated that the leaseholder “shall not raise the price during the first year of the lease period”. Later, the institute agreed on the price increase due to “continuous inflation.” This agreement had not only violated the leasing rules but was also unfair to those potential bidders who intended to bid but finally did not do so due to the aforementioned clause, constituting breach of the principle of impartiality.

If the operator was able to prove that there was any force majeure, s/he could be exempted from the responsibilities caused by not fulfilling all or part of the contract. However, “force majeure” does not include “continuous inflation” in general. In other words, “continuous inflation” could not be a legitimate reason for the operator’s exemption from abiding by the clause “shall not raise the price”. The institute granted catering coupons to the students and hired some of them to distribute the coupons for the reason of “reducing students’ economic pressure”. However, the rules of the institute stipulated that the expense should conform to the tenet of education. The expense caused by the distribution of subsidies was obviously unrelated to the tenet and therefore the legal basis for the decision was insufficient. The hiring of students originated in the unlawful decision to distribute subsidies. That means deficiencies existed in the institute’s formation of intention of employing students to distribute the coupons, and subsequently led to deficiencies of illegality / invalidity in the decision.

Since the institute has terminated the operation contract in advance and the new operator has started running the canteen, the aforementioned decision with deficiencies was an administrative act which could be repealed. Under the *Code of Administrative Procedure*, even though the administrative act was invalid, the authority can still recognize certain legal results of the facts caused by the invalid administrative act due to the lapse of time, principle of good will and safeguard of the stability of public administration, etc. Therefore, since the parties concerned should not be liable for any responsibility and the institute has already paid the correspondent the catering and employment expenses due to the execution of the aforementioned illegal decision, according to the law there were sufficient reasons to recognize the legal results of the facts caused by the revocable aforementioned administrative act (for example, the fact that the students have already enjoyed the catering subsidies). Based on this law, the relevant expense could not be retrieved. Hence, the CCAC requested the institute to strictly conform to the law of law-abidingness in discharging its duties during operation. The institute accepted the CCAC’s opinion and promised to strictly abide by the contract entered into with the new operator and conducted a comprehensive review on the management in every aspects in order to ensure legality. The CCAC thus filed the case.

5.1.1.2.3 Case no. 0053/E/2008, no. 357/C/2008 and no. 0005/DSPJ-I/2008

In mid-2008, the media revealed that the winner of the Conceptual Design Competition of the New Macao Central Library was a staff from the company responsible for the research on preliminary construction planning of the library. The public questioned the fairness of this competition because the consultancy company that participated in the research had obtained substantial internal information related to the project and its' staff's participation was apparently extremely unfair to other participants.

Following the CCAC's investigation, when the authority awarded the contract of "research on advance construction planning of the New Macao Central Library", it did not prohibit the company and its staff to join the bid or competition for design in the later stage and relevant restrictions were not introduced into the rules of the competition either, so the participation of the staff was not prohibited according to law. Nevertheless, due to the principle of fairness, the CCAC has suggested the department concerned that if there were open contests or competitions for acquisition of goods or service, it should evaluate in advance whether there were any entities or individuals who might gain the advantage of obtaining related information due to any reasons as well as the possibilities for them to become potential competitors. The institute should also establish relevant handling mechanisms, such as publicizing relevant information for all potential competitors, banning the individuals who had participated in related works or having the advantage of information due to any reasons from joining the competition, in order to ensure the fairness and justice of the whole procedure and avoid any tarnish to the credibility of the authority.

Later, the department responded that the authority had already provided necessary information to all potential participants in the competition and insisted that what the authority had done was absolutely conforming to all the regulations and principles that it should abide by. Therefore, the CCAC reiterated its standpoints and recommendations, notified the Secretary of the relevant field of the response mentioned above and the CCAC's stance. Finally, the Cabinet of the Secretary replied that it agreed on the recommendations from the CCAC and would instruct the Cultural Affairs Bureau to improve the related administrative procedure so as to avoid the same problem.

