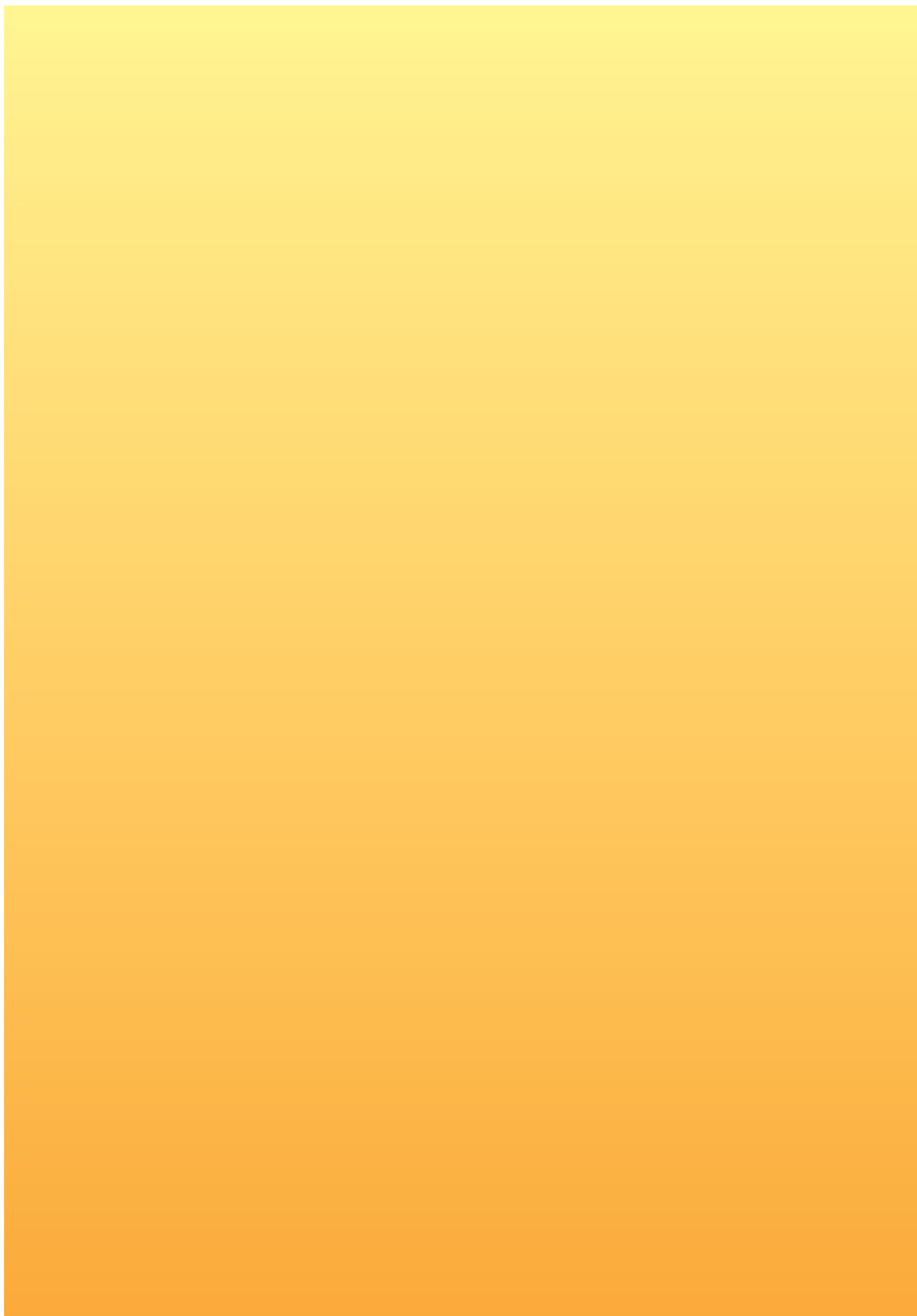


# PART VI

## APPENDIX





## APPENDIX I

Items 9 and 10 of Article 4 of Law no. 10/2000 of 14<sup>th</sup> August (*Organizational Law of the Commission Against Corruption of Macao SAR*) stipulate that:

*“The Commission Against Corruption is entitled to:*

*(...)*

*9) With regard to any shortcomings it finds in any legal provisions, specially those which may affect rights, freedoms, safeguards or any legitimate interests of the individuals, formulate recommendations or suggestions concerning their interpretation, amendment or repeal, or make suggestions for new legislation. Where, however, the Legislative Assembly is the competent entity to legislate, it shall merely inform the Chief Executive in writing on its position;*

*10) Propose to the Chief Executive the enacting of normative acts which may improve the work of the public institutions and enhance the respect for legality in the administration, particularly by eliminating factors which may facilitate corruption and illicit practice or ethically reproachable practice;*

*(...)”*

In 2010, the CCAC submitted a number of commentary reports to the Chief Executive, with the aim to enhance system building and administrative efficiency, exerting the Commission’s functions in implementing the policy plan. It also provides useful reference for decision-making departments. Below is one of the reports excerpted for the public’s reference.

## **BILL OF “JUDICIAL AIDS DUE TO EXECUTION OF PUBLIC DUTIES”: A COMMENTARY REPORT**

Under the Chief Executive’s instruction and Item 9 of Article 4 of Law no. 10/2000 of 14<sup>th</sup> August (*Organizational Law of the Commission Against Corruption of Macao SAR*)<sup>4</sup>, the report on the issue stated in the title is made for the Chief Executive for reference.

### **Part I: Introduction**

1. Since the Bill “Judicial Aids due to Execution of Public Duties” (hereinafter designated as “the Bill” or “Judicial Aids”) aroused public attention when it was discussed in the Legislative Assembly. Opinions and views were expressed in various ways. There were also criticisms. The views can be summarized as follows:
  - 1) To request the government to withdraw “the Bill” and re-consider the content and objectives of the legislation;
  - 2) To revise “the Bill”, in particular, to withdraw the system of paying the litigation expense for public servants by using public funds;
  - 3) Some criticisms indicated that the government intends to restrict criticizing opinions and thus hampers the freedom of press and speech. Therefore “the Bill” is a way to suppress criticism;
  - 4) Some opinions, however, are for “the Bill”, indicating that it implements the principle of equality (because “the Bill” is applicable to all public servants). Especially, it will provide larger protection for the frontline public servants, because, in reality, there are cases in which public servants were sued (esp. civil lawsuit) due to execution of public duties. In this case, public servants

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<sup>4</sup> The item states that: “The Commission Against Corruption is entitled to: (...) 9) with regard to any shortcomings it finds in any legal provisions, specially those which may affect rights, freedoms, safeguards or any legitimate interests of the individuals, formulate recommendations or suggestions concerning their interpretation, amendment or repeal, or make suggestions for new legislation. Where, however, the Legislative Assembly is the competent entity to legislate, it shall merely inform the Chief Executive in writing on its position; (...)”

became helpless as they have to hire lawyers on their own to defend for themselves, making people feel that the situation is unfair.

- 5) Some scholars and public voices believed that “the Bill” violates the principle of equality under Article 25 of the *Basic Law* because it provides a kind of “privilege” for public servants, which is, to pay for their litigation expenses by using public funds.

We do not intend to analyse and discuss the aforementioned viewpoints as this is not the purpose of making this report. We only analyse the content of “the Bill” and provide suggestions.

2. **To withdraw “the Bill” and re-consider the legislative rationale is, to a large extent, a political decision, which is beyond the competence of the CCAC.** However, as far as the overall situation and legislative concept are concerned, this can be a compromise. If the government decided to withdraw “the Bill” and reset the legislative mindset, the utility of this report as a reference would be much less.
3. If “the Bill” is still adopted, it is discovered after preliminary analysis that there are many points which need improvement. The points involve **decision of legislative policies** as well as **legislative technical problems**. Therefore, our commentary focuses on these two aspects.
4. The description of reasons in “the Bill” indicates that:  
  
*“1. In order to improve the protection for staff of public service in execution of duties, the Bill aims to provide them with judicial aids applicable to the judicial litigations stemming from execution of their public duties.*  
  
*2. The measures proposed by “the Bill” are for the people facing litigations caused by their execution of public duties or social service. Therefore, the measures are for public interests, because it is of the justice to guarantee that these people enjoy protection when facing judicial litigations stemming from execution of public duties.*  
  
*(...)”*

According to the meaning of the above paragraphs, the basic concept of the legislation is: to establish an ordinary system<sup>5</sup> through “the Bill”, instead of regulating the act of using public funds for legal proceedings as an exceptional or special case.<sup>6</sup> Therefore, it brings some questions worth thinking:

- 1) Are there adequate conditions for the legislation under the current political, social and cultural status and historical background?
- 2) Is there any other approach or way which can achieve the same effects but can avoid misunderstandings and intensifying social instability?
- 3) If “the Bill” is approved, can the mechanism it has established achieve the expected result? Will any other negative influence emerge, such as an increase of litigations?
- 4) How to co-ordinate and deal with the relationship between the government, the court, the beneficiary of judicial aids and the lawyer in the future?
5. We choose to answer these questions in an indirect way. In other words, we try to conduct a comprehensive and in-depth analysis on “the Bill”, in the hopes of contributing to the improvement of “the Bill”.
6. To conclude the information and our analysis on the current situation, the CCAC’s current stance is that: if a political decision to legislate for the “Judiciary Aid System” is made, it is necessary to thoroughly consider and analyse the content of “the Bill” and the issues it involves. We suggest legislating in a simple and direct way which can match up other regimes and systems. Only adopting this way can it have the expected effect.

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<sup>5</sup> Regarding the difference between exceptional norms and special norms, see Article 10 of the *Civil Code* and also José FALCÃO, Fernando CASAL, Sarmiento OLIVEIRA and Paulo FERREIRA DA CUNHA, *Introduction to Civil Law I*, 1993, P. 11 and subsequent pages.

<sup>6</sup> Ibid.

## Part II: Simple Explanation of Part of “the Bill” and Related Problems

### I. Article 1 of “the Bill” states that:

#### *“Article 1 Objective and scope*

*1. The law regulates that the following people who are prosecuted or file litigation due to the facts occurred or acts carried out in execution of public duties should be entitled to judicial aids in litigation process:*

- 1) The Chief Executive and principal officials;*
- 2) Staff of public services, including those employed under private regimes;*
- 3) Judges and prosecutors.*

*2. For the effect of this law, the public departments refer to the institutions and departments of the Public Administration, including the Cabinet of the Chief Executive, the Offices and supportive administrative departments of principle officials, autonomous funds, public legal persons, the Assistance Office of the Legislative Assembly, the Office of the President of the Court of Final Appeal and the Office of the Prosecutor General.*

*3. Regardless of the result of the litigation, judicial aids will continue to be provided for the relevant appeals and applicable to all proceedings attached to the dossier of the aided judicial litigation process.*

*4. Judicial aids remain effective in the execution based on the verdict of the aided litigation.*

*5. The judicial aids, provided to the public servants due to the acts they carried out or the facts occurred in execution of public duties, remain effective when the public servants resign, are pending for retirement and after retirement.*

6. *In case the beneficiary has deceased, the judicial aids prescribed by this law are applicable to the parties who have the legal legitimacy to initiate or proceed the litigation.*

7. *The judicial aids in any of the forms prescribed by this law are not applicable to administrative litigations and litigious proceedings about labour affairs, except those related to extra-contractual civil liabilities.”*

1. **In terms of legislative theory**, we have the following suggestions:

- 1) To establish an ordinary system applicable to the cases where public servants (*Note: The term “public servants” we use here refers to staff of public services in general, i.e. the people mentioned in items 1-2 of Article 1 of “the Bill”*) become defendants due to execution of public duties. In other words, to adopt “the Bill” (certainly, revision is needed for many points). To make it simple, the requirements of approval are less demanding, since public servants who face the litigations are in passive positions (being listed as defendants).
- 2) In reality, the cases where public servants are listed as defendants are common, because, under the related regulations in the civil law and the civil litigation law, in case the plaintiff wants to demand for the public servant’s personal responsibilities, the latter shall be listed as the defendant (the public servant and the government are liable jointly). Only in this case, the verdict for the plaintiff will have the effect of execution against the public servant.
- 3) For the cases where the public servant intends to file a litigation as the plaintiff due to infringement upon his rights and interests in execution of public duties, a special regime (even an exceptional regime) shall be set up. The establishment will involve formulation of strict assessment requirements because very complicated situations may be involved. The situations include:
  - a) Which person or institute suffers from the infringement (or both), resulting in adequate reasoning for the litigation?