In fact, the Macao SAR Government conducted researches or consultations on preliminary planning or feasibility of projects in different areas or fields many times over recent years and commissioned or contracted the projects to private entities (e.g. consultancy companies). However, there have been no regulations stipulating that entities or individuals that have provided service of research or consultation for the authority shall not participate in the bidding or competition related to that research or consultation and requiring the authority to formulate any prohibitive or restrictive clauses while signing contract with the company which provides the service of research or consultation. It is worth noting that the entities or individuals that participate in the preliminary / explorative researches or consultations naturally obtain more undisclosed information related to the project and are not subject to relevant responsibilities and obligation as public departments or public servants do. Moreover, on the premise that it is free to engage in any work and business, the possibility of the aforementioned private entity and its staff's participation in the authority's subsequent execution of the plan certainly could not be "automatically" excluded. Based on this presupposition, if the authority contracted out a research or consultation on feasibility and later acquired the goods or services related to the mentioned project of research or consultation through open contest or competition, some potential competitors might have special advantage of obtaining information due to their earlier participation in the research or consultation, bringing other competitors the chance to lose a fair competition and causing citizens to question about the fairness of contest or competitive activities held by the government.

Therefore, the CCAC proactively followed up the case and recommended the authority to urge all government departments to note that if there are open contest or competition for acquisition of goods or service in the future, they shall evaluate in advance whether there are any entities or people who might have the advantage in obtaining related information due to any reasons and the possibilities for them to become potential competitors and establish relevant handling mechanisms, such as publicizing relevant information for all potential competitors, banning the individuals, who had participated in related works or having advantage of information due to any reasons, from joining the competition, or requiring all competitors to make declarations, so as to adjust the grading proportion to offset privilege of the potential

competitors of obtaining certain information, In this way, the fairness and justice of the whole procedure can be ensured and damage to the credibility of the authority can be avoided. The CCAC's recommendation was transferred to the Secretaries and relevant departments following the Chief Executive agreement through an administrative order.

5.1.1.3 Formal Investigation, Admonition and Recommendation

In 2008, the CCAC conducted intensive investigation of 5 cases which involved "the Subsidy Assessment Scheme of the Macao Foundation and the Science and Technology Development," "establishment of an elderly home at a commercial unit", "inappropriate land-granting procedure concerning Travessa do Fogo," "not renewing the employment contracts of teaching staff of the Education and Youth Affairs Bureau" and "the legality of the establishment of intermediate storage of petroleum gas". For the first 4 cases, investigations have been completed and advices or recommendations have been made (please refer to the Appendix for summaries of the cases).

Moreover, the cases commenced for investigation and completed in 2007 included "Prosecution and Penalty Mechanism Concerning Unlicensed Meat Roasting Factory", "Prosecution of Illegal Hotel Proprietors and Unlicensed Tourist Guides" and "Prosecution Procedures Concerning Acts Against *Foreign Trade Law*". As the authorities concerned have already accepted the CCAC's admonitions and have carried out appropriate measures, such as formulation of written guidance, perfecting working procedure and enhancement of professional training for front-line staff, etc., the CCAC therefore filed the cases. As to the case of "employment of massage practitioner without professional qualification as a sports injury therapist" revealed by the CCAC which has reflected the internal maladministration of the public department, since the department adopted measures to improve its internal management in the course of follow-up, the CCAC did not need to make any admonition and filed the case. However, the CCAC will regularly review the implementation of the relevant measures with the department through mechanisms such as the "Integrity Management Plan".



5.1.2 Request for Help and Consultation

In 2008, the CCAC recorded 639 requests for help and consultation, a slight decrease of 1% comparing to that of 2007. To sum up, most of the requests addressed the legal system governing public services, traffic offences, illegal construction, municipal affairs and labour disputes. Those involving illegal construction saw a decrease of more than 33% (the complaints of the same subject also dropped off for more than 10%).