- b) Which reasoning and criteria is adopted to determine to what extent of the infringement upon these rights and interests shall a judicial procedure be commenced for protection, so that there is sufficient reasoning for using public funds to initiate the litigious mechanism?
- c) Is there any possibility of abuse of this mechanism? How to effectively prevent it?

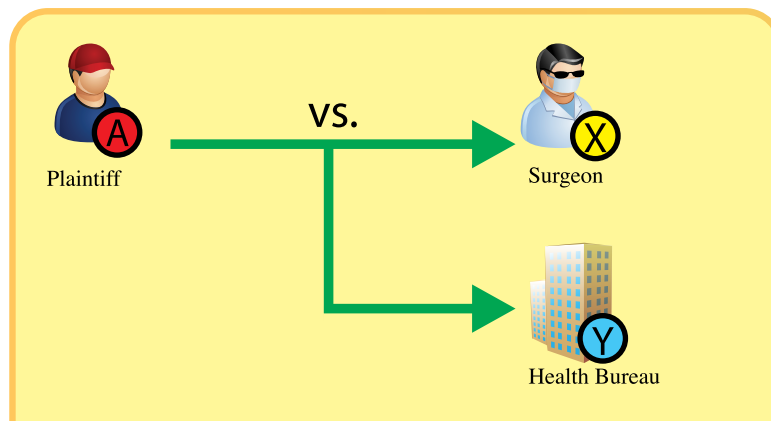
Since this mechanism involves political options, more in-depth analysis is not able to be conducted currently. It is because it is much more difficult to give comments on revision of a fully developed bill than to formulate and submit a new one. Therefore, this issue is put aside.

\* \* \*

2. The expression of this article is not comprehensive. A simple example can be used to explain this.

- 1) Under normal circumstances, if a patient files litigation against a doctor, the Health Bureau and the doctor (considered as one of the liable persons) will be listed as codefendants.

Let's suppose that a medical incident has occurred in Hospital Conde de S. Januário (CHCSJ). The victim, (A), took civil action against (X), the surgeon and the CHCSJ (However, the Health Bureau (Y) should be the



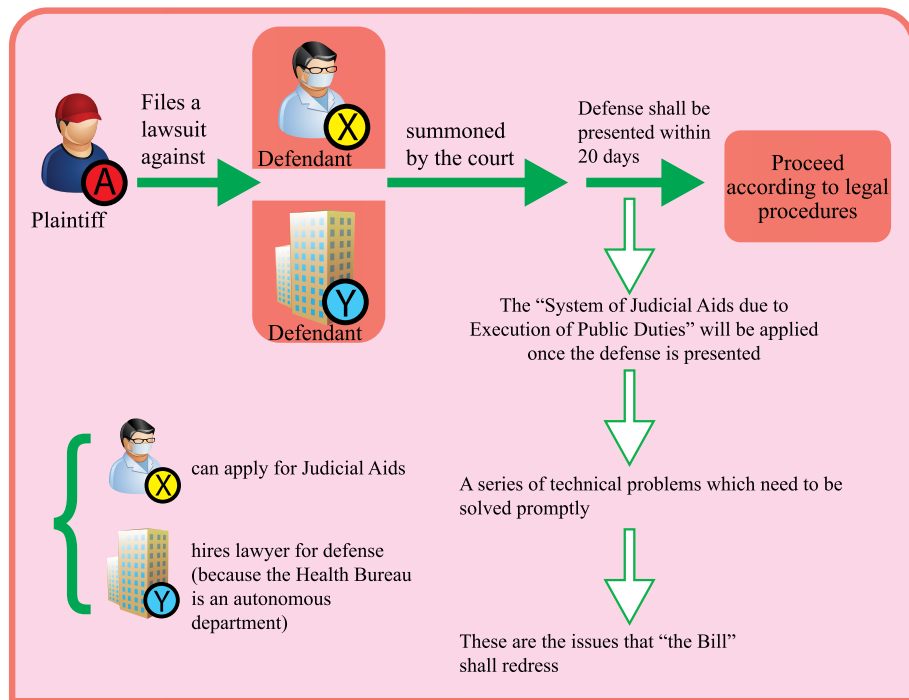
defendant instead of the CHCSJ, as the Health Bureau, which possesses legal personality, is the representative for external relations. The CHCSJ is only one of the institutions within the Health Bureau. In the sense, the Health Bureau is liable in the aspect of external relations.).

**Cause of action:**

- Surgeon, (X), did not fulfil his responsibilities during the surgery and thus was guilty, which refers to a functionary recklessness (*culpa funcional*). S/He is therefore demanded for civil responsibilities for his/her functionary recklessness.
- Moreover, (X) is employed by (Y), the Health Bureau, that has never set up an effective management system and whose amenities were too old. These factors have led to the faults in the medical treatment and thus infringed upon the plaintiff's rights and interests. Therefore, the Health Bureau is demanded for joint responsibilities.

**Petition:** (X) and (Y) are demanded for joint civil compensation for (A) (Ex.: MOP2,000,000)

**Once the indictment is submitted to the court, the first half of the litigious process is:**



2) The expression “*the facts occurred or acts carried out in execution of public duties*” is adopted in Article 1 of “the Bill”, while Paragraph 1, item c of Article 15 stipulates that “...*illicit acts carried out deliberately or due to serious recklessness*” (public servants who have carried out such acts shall be liable personally and repay all fees for judicial aids approved beforehand). In this sense, the facts or acts mentioned in Article 1 refer to:

- a) Acts carried out due to recklessness (*mera culpa*) or negligence (*negligência*);
- b) Civil responsibilities for risk (*responsabilidade pelo risco*).

However, some other problems also exist: In case that the court cannot confirm the actor’s recklessness and thus the case can only be dealt with as

a case of civil responsibilities for risk (when other statutory requirements are fulfilled), **shall the government or the relevant department be liable instead of the public servant? It seems so.**

- 3) Let's see another situation: a driver of a government department has been listed as a **co-defendant** in a case of a traffic accident. That means the victim claims for a **compensation** of which **the amount** is over the maximum amount<sup>7</sup> covered by the insurance for damage to third party caused by vehicle, so the insurance company as well as the liable party are listed as codefendants. In this case, the driver applies for the "judicial aids" (the defense is presented by the lawyer and the fees for the litigious proceedings are paid first). The final results may be:

- a) The driver is not liable because the court rules that there is no personal recklessness. Therefore, the fees for hiring lawyer and litigation are paid by the government;
- b) The driver is liable because he was reckless.

In the latter case, the government still has to pay the lawyer charge and the litigation costs first and subsequently claims for personal liability against the driver (execution of the right to claim for compensation) under item c, Paragraph 1 of Article 15 of "the Bill". However, it should be done through another lawsuit.

This case may lead to another kind of conflict – between the driver and the government, because the driver is demanded for personal responsibilities.

- 4) In case the government executes the right to claim for compensation, can the accused public servant apply for judicial aids again? "The Bill" does not mention this issue. This apparently is a loophole!

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<sup>7</sup> Under Article 45 of Decree Law no. 57/94/M, if the claimed amount is less than the maximum amount covered by the insurance for damage to third party caused by vehicle, the plaintiff can only take action against the insurance company. The latter can request the liable party (e.g. the driver or the car owner) to participate in the litigation as the co-defendant. Currently, the maximum amount is MOP1,000,000.

- 5) Here is another problem: ordinary judicial aids regime is looser than the regime of judicial aids for public servants, because the former does not require that the beneficiary shall be liable personally if s/he is reckless. However, the latter contains this requirement.

Ordinary Judicial Aids Regime refers to Decree Law no. 41/94/M of 1<sup>st</sup> August, of which Article 10 stipulates the situations where the judicial aids are repealed:

*“1. The judge shall repeal judicial aids in the following cases:*

- a) The beneficiary possesses sufficient assets to rid oneself of the judicial aids;*
- b) There are documents which prove that the reason for offering the judicial aids is no longer valid;*
- c) The documents which serves as the basis for judicial aids are judged to be false;*
- d) The beneficiary is judged to be malicious litigator;*
- e) The beneficiary has received a sum sufficient to pay for the costs of the judicial proceedings in a lawsuit for temporary alimony.*

*2. In case of Item a) of the preceding paragraph, the beneficiary shall immediately declare that judicial aids are not needed. Otherwise, s/he will be liable for punishment for malicious litigation.*

*3. Judicial aids shall be repealed based on the application by the Public Prosecutions Office, the counter party or the agent at court.*

*4. The application for repeal of judicial aids shall be enclosed with all proof. The beneficiary’s opinion shall be obtained in case s/he does not take the initiative to give up.”*

The above regulation does not require the beneficiary to take personal responsibilities for his/her own recklessness, because the main purpose of ordinary judicial aids system is to ease the financial burden on the beneficiary as well as to ensure the protection for the beneficiary in the course of the litigation (the lawyer charge and litigation cost are paid by the government).

- 6) Moreover, “the Bill” does not stipulate that even though the public servant is reckless (but the recklessness is very slight), the entity competent for assessment shall exercise discretion to exempt the public servant from personal liabilities. Nor does it regulate any mechanism to allow public servants to repay the government by installment.

3. As far as **legislative technique** is concerned, we suggest dividing Article 1 into **two separate articles** as well as adding Paragraphs 3 and 4 in Article 1 (as showed in the following), so that the article will not be too long. Moreover, the content of the two articles are not duplicates. Our suggestions are as follows:

Article 1  
Objective and Targets

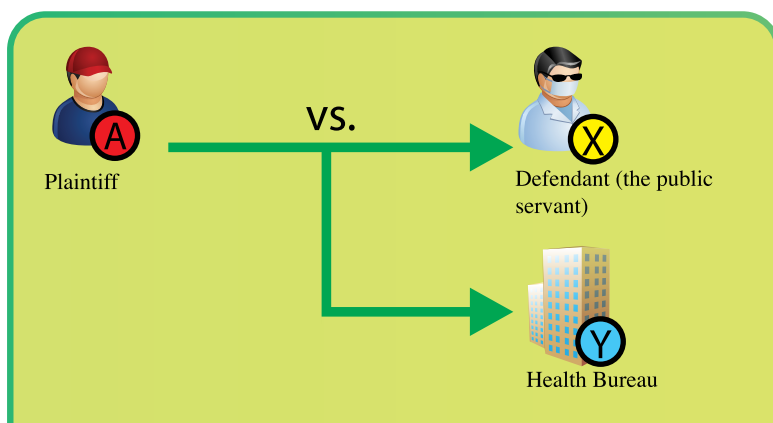
1. (...) [original text]
2. (...) [original text]
3. The provision under Paragraph 1 does not obstruct the reconvention filed by the beneficiary of judicial aids during the litigation.
4. The scope stated in Paragraph 1 refers to the plaintiff, the defendant or the participant in a civil case, or the complainant of semi-public crime, the complainant of private crime or the suspect in a procedure of criminal inquiry or trial.

Article 2  
Scope of Application

1. Regardless of the result of the litigation, judicial aids will continue to be provided for the relevant appeals and applicable to all proceedings attached to the dossier of the aided judicial litigation process.
2. (...) [ Paragraph 4 of the original text]
3. (...) [ Paragraph 5 of the original text]
4. (...) [ Paragraph 6 of the original text]
5. (...) [ Paragraph 7 of the original text]

\* \* \*

4. If “the Bill” includes a revision that allows public servants to apply for judicial aids only when they are prosecuted, they cannot initiate litigation as plaintiffs. In this case, it is necessary to consider another situation in practice. Therefore, it is also necessary to introduce new rules to solve these problems. See the following example:



- (X) and (Y) filed a reconvention (*reconvenção*) when presenting defence.
- After presenting the proof, the court rules that the petition submitted by (A) lacks reasoning. Therefore, (A) loses the lawsuit.
- At the same time, the court rules that the reasoning of (X) and (Y) 's reconvention is valid.

Final result: Plaintiff (A) → loses  
 Defendants/ counterclaimants (X) and (Y) → win

In this case, (X) uses public money to present defence and file a reconvention and finally wins. Will the related interests come to the public servant (X) or the Macao SAR Government? (Since the litigation costs have been paid by the government). “The Bill” does not foresee or solve this problem.

1. When exploring “the Bill”, many people, especially the media, compared it with the relevant regulations of Taiwan. They believed that the political appointees and elected public officials in Taiwan do not enjoy aids for litigation. However, this is misinterpretation.
2. In Taiwan, there is *Civil Service Protection Act* (promulgated on 28<sup>th</sup> May 2003), of which Article 22 states that:



*“When a civil servant is involved in a lawsuit while performing duties in accordance with laws, the government agency he/she serves shall retain lawyers to defend him/her and provide legal assistance.*

*If the lawsuit in the preceding Paragraph is caused by the intentionality or gross negligence of the civil servant, the agency where he/she serves shall claim for reimbursement against him/her.*

*The regulation with respect to the assistance to a civil servant against whom an action is initiated for performing duties shall be promulgated jointly by the Examination Yuan and the Executive Yuan.”*

3. Later, the Examination Yuan and the Executive Yuan formulated the ***Regulations Governing Litigation Aid for Civil Service for Performing Duties*** (promulgated on 19<sup>th</sup> December 2003), of which Article 21 states that:

*“These Regulations shall apply mutatis mutandis to the following persons who perform their duties and an action is initiated against them:*

- 1. Political appointees;*
- 2. Elected public officials;*
- 3. Educators who are appointed but not within the scope of Article 2 of the Educators Appointment Act;*
- 4. Other persons and military servants who serves in government bodies, public schools, or government-owned enterprises in accordance with laws.”*

This shows that political appointees as well as elected public officials enjoy litigation aids and assistance, contrary to what some of the local media have reported. If political appointees and elected public officials are excluded, the principle of impartiality will be violated. The focus of the issue should be: what are the requirements for approval of judicial aids? Also, a period of time should be set up regardless of the result of application. All of these are necessary points in the content of “the Bill”.

\* \* \*

## II. Article 2 of “the Bill” states that:

### “Article 2 Forms

#### 1. The forms of judicial aids include:

- 1) Exemption from litigation cost and prepayment;
- 2) Payment of litigation cost and prepayment;
- 3) Payment of agency fees for the court.

2. Judicial aids in form of exemption from litigation and prepayment do not require application by the interested party.

3. Judicial aids in form of payment of agency fee for the court can be offered together with other forms of judicial aids.”

There are many doubts in the content, including:

1. The legal terms are inconsistent. The term used in Article 2 and Paragraph 2 of Article 13 is “**interested party**” (*interessado*), but it becomes “**applicant**” (*requerente*) in Paragraph 4 of Article 15. Which one is correct? It seems that “applicant” is a better expression. An “applicant” may not be an “interested party”. For example, if the person applies for judicial aids as an inheritor, s/he is, strictly speaking, only an applicant, because in the relevant litigation s/he is not the interested party.
2. Paragraph 2 stipulates that “Judicial aids in form of exemption from litigation cost and prepayment do not require application by the interested party.” Paragraph 3 stipulates that “Judicial aids in form of payment of agency fee for the court can be offered together with other forms of judicial aids.”

According to the expression of Paragraphs 2 and 3, upon the approval of judicial aids, the prepayment (preparos) and the litigation cost (custas) will surely be exempted (even against the applicant’s will).

In this sense, it is difficult to understand the real function of Paragraph 3. Since there is no need to submit any application for exemption from litigation cost, it only refers to application for government's payment of lawyer fee. In this sense, what is the real purpose of Paragraph 3? There is only one possibility, which is to apply for **partial exemption of the prepayment and litigation cost**. However, in general, there is no such application.

It is difficult to understand its logic: now that full exemption does not require application, why should “partial exemption” from litigation cost require application?

\* \* \*

### III. Article 3 of “the Bill” states that:

#### “Article 3

#### *Exemption from Litigation Cost and Prepayment*

*1. When a litigation is filed against the people mentioned in this law due to execution of their public duties, they are exempted from litigation cost and prepayment regardless of the forms of the litigation.*

*2. In case any of the abovementioned people are declared to be the losing party in the litigation, the reimbursement for the winning party in the form of the losing party's litigation cost is considered judicial expense, without any effect to the application of Article 15.”*

Regarding this article, we have no comments.

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#### IV. Article 4 of “the Bill” states that:

*“Article 4  
Payment of Litigation Cost and Prepayment*

*1. The people mentioned in this law who file civil or penal litigation against the third person with properly explained reason can be offered judicial aids in the form of payment of litigation cost and prepayment without any effect to other exemption stipulated by law.*

*2. The properly explained reason mentioned in the preceding paragraph especially refers to cases when the applicants who are, as shown by strong and apparent signs, victims of menacing or revengeful criminal acts. In addition, the acts have infringed upon their life, physical integrity, freedom, reputation or **properties of significant value.**”*

1. The expression is not appropriate. What does filing litigation against the third person in penal procedure refer to? What is the meaning of **the third person in criminal sense**?
2. There was a huge controversy over the content of Paragraph 2. In fact, improvement is needed as far as expression and legislative technique are concerned. According to Article 74 of the *Code of Penal Litigation*, victims of criminal acts can be parties to civil suits under Articles 60-66 of the code. Only the time matters. In other words, they have to participate in the relevant penal litigation procedures in the right time according to law.

Article 74 of the *Code of Penal Litigation* stipulates that:

*“1. In case no claim for compensation of civil damage is filed in relevant penal proceedings or through independent civil litigation under Articles 60 and 61, **under any of the following circumstances, the judge shall determine an amount of compensation for the damage in the judgment even if no guilt is found:***

- a) *The amount is determined for reasonable protection for the victim’s interests;*

- b) *The victim does not object to the amount; and*
- c) *Sufficient evidence is gathered in the trial to duly justify the prerequisite of the judgment of the compensation based on civil regulations and the amount of the compensation.*

2. *Under the circumstances mentioned in the previous clause, as for investigation of evidence, the judge shall ensure the respect for the principle of defence.*

3. *The previous article is correspondently applicable to the verdicts of relevant compensation. ”*

3. Moreover, Paragraph 2 of Article 4 of “the Bill” indicates a few examples (but judicial aids can be applied for in the criminal cases not mentioned in the article):

- The acts have **infringed upon their life, physical integrity, freedom, reputation** (the government stated that this aspect will be deleted) or properties of significant value.

- 1) The illegal acts that have **infringed upon life, physical integrity and freedom** basically refer to the crimes prescribed by Chapter 1 to Chapter 5 of Book II (Articles 128-173) of the *Penal Code*.
- 2) The illegal acts that have **infringed upon reputation** refers to what Chapter 6 of Book II (Article 174-183) of the *Penal Code* indicates, however, it has been excluded from the cases where judicial aids are applicable. It is difficult to understand its rationale.
- 3) The illegal acts that have **infringed upon properties** stated in Article 196 to 228 of the *Penal Code*.
- 4) For illegal acts that have infringed upon properties of **significant value**, it is a new concept introduced by “the Bill”. What is **significant value** (*valor considerável*)?

Article 196 of the *Penal Code* defines:

- a) **Huge amount** (*valor elevado*): an amount over MOP30,000 when the act is carried out;
- b) **Considerably huge amount** (*valor consideravelmente elevado*): an amount over MOP15,000 when the act is carried out;
- c) **Small amount**: an amount under MOP500 when the act is carried out.

Since the new concept “properties of significant value” is adopted in “the Bill”, the difficulty of judicial litigation and chance of argument are expected to increase, bringing troubles to the court.

Example: **A** (the actor) has assaulted physician **X** and damaged light vehicle driver **Y**’s watch (a driver employed by government who was also at the site where the case occurred and was coincidentally involved; the value of the watch is, for example, MOP5,000). **Is it a property of significant value?** If the court forgets the damage to **Y** when hearing this criminal case and thus does not rule that **Y** will get compensation, can **Y** claim for compensation with judicial aids for public servants in execution of public duties?

- 4. There are almost 100 kinds of different criminal offences and crimes defined by the *Penal Code*. Why “the Bill” only indicates these? Since there are examples, it will be better not to mention them. As far as the original purpose of establishment of “the Bill” is concerned (strengthening the protection to public servants), does it confuse the essentials and bring counter effect? If yes, it is necessary to re-consider the content.
- 5. According to the information obtained by the CCAC, the government will delete the term “**reputation**” in Article 4 of “the Bill”. However, the legally protected interests of public servants which are infringed upon the easiest are image and reputation. **Apparently** such legally protected interests are excluded from the scope of protection under “the Bill”, however, in fact, the acts that will infringe upon “reputation” are still included, because Paragraph 2 of Article 4 only lists examples.
- 6. In addition, it is also difficult to understand another part of the article: infringement upon properties of significant value. The doubt is: is the purpose

of “the Bill” for the protection of proprietary interest or personal interest? Why is “properties of significant value”? It is possible that the cost of litigation is even more expensive than the compensation.

Example: a public servant was assaulted when exercising his/her duties (slight injury), but s/he only claims for MOP1 as mental compensation and gives up the claim for compensation for proprietary damage. It is because his/her purpose is to let the defendant and the society know that public institutions and public servants should be respected when they are fulfilling their duties and violence against them is not allowed. Why is this public servant not allowed to apply for judicial aids?

\* \* \*

**V. Article 5 of “the Bill” states that :**

*“Article 5  
Payment of Agency Fees for the Court*

*1. In the cases prescribed by Paragraph 1 of Article 3 and Paragraph 1 of the previous article, the judicial aids in the form of payment of agency fees for the court can also be obtained.*

*2. The judicial aids in the form of payment of agency fees for the court include payment for lawyer’s service fee, expenditure and charges.*

*3. The maximum amount of lawyer’s service fee is determined case by case by the Chief Executive through an order (despacho) and the current service charge table of the Macao Lawyers Association and the type of litigious acts within the scope of services shall take as reference.”*

The term “type of litigious acts” in Paragraph 3 should be revised as “**according to the level of complexity of the case**”. Otherwise, it is difficult to understand what the “type of litigious acts” refers to. It is necessary to note that a case tried by summary procedure can be very complicated. On the contrary, a case tried under normal litigation procedure can be very simple.

\* \* \*

**VI. Article 6 of “the Bill” states that:**

*“Article 6  
Charges*

*The charges caused by the situations prescribed by Paragraph 2 of Article 3, Article 4, Article 5 and Article 10 are paid from the Special Payment of the Budget of the Macao SAR.”*

Regarding this Article, we do not have any suggestion or comment.

\* \* \*

**VII. Article 7 of “the Bill” states that:**

*“Article 7  
Receipt of Reimbursement*

*The beneficiary of the judicial aids prescribed by this law who has been declared as the winning party in the litigation proceedings shall return the money s/he has been given as the payment of litigation cost and lawyer’s fee of the interested party to the Macao SAR, but the amount of the reimbursement shall be no more than the payment by the Macao SAR under this law.”*

Regarding this Article, we do not have any suggestion or comment.

\* \* \*



**VIII. Article 8 of “the Bill” states that:**

*“Article 8  
Decision-Making Competence*

*1. The Chief Executive has the competence to make decision on approval of judicial aids under this law.*

*2. The competence mentioned in the previous paragraph shall not be delegated.”*

In fact, we think that such decision should not be made by the Chief Executive solely without going through any assessment beforehand. Therefore, we suggest introducing an assessment committee.

“The Bill”, which is being deliberated by the Legislative Assembly now, stipulates that only the Chief Executive has the power to assess and approve applications for judicial aids (the Chief Executive himself may be an applicant). **One of the doubts caused by this point is that:** is it appropriate to set up this mechanism? Is there any other option in terms of legislative policies?