It should be noted that concerning the prosecution against and punishment for administrative infringement regarding the misuse and poor management of private premises, for example, illegal construction, due to the inadequacy and loopholes existing in current legislations of urban construction, the CCAC completed the research and examination on *the Power of Intervention of the Public Administration Concerning the Misuse and Poor Management of Private Premises* of which the outline of details was published in the 2006 Annual Report of the CCAC. The front-line staff of the CCAC will also explain to the citizens who come to request for help and consultation that the problems did not only lie on the internal operation and management of relevant departments but also the imperfection of the procedures of prosecution and punishment under current law. It is difficult to solve the problems fundamentally before the law is amended. Since the citizens can understand the difficulties in solving the problems concerning illegal construction through various channels, the number of requests for help and consultation (or even complaints) on related matters has decreased.

Meanwhile, there was, however, an increase of over 22% in the requests for help and consultation concerning traffic offences, reflecting citizens' concern on the strength and standard of the law enforcement since the *Law of Road Traffic* was implemented.

Table 16
Classification of requests for help and consultation in the ombudsman area in 2008

| Issues | Caseload |
|--|------------|
| The legal system governing public services (rights and benefits of staff, recruitment, discipline and declaration of incomes and properties) | 125 |
| Traffic offences | 71 |
| Guidelines on the Professional Ethics and Conduct of Public Servants | 32 |
| Illegal constructions | 32 |
| Municipal affairs | 32 |
| Labour disputes | 28 |
| Powers and functions of the CCAC | 16 |
| Education, sports and tourism | 15 |
| Telecommunication | 14 |
| Economic and social housing | 14 |
| Medical and healthcare | 14 |
| Right of abode | 13 |
| Illegal labour | 10 |
| Taxation | 10 |
| Social Security Fund | 10 |
| Property registration | 8 |
| Illegal businesses operation | 8 |
| Assessment and approval of imported labour | 7 |
| Access of information | 5 |
| Supervision on use of property | 5 |
| Improprieties of other procedures | 95 |
| Beyond the competence of the CCAC (private sector and lawsuits) | 75 |
| Total | 639 |

5.2 Researches and Examinations

5.2.1 Researches and Examinations on System

As to the researches and examinations on systems and operations, the CCAC completed a project of system research entitled *Analysis on Current Regulations on Use of Property and the Relevant Supervisory Mechanism*, which has been submitted to the administrative authority in 2008. Below is a concise introduction of the relevant analysis:

Analysis on Current Regulations on Use of Property and the Relevant Supervisory Mechanism

The CCAC has received many complaints / reports about use of properties, so the research and examination on system was conducted in order to clarify the insufficiencies of current regulations on use of properties and the relevant supervisory mechanism, as well as making recommendations for perfection. After analyzing the current regulations and the relevant supervisory mechanisms, it had revealed incompatibilities, mainly in the 3 below aspects:

1. Neither the *General Regulations on Urban Construction* nor the *Regulations on Use of Urban Real Estate* had clearly defined the statutory denotation of purposes of urban property

The *General Regulations on Urban Construction* and the *Regulations on Use of Urban Real Estate* had respectively categorized the purposes of property (The former stipulated 6 types of statutory purposes by listing, while the latter specified 7 types of statutory purposes by providing examples complemented by other unspecified statutory purposes. As for the statutory purposes, they are basically concordant with each other). However, none of these two regulations had further clarified the concrete denotation of every type of the purposes of the properties, that means they had not specified which (kind of) trade activity would be suitable to be operated within the properties of various purposes. On the other hand, although the *Rules of Fire Prevention and Safety* stipulates the purposes of property and explains the purpose of different kinds of properties and units and the applicable trade activities by using examples, it could not complement the definitions of the statutory purposes of urban property stated in the *General Regulations on Urban Construction* and the *Regulations on Use of Urban Real Estate*.

Based on the aforementioned presuppositions, and since most of the laws of “trade activity licensing system” did not clearly stipulate which kind of trade activities shall be operated within the properties of relevant purpose, the competent authorities have to exercise the “discretion” according to their own interpretation while assessing application for license. They have to determine whether or not the purpose of property suits the trade activity in order to avoid constituting inappropriate use. In particular, if the departments do not set up objective standard of law enforcement, different standpoints will then exist in similar cases or “inconsistent” standpoints in the same case, causing the authority’s credibility to be questioned. On the other hand, the authority’s “interpretation” on the denotation of different purposes of properties also becomes the crux of successful establishment of the relevant facilities, which causes latent risk of corruption.