**Due to time constraint, we have a brief analysis on the issues mentioned above:**

1. Paragraph 1 of Article 1 and Article 8 clearly show **the possibility that the Chief Executive may approve his own application.** The key question is: is this mechanism appropriate?
2. Paragraph 2 of Article 8 of “the Bill” is related to this question. It states that: “the competence mentioned in the previous paragraph shall not be delegated.” In other words, in case the Chief Executive becomes an applicant for judicial aids, he will face this situation: **on one hand, the competence shall not be delegated to other people while on the other, he shall assess and approve his**

**own application. How should that be done?**

3. Article 16 of “the Bill” states that:

*“The provisions under the Code of Administrative Procedure are applicable to the administrative procedures of granting judicial aids, in exception of the cases regulated by special stipulations under this law.”*

In this case, it seems that the recusal system under Articles 46-53 of the *Code of Administrative Procedure* can be adopted. According to these regulations, the Chief Executive shall not approve his own application. Therefore, the decision shall be made by his legal substitute, a Secretary. However, **this method may invert the logic**, because such system has (permanently) designated a subordinate to make the decision. In other words, if the Chief Executive intends to exercise the right to apply for judicial aids, his application shall be followed up by one of the Secretaries. From the **political and legal** viewpoint, such legislation is not encouraged.

4. It is worth noting that: **“the competence shall not be delegated to another person” and “the responsibility to make the decision is passed to another person for the reason of recusal” are issues that are totally different.**
5. For such mechanism under “the Bill” – that **all applications shall be assessed and approved by the Chief Executive – we remain reserved.** We think that applications for judicial aids should be submitted to a professional committee for analysis and the committee should **submit binding comments** to the Chief Executive, who subsequently makes the decision based on these suggestions. (For example, if the committee thinks that **the application should not be approved, then the Chief Executive cannot approve it.** However, if the committee thinks that it can be approved, the Chief Executive can approve or disapprove it based on public interests.) We suggest that: **if the application analysed by the committee is submitted by the Chief Executive, the decision should be entirely made by the committee and they should not just render comments. In this sense, establishment of such mechanism can reduce the Chief Executive’s responsibilities and the burden of risk, both politically and legally.**

The revision we suggest is as follows:

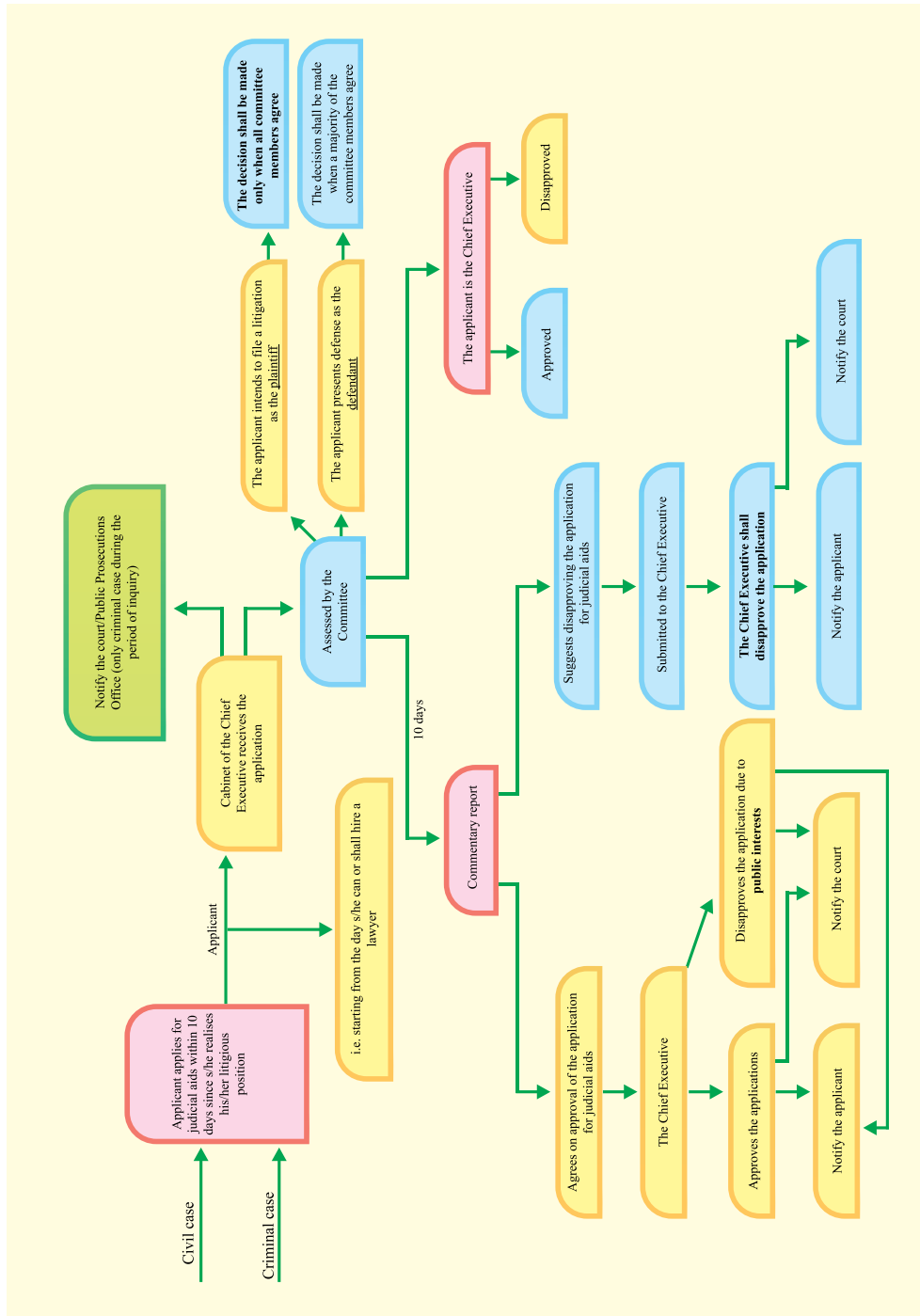
Article 8

Competence and Procedure of Assessment and Approval

1. Based on the opinions given by the special committee comprising three to five members, the Chief Executive shall decide whether to approve or disapprove the application of judicial aids with reason stated.
2. The competence mentioned in the previous paragraph shall not be delegated.  
(Original text)
3. The committee mentioned in Paragraph 1 shall make a commentary report within 10 days starting from the day when the relevant application is received. The commentary report is binding on the Chief Executive.
4. In case the comments mentioned in the previous paragraph are for the approval, the Chief Executive still can disapprove the relevant application for the sake of public interests.
5. If the application for judicial aids is from the Chief Executive, the committee mentioned in Paragraph 1 has the competence to make the decision directly.
6. The establishment and operation of the committee mentioned in Paragraph 1 are regulated by the Chief Executive through an order (*despacho*).

\* \* \*

Below is the flow-chart:



**IX. Article 9 of “the Bill” states that:**

*“Article 9  
Application for Judicial Aids*

*1. The application for judicial aids in the forms of payment of litigation cost and prepayment and payment of agency fees for the court shall be submitted before the first participation in the relevant litigation proceedings.*

*2. The applicant shall submit the special application form for judicial aids enclosed with necessary proof.”*

1. Paragraph 2 requires the applicant to submit proof. What does the word “proof” here refer to?

- 1) To prove that the litigation is related to execution of public duties? Only the court can judge it after trial.
- 2) Or prove that the application did not commit the fault intentionally when executing his/her duties and there was no severe negligence also?
- 3) Or prove that the applicant has fulfilled the requirements about position provided by Article 1?

2. The revision we suggest is as follows:

Article 9  
Application for Judicial Aids

1. Applicant shall submit the special application form for judicial aids enclosed with copies of all the documents that were submitted to him/her when s/he was notified or summoned by judiciary entities.

2. If the information submitted by the applicant is not sufficient for assessment of his/her application for judicial aids, the Chief Executive can require the applicant to submit supplementary documents within 10 days. In case of disobedience, the application will be rejected immediately except that a rational reason is stated and is

accepted by the Chief Executive.

3. Due to disapproval mentioned in the previous paragraph, the applicant cannot submit another application in the same litigation.

Moreover, we suggest inserting a new article:

Article 9 –A (or Article 10)  
Obligation of Notification

1. The Cabinet of the Chief Executive shall notify the Public Prosecutions Office or the court which handles the case of the relevant facts within three days since the application for judicial aids is received.

2. The notification mentioned above has the effect of suspending the proceedings for no more than 60 days.

3. Assessment and decision on application for judicial aids shall be made within 60 days.

4. Decision on application for judicial aids shall be notified to the relevant judiciary entities within five days.

5. The previous paragraph is complementarily applicable to the case of applicant's withdrawal of judicial aids.

\* \* \*

**X. Regarding to Articles 10, 11 and 12 of “the Bill”, we do not have any suggestion or comment.**

\* \* \*

**XI. Article 13 of “the Bill” states that:**

*“Article 13  
Independence of the Procedure*

*1. Compared with the relevant litigation, the procedure of application for judicial aids is independent and does not affect the progress of the litigation.*

*2. When participating in the relevant litigation procedure for the first time, the interested party shall attach the certification of the decision on the grant of judicial aids to the file of litigation procedure. In case the application or the judicial controversy on the relevant decision is pending, the relevant certification documents shall be attached to the file of litigation procedure.”*

The revision we suggest is as follows:

Article 13  
Independence of the Procedure

1. Judicial aids procedure is independent from the proceedings of the relevant case, in exception of the cases regulated by other laws.

2. When participating in the relevant litigation procedure for the first time, the interested party or his/her lawyer shall attach the certification of the decision on the grant of judicial aids to the file of litigation procedure. In case the application or judicial controversy on the relevant decision is pending, the relevant certification documents shall be attached to the file of litigation procedure.

Moreover, we suggest inserting a new article:

Article 13-A  
Employment of Lawyer

1. In case the application for judicial aids is approved, the government can designate a lawyer for the applicant when the applicant agrees on the choice; except for some justified reasons that the applicant’s agreement cannot be obtained.

2. The government can revoke the judicial aids in case the beneficiary's uncooperative attitude has caused failure of normal execution of the lawyer's duties. In this case, Paragraph 1 of Article 18 is effective.

\* \* \*

**XII. Article 14 of “the Bill” states that:**

*“Article 14  
Other Exemptions*

*1. The taxes, charges and other surcharges on the application form, certifications and other documents necessary for application are exempted.*

*2. Prepayment for raising controversy over the disapproval of application for judicial aids is exempted.”*

The revision we suggest is as follows:

**Article 14  
Other Exemptions**

1. The taxes, charges and other surcharges on the application form, certifications and other documents necessary for application are exempted.

2. Prepayment for raising controversy over the disapproval of application for judicial aids is exempted. In this case, the *Framework Law of Judicial Organization* and the *Code of Civil Litigation* are complementarily applicable.

3. The litigation costs and lawyer's fee for the relevant lawsuit resulted from the winning of the controversy mentioned in Paragraph 2 are paid by the government under Article 6 of this law.

\* \* \*

The following article needs to be inserted in “the Bill” in order to regulate the relevant matters in a clear and detailed way.



Article 15-A

Refusal of Judicial Aids

The people mentioned in Paragraph 1 shall not be granted judicial aids in case the litigation is against government institutions.

\* \* \*

**Part III: Conclusion**

1. Written based on the rationales adopted by “the Bill”, this commentary report, as mentioned above, focuses on the current legislative mindset and techniques. Therefore, it is under large constraints.
2. In case of significant change of legislative policies, such as adoption of another legislative mode, new analysis and consideration are needed.
3. In fact, “the Bill” does not establish rules about the relationship and association between the government and the court in the course of handling judicial aids applications. Such rules must affect the operation of judiciary entities.
4. We can foresee that when the system established by “the Bill” is adopted, the relevant proceedings must be slowed down by the “incidental matters” of the judicial aids.
5. “The Bill” does not clearly stipulate the time limit for handling application for judicial aids. This may be its Achilles’ heel. Another shortcoming is that it is not consistent with other laws and procedural norms in many aspects.
6. Due to time constraints, limited political and strategic information we have obtained and some other factors, we can only make this report for the Chief Executive as reference.

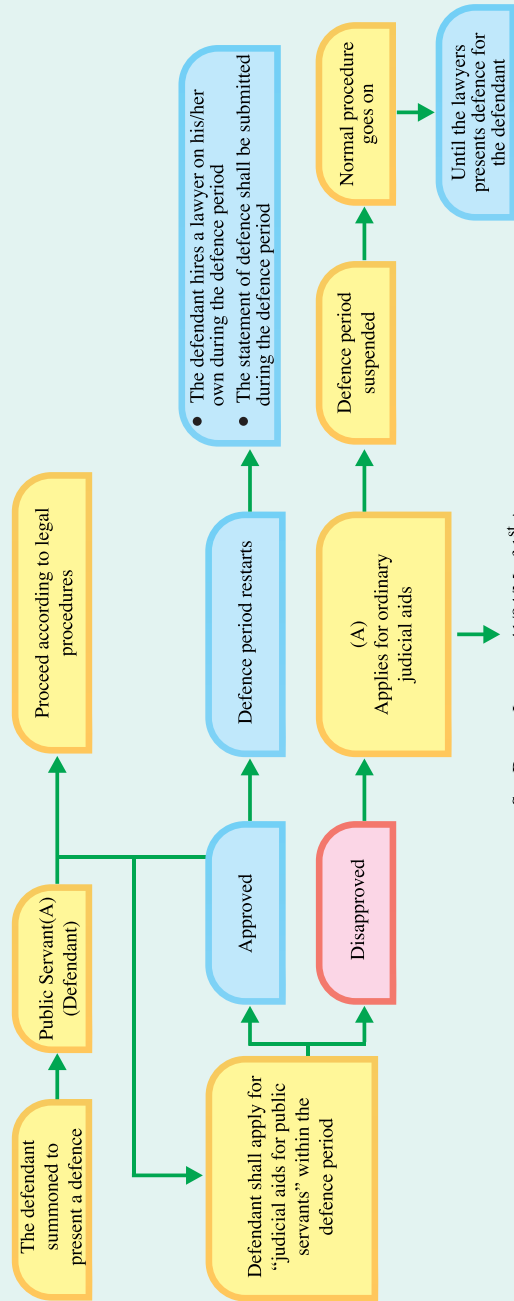
\* \* \*

Commission Against Corruption, 13<sup>th</sup> September 2010.

The Commissioner Against Corruption  
Fong Man Chong

## Annex 1

### Example – Civil Lawsuit:



- The government notifies the court of receipt of application for judicial aids through an official letter
- This notification has the effect of suspending the defence period
- The assessment shall be completed within 30 days since the application is submitted. In case the applicant fails to cooperate and thus does not submit the documents, the court shall be notified. In case of lack of required documents, the applicant will be disqualified for judicial aids. In either one of these cases, the defence period starts
- The government notifies the court of the decision of approval/disapproval through an official letter

## APPENDIX II

### THE FIVE RECOMMENDATIONS RENDERED BY CCAC

According to Paragraph 12 of Article 4 of Law no. 10/2000 of 14<sup>th</sup> August (*Organizational Law of the Commission Against Corruption of Macao Special Administrative Region*), the CCAC is entitled to render recommendations to administrative entities. The standards adopted are:

- (1) The illegality has persisted over a period of time and has reached a considerable degree of seriousness.
- (2) The case may be exceptional but has seriously damaged the rights of the complainant. A recommendation is thus rendered to prevent the administrative departments from repeating the deed.
- (3) The case may be one of the exceptional cases, but the department being complained is still encountering the same or similar cases. As a result, a unified way of handling the cases is necessary.
- (4) Though the case happens in a certain department, it can be expected that other departments may face the same situation. As a result, there is a need to standardize the way of handling the cases through administrative measure (example: an order (*despacho*) by the Chief Executive).

Below are the recommendations rendered by the CCAC in the past year and now, published here for public reference.

### **Case I - Supervision and Prompt Removal of Unauthorized Buildings**

**Main points:**

- Supervision on unauthorized buildings
- Strength of law-enforcement of supervisory department and the punctuality of supervision
- Time and efficiency of public department's response to citizen's complaints, especially those concerning daily life

\* \* \*

### **RECOMMENDATION NO. 001/RECOM-OP/2010**

[Item 12, Article 4, Law No. 10/2000 dated 14<sup>th</sup> August (*Organizational Law of the CCAC*)]

I. Since 22<sup>nd</sup> January 2010, a Macao citizen named X has made many phone calls to the CCAC to complain about an alleged illegal construction. The details are as follows:

1. On 22<sup>nd</sup> January, X made a phone call to the CCAC for complaining (he did not specify the location, but said that he would be willing to testify to the complaint in person);
2. On 25<sup>th</sup> January, X made a phone call to the CCAC for complaining and requesting for updates of follow-up works;
3. On 26<sup>th</sup> January, X made a phone call to the CCAC to complain over the same case;

*"On the same day, I ordered to refer the complaint to the Land, Public Works and Transport Bureau (DSSOPT) for follow-up. Therefore, the CCAC sent a letter to the DSSOPT on 29<sup>th</sup> January."*

4. On 8<sup>th</sup> February, X phoned to the CCAC again to complain that the illegal construction continued on a weekend but no one stopped it;
5. On 9<sup>th</sup> February, X phoned the CCAC again to request the CCAC to give a written reply of his complaint and the decision of the referral;

*“On 10<sup>th</sup> February, the CCAC sent a letter to the DSSOPT to request for information about the handling of the complaint and the results of relevant investigations, but no reply has been received until now.”*

*“On 26<sup>th</sup> February, the CCAC sent another letter to the DSSOPT to request for information about the complaint (e.g. photos and report of analysis), but no reply has been received until now.”*

6. On 23<sup>rd</sup> February, X phoned to the CCAC to request for updates of follow-up works by the DSSOPT;
7. In the morning on 3<sup>rd</sup> March, X made three phone calls to the CCAC to request the CCAC to handle the complaint as soon as possible and express his grievance;
8. In the afternoon on 3<sup>rd</sup> March, X made another phone call to the CCAC again for complaining;
9. On 4<sup>th</sup> March, X made a phone call to the CCAC to express his grievance and complain over the case;
10. On the same day, I issued an order to dispatch investigators to the site to gather evidence and details about the situation and make a report;
11. On 5<sup>th</sup> March, the investigators submitted the report enclosed with photos to me;
12. On 13<sup>th</sup> March, X made a phone call to the CCAC, stating that the DSSOPT had never adopted any measures and the construction had been completed;

13. On 15<sup>th</sup> March, X made a phone call to the CCAC to request for updates of the handling of complaint;
14. On 17<sup>th</sup> March, X made a phone call to complain that interior decoration was ongoing and request the CCAC to urge the DSSOPT to intervene into the case.

\* \* \*

## II. Analysis:

1. According to the information obtained by the CCAC, the structure was an “iron hut” on the rooftop. Without any windows, it was thought to be used as storage because it was closed (unable to know what is stored inside).
2. However, the information clearly demonstrates that:
  - a) The “iron hut” has blocked the stairs to the rooftop (where a reservoir might be situated);
  - b) Sealing the rooftop of a building for private use constitutes threat to safety of the households in that building. In particular, when fire or any other crisis occurs, it will be undoubtedly a hazard to their life and property.
3. Since the case is special and urgent, the DSSOPT should immediate adopt compulsory coercive measures. (Please refer to Article 88 of the *Fire Safety Rules* approved by Decree Law No. 24/95/M of 18<sup>th</sup> May.) Therefore, according to Item 12 of Article 4 of Law No. 10/2000 of 14<sup>th</sup> August (*Organizational Law of the CCAC*), the CCAC rendered the below recommendations:
  - (1) - **To immediately adopt appropriate measures and order to remove the aforementioned “iron hut” unless there are adequate legal bases to prove the legality of the structure;**
  - (2) - **To notify the complainant and the CCAC of the measures adopted.**

\* \* \*

**A copy of this document to be sent to the Secretary for Transport and Public Works.**

\* \* \*

Commission Against Corruption, 22<sup>nd</sup> March 2010.

The Commissioner Against Corruption  
Fong Man Chong

**Conclusion:**

Inspiration of the case:

- (1) The competent authority should duly fulfil its duties, strengthen the supervision on illegal construction as well as suppress and order to remove illicit buildings;
- (2) It is necessary to enhance the strength of law-enforcement and standard of management;
- (3) It is necessary to pay attention to and promptly respond to citizens' demand for suppressing illegal buildings in order to prevent aggravation of the problems concerning illegal construction that affects citizens' daily life.

## **Case II – Review on Illegal Labour Inspection Mechanism**

### **Main Points:**

- Methods and procedures in handling complaints adopted by administrative entities
- Facts underlying the administrative decisions
- Methods and procedures in processing complaints
- Regular inspection on industrial and commercial premises and conducting raids to combat illegal workers
- The authenticity of the facts made to the public

\* \* \*

### **AN INVESTIGATION REPORT OF STAFF FROM “LABOUR AFFAIRS BUREAU” RAIDING “MACAO ASIA SATELLITE TELEVISION COMPANY LIMITED” IN SEARCH OF “ILLEGAL WORKERS”**

**AND**

### **RECOMMENDATION NO. 002/RECOM-SEF/2010**

#### **Part I: Cause**

1. The Labour Affairs Bureau (DSAL) dispatched seven staff members at about 3pm on 18<sup>th</sup> March 2010, together with six members in the Public Security Police Force (PSP) to the News Department and Office of the “MASTV”<sup>8</sup> to

<sup>8</sup> Full name as “Macau Asia Satellite Television Company Limited”, formerly known as the “Angel Satellite Broadcasting Limited”, established in December 2000. In February 2001 its name was changed to “Macau Asia Television Limited”. In May 2001 its name was changed to “Macau Asia Satellite Television Company Limited” (See file page 133-135).



crack down on the employment of “illegal workers” located at Ave. Dr. Rodrigo Rodrigues, “First International Commercial Centre”, Floor 4 and 5, Macau. On the day of the incident, it had immediately aroused the concerns in the society, and the media also alleged that the government hoped to take advantage of the inspection to influence the operation of the media organizations. At that time, the “Commission Against Corruption of Macao” (hereafter as CCAC) decided to follow up the case so as to understand the ins and outs of it.

2. Meanwhile the CCAC received a complaint letter from the MASTV on the 24<sup>th</sup> in the same month stating that the DSAL had repeatedly raided the television company in search of “illegal workers” but nothing could be found. It was suspected of making use of the raid to suppress press freedom and influence the operation of media organizations. The legality of this action was also questioned. The MASTV stated in the complaint letter:

*“The Labour Affairs Bureau mobilized a large number of staff on 18<sup>th</sup> March 2010, arrived together with the Public Security Police and made a raid on our broadcasting station’s News Department and Office located at Ave. Dr. Rodrigo Rodrigues, “First International Commercial Centre”, Floor 4 and 5, Macau. They did not follow the legal procedures to present the search warrant and forcefully gathered the staff’s identity cards, asked them one by one to get into the conference room for investigation. **It is clearly stated in the law that a valid search warrant is necessary for government law enforcement agencies to enter citizens’ or legal personality’s private premises for search. The DSAL searched my station without a search warrant and their explanation was that the action was initiated due to a reporting letter from some resident. Unlike ordinary criminal searches, a search warrant was not necessary for checking whether the station’s staff possess legitimate work permits.***

(...)