2. Controversy over “possible compatibility between similar trade activities and different property purposes” due to unclear regulations

Apart from the problems discussed above, competent authorities still have to face the confusion whether similar trade activities are “compatible” with different property purposes. In fact, a trade activity may possess two or more natures / characters, take profit-making elderly homes as an example, even the licensing department has different opinion on whether or not they have the nature of “social facility” or “commercial facility” during different periods of time. This leads to another problem which is more controversial: shall profit-making elderly homes be established at properties for “social facility” purpose, “commercial purpose” or properties which are “compatible” with these two purposes? If an elderly home is allowed to be operated at a property for “commercial purpose” due to its profit-making nature, once its ownership is transferred to a social association which operates it on a non-profit making basis, does this constitute inappropriate use unless the new owner finds another property which is built for the “social facility” purpose? This inference is manifestly absurd.

In view of the context of the *Regulations on Use of Urban Real Estate* and the interpretations made by the lawmaker while formulating the aforementioned norms, it seems that the lawmaker did not take into account the fact that similar trade activities may be compatible with properties for different purposes. Nevertheless, in reality, whether before or after the abovementioned regulations came into force in 2000, the authority always allows the operations of trade activities which have not been clearly stipulated by specific laws of

licensing system about their compatibility. The aforementioned circumstance may lead to public's suspicion of whether or not the authority has assessed and approved the applications in accordance with law and the established assessment criteria, giving rise to potential risks of corruption.

3. Ineffective supervision by public law

a. The public works department did not perform its supervision role in the course of assessment and approval of construction license

In general, before the licensing department makes the final decision concerning application for license, the public works department has usually been participating in the processing of the case: either issuing construction license or rendering professional opinions to fulfil their duties to supervise the use of property. The *General Regulations on Urban Construction* has clearly stipulated that the public works department shall supervise whether or not the construction project conforms to the specific requirements laid down by the "trade activity licensing system".

Therefore, if legislations of the "trade activity licensing system" have already stipulated a particular trade activity to be operated within properties of specific purpose, or that the conformity of the premises with relevant purposes shall be the prerequisite for issuance of construction license, the public works department has the power to dismiss the construction project should it be discovered that the project does not accord with the purpose of property. However, if the licensing system has no concrete regulations as mentioned above, a larger controversy may rise regarding the public works department's competence to dismiss the projects due to "inconformity of purpose". In particular, under the *Regulations on Use of Urban Real Estate*, "only when the use of property, in law or in fact, different from that indicated in its license of use, inappropriate use has been constituted" and when the party concerned submitted the application for construction license to the public works department, s/he "has not yet utilized" the unit for the purpose different from that indicated in its license of use, whether in law or in fact. However, from another point of view of this case, even if the party concerned has successfully obtained the construction license issued by the public works department, as long as the problem concerning "inappropriate use" is not solved, s/he may not obtain the license successfully in the future.

In reality, the CCAC has discovered that the public works department had issued construction license based on the notion that it was not necessary to verify whether or not there was “potential” alteration of use while assessing and approving construction project. Also, the department did not explain on the future risk of committing “alteration of use” to the applicants. The practice has been detrimental to the “credibility” of the authority and violated the principle of good will under the *Code of Administrative Procedure*.

b. Inconsistency between the administrative supervisory system and the civil supervisory system

According to the current *Civil Code*, whether or not a proprietor of a unit is allowed to modify the constitutive title of the horizontal property to change the purposes of the unit is a common disciplinary power of all proprietors of the units at the property. In principle, the modification of the purpose of property indicated in the constitutive title shall be approved by all proprietors unanimously. Even if the proprietor opts for judicial means to make the modification, s/he shall obtain the agreement of two-third of all proprietors. In that sense, it is stringent to make such modification.