*The DSAL’s frequent raids on our station was based merely on an anonymous report. It is true that the DSAL has an obligation to take public’s reports seriously and initiate related actions. However, in the Macao Special Administration Region there is a large number of enterprises hiring employees. The DSAL must have received numerous complaints daily. Why do they still target at my station after frequent fruitless investigations as well as wasting public administrative*

*resources to interfere in the normal operation of my station? This has seriously hampered the news work of the day in my station and seriously injured the pride and credibility of all journalists. It was a long term damage done to the operation of my station with a huge economic loss. (...) ”*

3. On 25<sup>th</sup> March, the CCAC sent a letter to the DSAL asking them to submit the relevant information for the CCAC to follow up and analyze the case.
4. On 30<sup>th</sup> March, the DSAL sent a document<sup>9</sup> with a total of 212 pages to the CCAC.
5. The “DSAL” in its reply on 30<sup>th</sup> March indicated the remote and immediate causes of the case and the following is its brief description:

*“On 21<sup>st</sup> July, 2009 (Note: the date should be an error, the correct date should be 27<sup>th</sup> July not 21<sup>st</sup> July – See file page 3), the Bureau received an anonymous letter<sup>10</sup> regarding the complaint of the unlawful behaviour of the MASTV in violation of the labour law including hiring illegal workers, never paying on time, and the seriously imbalanced proportion between their local employees and imported labour. For labour disputes, the Bureau opened a file No. 6154/2009 to follow up this case.*

*In addition, on 5<sup>th</sup> August 2009, the Labour Inspection Department of the Bureau received another anonymous email<sup>11</sup>, reporting that there were a lot of Taiwanese within the MASTV who did not apply for legal work permits and used some sort of identification documents to work in a long term in MASTV.*

*As the information provided in the above email was relatively simple, to obtain more specific information, on 18<sup>th</sup> August 2009, the Labour Inspection Department of the Bureau requested the sender by email to provide more specific information. However, there was no reply until 9<sup>th</sup> November 2009.*<sup>12</sup> Hence the

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<sup>9</sup> There are three groups of files, of which two groups have some repeated documents, each of which has its own page number but is incomplete. Whereas the other group has no page number and is a collection of all kinds of documents. It shows that this is not a complete administrative file with page numbers. It is difficult to understand: how come there are two files for the same case? What procedure do the competent administrative authorities follow when they produce files?

<sup>10</sup> The underline is inserted by the CCAC.

<sup>11</sup> Same as above.

<sup>12</sup> Same as above.

department requested the sender again by email to provide information.

*Although there was no reply from the sender, considering that the report was sent by email in which the source could be traced and after conducting long-tome analysis, there are reasons to believe that this email report is not “fabrication” and has enough conditions for further follow up. Consequently, a final decision was made for a joint operation with the Public Security Police instead of using the method of selecting envelopes at random*<sup>13</sup> *to crack down on the employment of illegal workers in the reported organization. The report has long been included in the mechanism of random selection method but was not drawn for inspection until the above decision was made.*

*Facing the special attention to the inspection at the MASTV, since it happened all of a sudden, both the leadership and the supervisory staff of the DSAL gave the media an ordinary immediate response, that it was only a regular inspection by random. Later, we had a review on the relevant operation and the reason stated above and realized that the target of the relevant operation to crack down on illegal labour was chosen directly. In addition, after the Bureau had discussed the case with the Police, it was found that the office of the company was distributed within two floors. Therefore, the Labour Protection Division Head who was responsible for combating illegal labour had decided to combine the morning and afternoon working groups together, to conduct an one-time crackdown in order to allow the staff dispatched by the Bureau and the Public Security Police Force to meet the required human resources of the actual space of the spot for an effective investigation*<sup>14</sup> *. (...)”*

\* \* \*

<sup>13</sup> The underline is inserted by the CCAC.

<sup>14</sup> Same as above.

## Part II : Procedures Adopted by DSAL in Handling the Incident

On 18<sup>th</sup> March 2010, the staff from the DSAL went to the MASTV located at Ave. Dr. Rodrigo Rodrigues, No. 600E, “First International Commercial Centre”, Floor 4 and 5, Macau, for inspection of illegal labour. Six months before the action took place, a number of acts and orders were made by the heads of the departments and divisions. Details are as follows:

1. On 27<sup>th</sup> July 2009, an anonymous letter was sent to the DSAL, to report the MASTV in violation of labour law. It mainly involved three areas:

- (1) Illegal workers (from the Mainland and Taiwan), have worked more than a year, of which six persons’ name were listed;
- (2) Late payment of wages (delay for more than 10 days every month);
- (3) The imbalanced proportion between local and non-local workers, and the company has employed large numbers of non-local workers (See file page 109).

2. On the same day, the Head of the Labour Inspection Department made the following comments upon the anonymous letter:

*“To DPAL<sup>15</sup> and DCDL<sup>16</sup>, together with the Public Security Police, conduct operation to combat illegal working and implement relevant labour laws (Signature).” (See file page 2)*

3. On 5<sup>th</sup> August 2009, the DSAL received an email. The content is as follows:

*“There are a lot of Taiwanese working in the MASTV, and it is understood that they did not apply for legal working permits. They are all using documents for long term stay in MASTV to work.” (See file page 109)*

4. On 6<sup>th</sup> August 2009 the Head of the Labour Inspection Department made a

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<sup>15</sup> The Labour Protection Division (*Divisão de Protecção da Actividade Laboral*).

<sup>16</sup> The Labour Relation Rights Division (*Divisão de Controlo dos Direitos Laborais*).

written comment on the hard copy of the email:

*“To DPAL for execution.” (See file page 109)*

5. On 1<sup>st</sup> September 2009, the Bureau opened a file and handed it over to the designated labour inspector. (See file page 3)
6. On 10<sup>th</sup> November 2009, the Head of the Labour Inspection Department from the DSAL issued a notice to the MASTV. The content is as follows:

*“According to Items b) and c) of Clause 1 of Article 6 of Regulation of Labour Inspection approved by Decree Law No. 60/89/M of 18<sup>th</sup> September, notice is hereby given to the legal representative of MASTV limited. Please come to the Labour Inspection Department located at Avenida do Dr. Francisco Vieira Machado, Building Advance Plaza, no. 221 - 279, Floor 1 on 1<sup>st</sup> December at 2:30pm and meet with inspector xxx (Contact number.....), in order to submit the following documents:*

- 1. Business Registration of your company;*
- 2. The Social Security Fund contribution documents for 2<sup>nd</sup> and 3<sup>rd</sup> quarter of 2009;*
- 3. Employees Registration Form from April to August 2009.*

*In addition to the notice, late submission of the documents without explanation made in five working days after the abovementioned period will be fined for MOP200 to 4000 respectively according to Clause 5 of Article 6 of Regulation of Labour Inspection approved by Decree Law No. 60/89/M of 18<sup>th</sup> September.*

*Besides, the purpose of the personal information provided by the data subject to the Bureau was to deal with the complaint in cases and the proceedings brought by the interested parties.*

*Data subject has the legal right to access or correct any personal information that is archived in the Bureau; a written approach is needed to been made to the Bureau when the data subject exercises its access right and*

*a reasonable amount of fee is required. When the data subject exercises its correction right, it can be raised in person or via a written approach to the Bureau.*

*In order to fulfil legal obligations, the Bureau may transfer the personal information provided by the data subject to other administrative entities or judiciary entities, etc. ” (See file page 5)*

7. It is not known when [the documents submitted to the CCAC had no indications of the DSAL about the time or means (in person or by email) to receive such documents] there are a few documents attached in the file, including:

- (1) The Memorandum of the “Macau Asia Satellite Television Company Limited”;
- (2) The Business Registration Certificate of the “Macau Asia Satellite Television Company Limited”;
- (3) The Staff’s Social Security Fund payment slips of the “Macau Asia Satellite Television Company Limited”.

8. On 1<sup>st</sup> December 2009, an inspector from the DSAL made the following recommendation to the related Chief:

*“To the Head of the Labour Inspection Department:*

*As for the anonymous complaint letter received by the Bureau complaining about the late payroll from the “Macau Asia Satellite Television Company Limited” (p.2), the report is as follows:*

*As instructed by the Labour Rights Division Head, I have obtained the following information from the company:*

- 1. Business Registration (p. 7-19);*
- 2. The Social Security Fund contribution documents for 2<sup>nd</sup> and 3<sup>rd</sup>*

*quarter of 2009 (p.20 – 23);*

3. *Employees Registration Form from April to August 2009 (p. 24 – 48).*

*The above documents showed that during April to August 2009 the company had about 20 local workers and about 60 non-local workers in average per month. There were approximately 80 workers in total.*

*As to the late payroll from the company, I suggest conducting a questionnaire and using a random sampling method to choose three local workers and five non-local workers for a thorough understanding.*

*To the superior for approval.” (See file page 49)*

9. The Division Head made the below comments:

*“As to the anonymous letter requesting the Bureau to conduct investigation over the relevant illegal work, late payroll and an imbalanced proportion between local workers and non-local workers, taking into account the case information and the inspector’s report, the following is my analyses and recommendations:*

*1. Regarding late payment of wages and an imbalanced proportion between local workers and non-local workers, according to the information provided by the above company (p. 24-48), the company had an average of 20 local workers and 60 non-local workers with about a total number of 80 workers per month during April to August 2009. I agree with the inspector on using a questionnaire and choosing three local workers and five non-local workers at random to find out whether the company paid on time. I suggest requesting the employer to explain on the abovementioned proportion of the local and non-local workers.*

*2. In the aspect of illegal employment, according to the inspector’s verbal report, up until now, the two divisions in the Bureau have not jointed with the Public Security Police to combat illegal work (p. 2).*

*This case has been returned to the inspector for follow-up.*

*To the superior for approval.” (See file page 50)*

10. On 11<sup>th</sup> December 2009, the Acting Head of the Labour Relation Rights Division made the following instructions:

*“1. I agree with the recommendations made by the inspector and the functional supervisor on conducting questionnaires for the local and non-local workers and requiring the employer to indicate the reasons for the imbalanced proportion between their local and non-local workers in order to determine whether the employer has breached the law.*

*2. For matters relating to illegal employment, in order to implement the order made by the Department Head on 28<sup>th</sup> July, 2009 (p.2), it is suggested that the DPAL be informed to organize joint operation with the Public Security Police to crack down illegal employment as soon as possible.*<sup>17</sup>”

*To the superior for approval.” (See file page 50)*

11. On 23<sup>rd</sup> December 2009, an acting department head made the below instructions:

*“I agree with the comments made by the Acting Division Head of returning the case to the inspector for conducting random checks and monitor the implementation of the relevant labour law.*

*For matters relating to illegal employment, it has been referred to the DPAL to liaise with the Public Security Police Force to conduct joint inspections with our department. A confidential copy of this report to be submitted to the Head of DPAL who will sign upon receipt.” (See file page 50)*

12. Subsequently, the inspector from the DSAL has met with the eight staff from the MASTV in order to understand whether that company is in the situation of late payment of wages. The result was that all respondents stated that late payment

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<sup>17</sup> The underline is inserted by the CCAC.



of wages had not happened. (See file page 51-78)

13. On 24<sup>th</sup> February 2010, the inspector from the DSAL made the following report:

“(…)

*In the questionnaire statement, they all stated that the pay day from the abovementioned company was the 10<sup>th</sup> of every month. The payment of wages was made by bank transfer and cash payment. During their tenure, the company would pay on time. Up until now, late payment of wages did not happen to them.*

*Therefore, I could not find any information about the abovementioned company not paying wages on time or any signs of late payment of wages.*

(…)

*Based on this, the number of local workers in this company is consistent with the provisions of relevant order. Illegality is not found.*

3. Conclusions:

**In the two abovementioned matters a breach of law by the company was not found. Therefore I suggest having this case archived.**

(Besides, I have not conducted any joint inspection operation with the Labour Protection Division and the Public Security Force.<sup>18</sup>)

*To the superior for approval.” (See file page 124-125)*

14. On 4<sup>th</sup> March 2010, a division head of the DSAL made the following suggestions:

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<sup>18</sup> The underline is inserted by the CCAC.

*“According to the report no. 33186/DIT/SHER/2009 (p.50), this is to follow up the matter of the anonymous letter regarding late payroll and an imbalanced proportion between local and non-local workers.*

*1. In terms of late payroll, according to the result from the questionnaire survey (p.51-78), the company involved did pay wages on time and situation of late payment of wages stated in the letter was unfound.*

*2. In terms of the proportion of workers, following the instruction by the Human Resources Office (p.93-94) that the company involved must maintain the employment of at least 28 local workers. According to the employees registration form recorded on page no. 95-99 of case file, the company involved had 33 local workers and had also provided the information, recorded on page no. 79-92, proving that the employment priority was on local workers.*

*In summary, illegal situation was not found at the company involved. Therefore it is agreed to have this case archived and notify the employer*<sup>19</sup>.