Therefore, the lawmaker made a choice between the public interest and other proprietors’ interests regarding some of the trade activities with the nature of public interest, such as social facilities, by stipulating specifically in the “licensing system” that the authority is allowed to issue licenses to facilities which are not established at units of “social facility purpose”, without obtaining the agreement of other proprietors. Once the licenses are issued, the operators will not be liable for minor violation of “inappropriate use” if they do not engage in any trade activity which exceeds the prescript of the administrative licenses.

However, the aforementioned special regulation does not rule out the proprietors’ right to raise objection about “not using the property for the purpose indicated in the constitutive title” through civil means. Therefore, even if the operator of the facility has obtained the administrative license issued by the authority, s/he may still be exposed to the risk of judiciary lawsuits filed by other proprietors. The operator shall take civil responsibilities or even prohibition from continuing the activity once s/he loses.



Moreover, the authority may be held liable had it not notified the operator of the aforementioned risk while issuing the administrative license.

c. “Proprietors’ written consent” is not sufficient to make up for the deficiencies in the current system

Modification of constitutive title requires not only the consent of a certain proportion of proprietors according to the “strict” requirements under the law but also completion of certain procedures and relevant expenses. Besides, the market value of the property might be affected by the alteration of unit. Therefore, in practice, even if the proprietors of the remaining units at the property agreed on the alteration, they might not agree on modification of constitutive title and property registration. According to the information available, the public works department has adopted a “compromising resolution”, which was that once the party concerned submitted the written consent by a sufficient proportion of proprietors, the department would issue the construction license or render feasible opinion in the course of issuance of license without requiring the party concerned to modify the constitutive title and property registration. However, it is worth paying attention that since the registered purpose of the unit was not altered in law, the “compromising resolution” adopted by the authority, strictly speaking, is likely to violate the provision that “the utilisation of property shall conform to the registered purpose” under the *Regulations on Use of Urban Real Estate*.

Furthermore, although the proprietors who have signed the consent in principle could not file an administrative or civil petition to the administrative or judiciary authorities against the alteration of purpose, the current legal system (including the *Civil Code* and the *Code of Property Registration*) does not absolutely bar the subsequent owner, who later acquires proprietorship, from lodging a civil proceeding against the licensee for utilising the unit different from the registered purpose, since the “purpose of property” recorded in the constitutive title and Property Registration has not been altered. In other words, the “compromising resolution” adopted by the authority did not “properly” solve the problems existing in the current system.

The various problems mentioned above have to be improved through amendment of law. Relevant suggestions are listed below:

1. To standardize the classification of the purposes of properties stated in the *General Regulations on Urban Construction and the Regulations on Use of Urban Real Estate*; clearly define each type of purpose, i.e., which kind / kinds of trade activities is / are suitable to be operated in the properties for the mentioned purposes, and stipulate “whether or not properties for different purposes can be used for same business activity”.

2. Concerning the trade activities which are considered to have significant value of public interest, the authority should consider how the public interest may override the right to dispose enjoyed by the proprietors, review the pertinent licensing system to make it truly reflect the significant public interests of the relevant trade activities, restrict the proprietors’ right to dispose to an appropriate extent. (For example, for mandatory alteration of registered purpose due to the establishment of certain trade activities, the related legislations may be amended to reduce the statutory proportion of consent or stipulate that establishment of the facility can only be prevented by the objection raised by proprietors of a particular proportion, or else, the facility may be established without complying with the registered purpose. In this case, the proprietors and those who acquire ownership of the units at the property afterwards are barred from raising any objection by civil means)

3. The authority is advised to confirm the validity of the written consent through law amendment if it deems maintaining current written consent of proprietors to be necessary, so that it will be compatible with the provisions of the *Regulations on Use of Urban Real Estate*, *the Civil Code and the Code of Property Registration*.