*Submit to the superior for approval.*

*P.S.: According to the report made by the inspector, so far, the two divisions in this department have not yet carried out joint operation with the Public Security Police to combat illegal work.*<sup>20</sup> (See file page 124)

15. Another chief made the below recommendations (no date was specified):

*“According to the instruction made by the Department Head in the present case on page 2, the division should carry out joint inspection with DPAL and my division is responsible for the implementation of the relevant Labour Relation law. However, since the case opened in August 2009, the abovementioned operation has not yet been carried out (DPAL has not given any notification). Considering that claiming issues in the Labour Relation Law involve the statue of limitation, I, as the Acting Department Head, ordered*

<sup>19</sup> The underline is inserted by the CCAC.

<sup>20</sup> Same as above.

*the inspectors to carry out random checks on labour rights issues on 23<sup>rd</sup> December 2009. Investigation showed that there was no indication that wages were not paid on time or employment situation that was in conflict with the instruction of employment of non-local workers.*

*In summary, I suggest archiving this case and notifying the employer of the investigation outcome. On the other hand, DPAL should also be informed in order to allow them to continue with the arrangement of illegal employment inspections with the Public Security Force. In addition, the Director may consider exempting the participation of our division* <sup>21</sup>.

*To the superior for approval.” (See file page 124)*

16. On 12<sup>th</sup> March 2010, the Head of the Labour Inspection Department made the below instruction:

*“Read.*

*DPAL must stop this slacking attitude. The relevant action should be conducted next week jointly with the DCDL.*

*The Head of the DPAL should strengthen and coordinate the execution of its duties.*

*DCDL and DPAL should take action immediately* <sup>22</sup>.

*Date (12/03/2010) and signature”*

17. On 18<sup>th</sup> March, staff from the DSAL went to the MASTV to inspect on illegal employment. After implementing the instruction of the Department Head, a report was made as follows:

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<sup>21</sup> The underline is inserted by the CCAC.

<sup>22</sup> Same as above.

*“According to the reported information, staff from the Bureau arrived at the related work location to conduct an inspection to “combat illegal employment” in conjunction with the Public Security Police Force at 15:15 on 18<sup>th</sup> March 2010. The report is as follows:*

*Inspectors: six PSP officers, seven staff members from the Bureau (including Senior Officer XXX, XXX, Inspector XXX, Assistant Officer XXX, XXX, XXX and XXX)*

*Company Name: Macau Asia Satellite Television Company Limited*

*Inspection Location: Ave. Dr. Rodrigo Rodrigues, “First International Commercial Centre”, Floor 4 and 5, Macau.*

- Result:*
- 1. A total of 27 employees’ identity documents were checked;*
  - 2. 10 employees (5 males, 5 females) were Macau ID card holders;*
  - 3. Another 17 employees (7 males, 10 females) were non-local workers ID card holders; no circumstances of violation of law was found on the spot;*
  - 4. During the inspection it was found that one of the non-local workers, with non-local workers ID card holder numbered XXX, was employed as non-local worker at XXX International Limited with the post of engineer. As the address of XXX International Limited registered the same address in Financial Services Bureau as Macau Asia Satellite Television Company Limited (see page 28 & 29), and according to the source of a declaration statement (see page 30) and the on-site situation, it was not a violation of the relevant provisions of the Administrative Regulation no. 17/2004;*
  - 5. No illegal work situation was found in this inspection.*

*Recommendations: 1. Keep a copy of this report in Case No: P-6154/09 in*

*order that the inspectors responsible can be aware of the inspection outcome;*

2. *Use E-mail to reply the reporter about the result of this inspection and archive this report*<sup>23</sup>.

*Submit to the superior for approval.*

*Senior Officer*

*Senior Officer*

*(Signature)*

*(Signature)*

*19<sup>th</sup> March 2010” (see file page 173)*

\* \* \*

### Part III: Analysis

#### 1. Legal Characterization of the Letter from MASTV

The letter from the MASTV mainly questioned the legality of the decision and procedures made for the inspection on 18<sup>th</sup> March by DSAL, alleging that the action was in the suspicion of “suppressing press freedom” and influenced the normal operation of media organizations as well as generating injustice.

This is clearly a “complaint”; the complainant doubted the decision made and action taken by the DSAL in the perspective of “legitimacy” and “rationality”.

We first look at the complainant’s procedural rights.

Regarding the right to complaint of Macau Residents, although there is no explicitly mentioned provision in the *Basic Law of Macao Special Administrative Region*, the powers of the Chief Executive on Item 18 of Article 50 provides:

*“The Chief Executive of the Macao Special Administrative Region shall exercise*

<sup>23</sup> The underline is inserted by the CCAC.

*the following powers and functions:*

*(...)*

*18) To handle petitions and complaints.*”

It can be seen that residents are entitled to the rights of complaint and petition under the legal system of Macao. Although the abovementioned are the powers of the Chief Executive, they do not prevent the law from granting the powers to deal with the petitions and complaints to other administrative entities, namely, the Commission Against Corruption.

In addition, regarding the ways and the essential conditions to exercise the right to petition, Law no. 5/94/M of 1<sup>st</sup> August has its provision, in which Article 2 states:

*“ 1. For the purpose of this law:*

- Petition – in general, it is to raise a request or proposal to the administrative authority itself or any public authority in order to obtain, adopt or propose certain measures;*
  - Representation – a type of elaboration for the expression of opinions contrary to the position taken by any entity, or demanding attention in relation to an act or situation from a public authority for review or considering of its effects.*
  - Objection – an appeal made to the agencies or superiors for the acts committed by the civil servants or service personnel.*
  - Complaint – a complaint of any illegal acts and the malfunction of any entities, with a view to adopting measures against those who are held responsible.*
- 2. The petition, representation, objection and complaint are regarded as collective when they are made by a group of people through a single instrument or submitted by a legal person on behalf of its members under the name of a collective.*

3. Whenever this law employs the term “petition”, it refers to all forms mentioned and applicable in this article.”

Although Paragraph 2, Article 1 of the above cited law provides:

“(…)

- 2) This law does not apply to :

- a) *The rights before the courts and protection of interests;*
- b) *The complaint as an administrative action by means of raising an objection or appeal;*
- c) The rights to complain to the High Commissioner against Corruption and Administrative Illegality (it is now understood as the “Commission Against Corruption”);
- d) *The collective petition of the military and military agents of the Public Security Forces of Macao.”*

However, this does not mean that the CCAC has no rights to handle complaints. As Item 4, Paragraph 2, Article 3 of Law no. 10/2000 of 14<sup>th</sup> August (*Organizational Law of the CCAC*) states that:

“1. *The Commission Against Corruption aims, within its scope of activity, at:*

(…)

(4) Promoting the protection of rights, freedoms, safeguards and legitimate interests of the individuals, and ensuring, through the means referred to under Article 4 and other informal means, that the exercise of public powers abides by criteria of justice, legality and efficiency.

(…)”

Clearly, the rights to complain and petition is the fundamental rights of the residents. They are procedural rights in nature against the illegal and improper conduct of administrative entities. Therefore they are within the scope of “rights, freedom and safeguards” and hence the CCAC can legally intervene into the unfair or improper administration actions or decisions with the aim to rectify.

Furthermore, Article 4 of Law No. 5/94/M of 1<sup>st</sup> August also provides:

*“1) The rights to petition is exercised by an individual or a collective.*

*2) Any legal entities duly constituted shall enjoy the same rights to petition.”*

As a result, the MASTV, as a legal entity, has the legitimacy to lodge complaints.

Since there is a lack of reason that causes the CCAC to reject handling the case at the start, the CCAC has then conducted a comprehensive and in-depth analysis of the incident in accordance with applicable laws and basic legal principles.

\* \* \*

## **2. A Review of the Criteria and Justifications of Administrative Acts**

In the current administrative system in Macau, when it comes to whether the decision, actions as well as the actual implementation of action is appropriate, apart from judging with the law as the criterion (this is legitimacy (*legalidade*)), “appropriateness” (or “rationality” (*mérito*)) can also be adopted as a criterion for considering the properness of the action of the administrative entities. For this reason, legislators allowed the “appropriateness” as the basis of administrative complaint. Article 146 of the *Code of Administrative Procedure*<sup>24</sup> states :

*“Raising an objection and appeal can be based on the illegality or inappropriateness of administrative acts being complained about, except as otherwise provided.”*

Although this case is not an administrative objection (*impugnação administrativa*)

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<sup>24</sup> With the approval of Decree Law No. 57/99/M of 11<sup>th</sup> October and was effective from 7<sup>th</sup> November 1999.



in a narrow sense as stipulated in the *Code of Administrative Procedure*, the above cited provision can be helpful in understanding clearly the very core of the current administrative system in Macao. As the German jurist Philip Hack said: “*Anyone adopts a specific stipulation adopts the whole legal system; anyone explains a legal article explains the whole legal system*”.

Regarding the “appropriateness” of administrative act, Marcelo Rebelo de Sousa in his book, *An Introduction to Administrative Law* (Volume I) wrote<sup>25</sup> :

*“Impõe-se, portanto, uma distinção entre a esfera da legalidade, sujeita a controlo jurisdicional, e a esfera do mérito, a ele subtraído. O mérito engloba a apreciação da oportunidade (utilidade da concreta actuação administrativa para a prossecução do interesse público legalmente definido) e da conveniência (utilidade da concreta actuação administrativa para a prossecução do interesse público legalmente definido à luz dos demais interesses públicos envolvidos) de uma determinada decisão administrativa, em termos que podem levar a dizer que ela prossegue de forma melhor ou pior o interesse público, mas não que é ilegal. (...)”*

English meaning:

(It is necessary to distinguish between the spheres of legitimacy which is subjected to judicial monitor, and the spheres of appropriateness which is not. The latter includes the consideration of “timeliness” (benefits arising from taking concrete administration action in order to pursue public interest) and “properness” (benefits sought from taking concrete administration action in response to other public interests involved). With this, the conclusion of whether the administrative authorities have adopted a better or worse way to pursue public interests can be drawn, but this does not involve illegality. (...))

\* \* \*

<sup>25</sup> *Direito Administrativo Geral* (Introdução e princípios fundamentais), tomo I, Dom Quiete, 2ª Edição, Page 182 and continued.

Another scholar Freitas do Amaral also pointed out that <sup>26</sup>:

*“Frequentemente, a lei remete de modo expreso nos seus dispositivos para normas extra-jurídicas.*

*Quando assim sucede, deve entender-se que não estamos no terreno da discricionariedade, mas sim no campo da vinculação. Porque, ao remeter para normas extra-jurídicas, a lei fá-las suas, incorpora-as na ordem jurídica e portanto torna-as juridicamente obrigatórias, em termos tais que a violação dessas normas é para todos os efeitos uma violação da lei que para elas remete. Há uma vinculação jurídica a normas extra-jurídicas, sendo estas relevantes e obrigatórias para a Administração porque a lei as fez suas, as incorporou na ordem jurídica, e impôs à Administração que as respeitasse.*

(...)

*A lei subordina a Administração a normas técnicas e a normas morais. Umas e outras não são normas jurídicas, mas a lei remete para elas, e torna-as juridicamente relevantes, e obrigatórias.*

(...)

*Não estamos, pois, no domínio da discricionariedade, mas sim no da vinculação. Claro que se trata de uma vinculação que só indirectamente é jurídica, pois em primeira linha é uma vinculação a normas técnicas ou morais; mas nem por isso deixa de ser uma vinculação jurídica, e não é, de toda a maneira, um caso de discricionariedade.”*

English meaning:

(Often, the law refers to “extra-legal norms” in its provisions.

Where this happens, it should not be understood as the realm of discretion, but the field of “binding”, because when the law incorporates these norms into its system, it is to make them legally obligatory, in such terms that, violation of these norms is the violation of the law. There is a kind of legal binding in extra-legal norms. As a result, the extra-legal norms are compulsory and important for administrative

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<sup>26</sup> See *Curso de Direito Administrativo* – Vol. II, Edição de 2001, Page 115 and 116

entities, which prompt their compliance.

(...)