On the other hand, the authority should adopt the measures below prior to law amendment:

1. The public works department and the licensing department should establish clear and standard criteria to interpret the definition of every types of purposes of property and confirm the criteria as standard for law enforcement. (applicable when the public works department assesses and approves construction license as well as provides professional opinions in respect of the licensing procedure and the licensing department assesses and approves application for license)



2. As to the situation where the public works department has already released that the activity to be engaged in at the property will contravene the registered purpose in the future while assessing and approving the application for construction license, the department should establish the criteria for issuance of construction license. Even if the license is issued, the department should make the following suggestions as appropriate according to the actual situation:

- a) The party concerned does not require administrative license for the activity s/he engaged in, however, the procedure of legalization has not yet been undergone. In this case, the public works department should remind the party concerned that s/he will commit inappropriate use of the relevant property when the activity is commenced in the future.
- b) If administrative license is required for the activity engaged in by the party concerned and the licensing department, according to law, has no authority to exempt the premises from compliance of the requirement of conformity to the purpose of the properties, the public works department should remind the party concerned that change of utilisation will prevent him / her from obtaining the license.
- c) If administrative license is required for the activity engaged in by the party concerned but the power of exemption of conformity to the purpose of the properties has been conferred upon the licensing department by law, the public works department should also remind the party concerned that even the licenses has been granted, there is still a possibility to face the civil lawsuit filed by other proprietors against his / her inappropriate use of the property in the future.

5.2.2 Research and Examination on Operation

In 2008, the CCAC conducted a conjoint research and examination with the Identification Bureau (DSI) on the operation of its subdivisions, the Department of Travel Documents and the Department of Residents Information, and carried out a research and examination project on the operation of the Labour Inspection Department of the Labour Affairs Bureau.

The Identification Bureau

A. The CCAC and the Identification Bureau (DSI) carried out a conjoint research and examination on operation of the Department of Travel Documents in 2007. In the first quarter of 2008, a consensus of improvement was implemented by the DSI by November 2008.

1. Provision of Information

To adjust the contents of “the procedure of application for minor children’s travel document” on the website and the promotional pamphlet.

2. Procedure of issuance of travel document

- a. To improve the procedure of handling enquiries through establishment of the reviewing mechanism;
- b. To adjust the content of the “declaration of responsibility” which shall be signed by mothers whose marital status are “unmarried” when submitting applications for their minor children and remind them of the legal responsibility caused by false declarations;
- c. To standardize the method of recording outstanding documents and indicate at the column of “Expected day of collection” on the receipts that “the collection date is dependent upon the date when all required documents have been provided”;
- d. To send letters to notify the applicants of the suspension of issuing documents and refund the fees charged;



- e. In the cases of not issuing documents and thus having to refund the fees charged, letters will be sent to notify the applicants of the reasons, the means to appeal and the competent authority where the appeal can be lodged;
- f. To immediately verify whether or not there is overlap while receiving applications at the counter; to record the overlapping applications with the computer system; to remind on the application forms that criminal liability will ensue from false declarations and report false declarations to law enforcement authorities if the explanations of the parties concerned are not accepted;
- g. To establish fingerprint cross-checking mechanism for overseas applications submitted by post; to list the amount of every type of fees and indicate the procedure of refunding the remaining sum in the letters attached to the travel documents being sent back;
- h. To properly record the authority's decisions and relevant basis for the requests for expedited issuance of documents after loss of travel documents; to notify the applicant and make relevant records;
- i. In the cases of application of replacement due to damage, it is not necessary for the applicant to undertake to return the old documents in the statement has s/he already returned the old one.

3. Management of documents and files

- a. To establish the mechanism of archiving the "form of follow-up on matters of issuance of travel document" in chronological order and to destroy the expired forms;
- b. To adjust the format of "case follow-up form" by creating relevant forms respectively for in-person application, application by post from overseas and enquiry by post and to ensure that the forms are filled in clearly and completely;
- c. To carry out stocktaking mechanism and store the travel documents which have been uncollected for more than half year after issuance; to destroy the uncollected travel documents which have expired.

4. Enquiry and access of archiving system

To establish an archive system with index formed by Identification Card numbers for the follow-up and handling of enquiry cases and to add a procedure of "Inspection on existence of enquiry exist".

5. Procedure and record of receipts of fees

To improve the procedure of receipts of fees at the general counters.

6. Personnel training

To research on the enhancement of personnel training in order to facilitate the succession of work.

7. Working rules and guidelines

- a. To formulate written guidelines for the procedure of handling replacement due to loss and damage, including the expected date of collection, period of validity, documents required for expedited application and the approval criteria;
- b. To formulate guidelines for recusation and adopt measures to ensure all staff are clear about the relevant provisions;
- c. To keep a copy of the working procedural guidelines of "receiving applications for travel documents" at the front desk.

B. The CCAC and the DSI conducted a conjoint research and examination on the operation of the Department of Residents Information in the third quarter of 2008 and reached a consensus on the following improvements:

1. Provision of information

- a. Reasons will not be required for expedited application which are not made on the basis of loss of documents;
- b. To explain the contact methods adopted by the DSI and the matters concerning the charges to the applicants who can only provide overseas contact numbers;

- c. To formulate “notice to applicants” for different types of application; the notices should include the means of contact adopted by the authority and the consequences of not submitting outstanding documents in accordance with the notices and to upload the notices on the official website.

2. Procedure of issuance of the Resident Identity Card

- a. Handle the cases which have been persistently “pending” by considering whether or not the cause is attributable to the party concerned;
- b. To establish fingerprint cross-checking mechanism for the applicants who did not apply for the right of abode but had gone through the fingerprint checking process except for those who have already undergone automatic fingerprint verification.

3. Modification of identification data

- a. To handle the applications for modification of address rejected due the use of inappropriate application form and notify the applicants; To rearrange the application forms for modification of identification data and create another form especially for the declaration of address for receiving the cheque under the Wealth Partaking Scheme;
- b. Regarding the application for change of name, if the applicant cannot present the birth certificate or official certification documents to prove that s/he has ever used the previous name, yet the authority regards the reason for such changing as sufficient, the authority should then request the Chief Executive to make the decision;
- c. To make and archive written records of all applications for updating the fingerprints, including the requests expressed to the authority before submitting formal application and the authority’s decisions;
- d. The Director of the DSI should issue and publicize an administrative order to delegate the power to approve / reject residents’ application for modification of identification data to the chief of the Department of Residents Information.

4. Notification

For applications being rejected by the authority (including applications for modification of identification data and issuance of certificate) and cases in which the data contained in the applicants' ID cards has been modified by the authority, notifications shall be made by post and the methods and period for making appeals should be included.

5. Handling false declarations of identification data

- a. To review the criteria for reporting cases concerning false identification data to the Public Prosecutions Office and allow the director's discretion on reporting;
- b. For people who were born after 1990 and whose biological father / mother was confirmed not to be legally residing in Macao by the time of his / her birth through judicial verdict, the authority should refer the cases to the Chief Executive and request the latter to decide whether or not to allow them to reside in Macao and issue Resident Identity Cards.

6. Authentication of Resident Identity Card and provision of personal data

- a. To standardize the handling of application for authentication of document by cancelling the measure that requires the applicants to obtain prior consent of their domestic helpers / clients;
- b. As to the requests by public or private entities involving provision of personal information, establish reviewing mechanism according to the complexity of the details being requested.

7. Internal management

- a. To rearrange the shift of telephone operators at noon;
- b. To review the operating system for the issuance of resident identification documents being used currently; to improve and promote the computer tracking system gradually.



The Labour Affairs Bureau

The joint research and examination on operation conducted by the CCAC and the Labour Affairs Bureau (DSAL) was commenced in late April 2008, featuring an in-depth analysis on the works of the Labour Inspection Department in the areas of labour dispute, fight against illegal employment, industrial injury at work and recruitment agencies. Up to late 2008, the analysis on relevant operation had been completed, but both parties were still discussing the improvement measures agreed upon. (Since the DSAL was focusing on the promotion of the new Labour Relation Law and the preparation for new law enforcement mechanism, the discussion was thus postponed.)

5.3 Integrity Management of Government Departments / Institutions

5.3.1 Integrity Management Plan

Up to February 2009, all 61 government departments / institutions have already joined the Integrity Management Plan – Protocol of Collaboration launched by the CCAC in late August 2007, promising to establish preventive and educational mechanisms regarding internal management.

Each participating department or institution may decide its own pace of implementation of the 2-year plan according to their own situations. To sum up the status of implementation, the plan has been generally implemented. All departments and institutions have already fulfilled the most essential requirement – the formulation of internal code of conduct. Some of them have furthered the improvement based on their initial experiences. In general, the departments have further alerted their staff to the problems concerning recusation, handling of advantages received and outside employment and have improved the operating mechanisms in respect of the enhancement of transparency, justice and the prevention of conflict of interests in procurement process. The summaries of the departments' implementation are listed below:

1. Some departments have established independent working groups responsible for the coordination, research and follow-up on the implementation of various projects indicated in the plan as well as make a specific work schedule.

2. Improvement of the mechanism of recusal implementation: Many departments have formulated more concrete and complete recusal mechanisms regarding procurement procedure and assessment, including the recusal of the members of collegial bodies of the departments, which facilitate in enhancing impartiality and transparency of relevant works.

3. Systems of handling and review of data and information: many departments have formulated more concrete internal procedures and rules of handling, reviewing and using internal data, documents and other information.

4. Conducting risk assessment of internal corruption and formulating preventive measures: many departments have excogitated working procedures and rules for corruption-prone areas in order to fortify supervision, especially on the formation of tender-evaluation committee during the procurement process, the criteria of evaluation and the recusal mechanism. Also, some departments have formulated independent code of practice for field work inspection in order to consolidate the supervision.

5. Some departments requested continuous technical assistance from the CCAC especially in the aspect of fortification of personnel's awareness of integrity and the technical guidance on risk assessment of corruption.

5.3.2 "Research Awards on Comparative Studies of Ombudsman Systems in Asia"

The 3 shortlisted research teams participating in the "Research Awards on Comparative Studies of Ombudsman Systems in Asia" co-organized by the CCAC and the Macao Foundation completed their research reports in February 2008. According to the rules of the scheme, the organizer may select the best research report and award the team. The Jury Panel has selected the report entitled "Exploration of the Direction of Development of the Ombudsman System in Macao – Comparative Studies of Ombudsman Systems in Asia" by the Association of Study of Law of the 21st Century of Macao as the most outstanding research.

The report mentioned above and the report entitled "Comparative Studies of Ombudsman Systems in Asia: Observation on Macao, Korea and India" by another team were being translated into English. The English versions will be submitted to the Asian Ombudsman



Association upon the completion of proofreading in order to enhance the promotion of the ombudsman system in Asia.

5.4 Formulation of Guidelines and Organization of Seminars / Workshops

The CCAC continued to organize seminars and workshops on topics such as “Professional Ethics and Conduct”, “Public Procurement” and “Ombudsman” targeting at the law enforcement staff who were going to be promoted, newly recruited public servants, personnel of newly established public departments / institutions and staff of private enterprises or organizations or those partly owned by the government. Aside from this, representatives were also sent to conduct seminars about the integrity building of Macao in response to invitations by departments of the local government in Mainland China.

5.5 External Exchanges and Personnel Training

As to external exchange, the Ministry of Supervision of the People’s Republic of China, the ICAC of Hong Kong and the CCAC co-organized conferences respectively in Shenzhen and Hong Kong, namely “Corruption Prevention Strategies in relation to Construction Projects” and “Conference on Corporate Governance in the Financial Sector”. The CCAC sent delegates to these conferences, while representatives of local public departments / institutions and professionals from private sector in related fields also attended the conferences. On the other hand, the CCAC continued to take part in the symposia and conferences held by the International Ombudsman Institution and other international corruption prevention organizations.

As to personnel training, the Ombudsman Bureau of the CCAC for the first time dispatched staff to attend the course on studies of internal affairs of China which was organized by the China National School of Administration exclusively for CCAC’s staff and continued to take part in the investigation course co-organized by the Chinese People’s Public Security University and the CCAC. Moreover, the CCAC also sent delegation to the Mainland China to observe the operation of supervisory bodies.