The law requires the administrative entities to comply with the technical standards and moral norms. Both are extra-legal norms, but the law refers to them and makes them legally compulsory and binding.

(...)

We are, therefore, facing not the realm of discretion, but the field of “binding”. Apparently, this is only an indirect legal “binding” because firstly, binding should be applied on technical and moral standards. Even as it is, it should not be regarded as falling beyond legal restriction and definitely, not within the case of discretion.)

\* \* \*

In the work quoted above Marcelo Rebelo de Sousa also wrote:

*“A autovinculação só pode conciliar-se com os princípios da legalidade e da igualdade caso se lhe imponham alguns limites. Primeiro, os critérios decisórios dela resultantes não podem ser imutáveis, implicando a margem de livre decisão que eles possam ser administrativamente revistos sempre que se tal considere juridicamente necessário, ou simplesmente oportuno ou conveniente; ou seja, é possível a autodesvinculação (Scholler). Segundo, a autovinculação não dispensa o decisor administrativo de averiguar se, no caso concreto, existem circunstâncias que imponham diferente ponderação dos interesses envolvidos e, eventualmente, diferente solução; se assim suceder, o caso concreto em apreço deverá ser considerado como atípico – isto é, exorbitando do âmbito da autovinculação – e, como tal, ser decidido sem referência aos critérios gerais e abstractos fixados. Tendo em conta estes limites, a autovinculação corresponde ainda e sempre ao exercício, embora antecipado, da margem de livre decisão, permitindo igualdade a ponderação das circunstâncias relevantes do caso concreto.”*

English meaning:

(“Self-binding”, as another criterion for judging acts of administrative institutions, needs only to be in harmony with the principle of legality and fairness if restriction exists. First, the criteria for decision-making originated from “self-binding” are not unchangeable. It involves a “space for free decision”. When viewing from the legal perspective, if necessary, administrative revision can be made. The administrative revision can also be made according to “timeliness” or “appropriateness”. In other words, it is possible to free itself from “self-binding”. In addition, “self-binding” does not prevent the administrative entities from assessing whether it is necessary to take into account different interests in some cases and subsequently adopting different solutions. Under such circumstances, these cases should be considered as untypical cases (beyond the scope of self-binding). Therefore, the decision regarding the case should not be made based on generality and abstractness. In this sense, “self-binding” is to use the room for free decision to make accurate judgment on the important situations in the cases. This can help attaining fairness.)

\* \* \*

It can be seen that in order to determine if an action, a decision or a procedure is fair or not, relevant circumstances and conditions should be taken into full consideration and analysed. “Appropriateness” always plays a key role and is one of the biggest challenges administrative entities face.

It is worth mentioning about the legitimate intervention of the CCAC as Item 12 of Article 4 of Law no. 10/2000 dated 14<sup>th</sup> August (*Organizational Law of the CCAC*) states:

*“The Commission Against Corruption is entitled to:*

*(...)*

*(12) address recommendations directly to the competent authorities for the purpose of rectifying illegal or unfair administrative acts or procedures;*

*(...)”*

\* \* \*

### **3. Defects on Handling Administrative Procedures and Making the Decision of Inspection**

The above information clearly shows that during the process of combating illegal working, problems plagued in different stages. Although it has not necessarily reached the extent of illegality, from the perspective of “appropriateness”, review is essential.

We made an analysis focusing on a few significant points.

#### **I – Failure in Identifying Core Issues in “Complaints” Being Handled:**

According to the stance of the DSAL, if the anonymous report made on 27<sup>th</sup> July was true, the two key points were:

- (1) Reporting the employment of illegal workers in the MASTV;
- (2) Frequent late payment of wages without any explanations.

With regard to point (2), when no specific victim has lodged the complaint, is it necessary for the DSAL to deploy human and material resources and spend over six months to track the case (simply based on an anonymous letter)? Furthermore, the report only referred that MASTV never met the payroll on time rather than late payment of wages or not paying wages to the employees.

Indeed, the DSAL should focus its effort on point (1), but in fact it did not.

#### **II – Defects in Ways of Handling Complaints:**

Six persons’ names (claimed to be the MASTV’s employees in the letter) were mentioned in the anonymous letter on 27<sup>th</sup> July 2009. However, the DSAL has never followed up these six persons’ information and did not even conduct a preliminary investigation on their immigration record.

In the lack of any follow-up measures or substantial evidence, the chiefs hastily took the action of “combating illegal workers” and repeatedly asked the PSP for a joint operation, which inevitably makes the question: for what reason the decision of

“combating illegal workers” is made?

When the DSAL decided to commence a case file, it meant a procedure has been started. Investigation and data collection (*instruir processo*) are needed in commencing a procedure. In response to Paragraph 1, Article 2 of the *Code of Administrative Procedure*, Article 86 in the same code should be implemented. It states that:

*“ 1. If knowing certain facts helps to produce a fair and prompt decision of the procedure, the competent entities should seek to investigate these facts; investigation of such facts can make use of all proving methods allowed by law.*

*2. Proof and statement are not necessary for obvious facts and the facts that the competent entities know about while performing their job duties.*

*3. The competent entities should, in the procedure, mention the facts known while performing their duties.”*

However, there is not any investigation in this regard.

Undoubtedly, the DSAL has the right to inspect labour behaviour – Article 1 of Administrative Regulation No. 26/2008 of 29<sup>th</sup> December (*Rules of Labour Inspection Operation*) states that:

*“This Administrative Regulation stipulates the rules of operation of labour inspection carried out by the Labour Affairs Bureau.”*

Besides, Article 3 of the same “rules” also states that:

*“ 1. Director of the Labour Affairs Bureau is responsible for leadership and co-ordination of the work of labour inspection conducted by the Bureau.*

*2. Director of the Labour Affairs Bureau shall delegate his functional duties regulated under this Administrative Regulation to others in accordance with the law.*

*3. Director of the Labour Affairs Bureau shall supervise the delegated authority’s decision; in particular, the orders of confirmation, conformation denied*

*and abolition made by the delegated authority.”*

Nevertheless, something should be noted: the facts that a certain entity is entitled to certain competence determined by Regulations and that it makes a decision in a specific case in exercising the entitled competence are different. When the DSAL made the decision to carry out an inspection, it is realizing the public interest sought by the aforementioned regulation: to inspect and ensure all workers in the particular place are legal workers (i.e the order of legal working). However, at the same time, the act of inspection itself constitutes breach of private interests, especially when it comes to a semi-opened or fully closed space. To a certain extent it is an act of invasion of private space. However, in order to pursue public interests, the legislators opt for protecting public interests in priority over private interests. Therefore before making a decision, the administrative entity should base itself on substantive facts – to discover signs (indícios) of illegal work in the specific cases. Only this constitutes the prerequisite of the action taken, and this is the manifestation of the most basic law enforcement standard that an administrative entity should have.

For example, the administrative entity cannot choose to carry out an inspection to a place at midnight when there is no sign of illegality, or make successive inspection to the same place every hour in the absence of any evidence of infringement (according to the law, the administrative agent is given the right of inspection, but the exercise of this right will depend on the availability of the prerequisite of certain facts).

In the second example mentioned above, the law does not prohibit performing more than one inspection on the same place on the same day. If there is evidence to suggest the existence of illegal work in different times, it is also legal and reasonable to carry out several inspections at the same place on the same day. This means that the judgment made by the administrative entity should be based on the circumstances of each case and cannot and should not adopt a mechanic approach in operation.<sup>27</sup>

Public administration management is a compound and complex activity that involves collecting and analyzing data in order to balance various interests involved according to the requirement of public interests and finally the best way to pursue public interests is chosen and in principle, there is only one way <sup>28</sup>.

<sup>27</sup> See Rogério Soares On *Administrative Law*, Faculty of Law, University of Macau, 2008, page 68.

<sup>28</sup> Ibid, page 154.

It can be seen that the activity of public administration is not a coin tossing game, but an activity in which the administrative agent is required to make a judgement — an accurate judgment. Otherwise the administrative agent shall be legal liable.<sup>29</sup>

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### **III – Lack of Credible and Comprehensive Information as Basis behind the Decision to “Combating Illegal Workers”:**

The DSAL requested the MASTV to submit copies of documents and had held a meeting with eight workers. However, the DSAL has not undertaken any follow-up work on the possible existence of “illegal work” in the process, especially the collection of indirect evidence (it is not a breach of secrecy in this case since the DSAL had requested the relevant staff members to the DSAL for assistance in investigation and submission of information. Related information has already been indirectly revealed. Therefore, evidence should be collected indirectly in these meetings). For example, the following questions can be asked:

- How many people are actually working there (is the actual number more than that of registered staff)?
- Are there any strangers who always go in and out of the company?
- Are the existing staff members sufficient to complete the whole procedure of audio-visual production and broadcasting?
- If there are problems concerning technologies, how does the company tackle them? Will they solve the problems by out-sourcing or hiring temporary staff?

Simply speaking, the DSAL, in fact, has never had any basic follow-up on whether there were any illegal workers. The inspection was decided based on only an anonymous complaint.

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<sup>29</sup> Officeholders of administrative entity may be demanded for civil responsibilities due to its functionary acts (legal or illegal) – see Articles 2 and 3 of Decree Law no 28/91/M of 22<sup>nd</sup> April.



As mentioned above, the administrative authority shall obtain the facts related to the problems, reliable and comprehensive information and materials when making a decision. If such materials are lacking or insufficient, it should first conduct an investigation. The decision can only be made when all necessary information has been obtained.

In the case, the most basic requirement for carrying out the inspection is that there should be signs of existence of illegal labour instead of ordering an inspection without any substantial information but based merely on a document in which the content is not duly proved.

\* \* \*

#### **IV – Inappropriate Timing and Unclear Direction of Preliminary Inspection**

The DSAL received the anonymous report on 27<sup>th</sup> July 2009 but it was not until 18<sup>th</sup> March 2010 that the inspection was carried out. Over the seven months, no investigative measure was taken. In other words, there was no substantial evidence supporting the action. It is hard to understand the following facts:

- a) Frontline staff suggested archiving the case;
- b) The department head ordered a number of times to carry out joint operation with the Public Security Police (PSP) to combat illegal labour.

In the last order, the department head even pointed out that:

***“Read.***

***The DPAL must stop this slacking attitude. The relevant action should be conducted next week jointly with the DCDL.***

***The Head of the DPAL should strengthen and coordinate the execution of its duties.***

**DCDL and DPAL should take action immediately.**

*Date (12/03/2010) and signature”*

Since there were no substantial materials to support this decision, the conclusion is: it is an inspection for the sake of inspection, an action for the sake of action. There seems to be a waste of manpower.

Another problem is about the timing: if the inspection carried out on 18<sup>th</sup> March was a regular inspection, the reason why the action was taken over half of a year after the complaint was received is unable to be explained. Under such circumstances, the inspection was meaningless.

\* \* \*

#### **V – Different Handling Processes According to the Types of Nature of Complaints/Reports Were Not Set Up**

In the whole process of handling the complaint, it seems that the DSAL did not set up different handling methods according to categories of complaints – anonymous and signed. In fact, both of them cannot be handled with the same method. Otherwise, the DSAL will be in a very passive position and thus the effectiveness of inspection will decrease significantly.

The DSAL revealed that a lot of anonymous letters were received every year in a publicized letter:

*“The DSAL points out that alleged illegalities are not discovered from every frontline inspection against illegal labour. In 2009, the DSAL and other government departments carried out 345 inspections. Alleged illegalities were detected from 90 of them, involving 306 individuals including 195 alleged illegal workers, 94 people suspected of doing the jobs which they were not allowed to do, six people suspected of working beyond the places they were allowed to work in, nine people alleged of working for their own interest and two people alleged of violating the provision*

about exceptional cases under Administrative Regulation no. 17/2004.

*A majority of the reports about illegal working received by the DSAL were anonymous. Therefore it is possible that some of them were not true. However, the DSAL will surely strictly suppress and penalize illegal labour and exercise its statutory competence to guarantee employment of residential workers and prevent illegal workers from harming their rights and interests.”*<sup>30</sup>

For this reason, the DSAL should have a strict system of handling anonymous complaints instead of using a fixed routine to handle them. In fact, the legislator also provides a set of criteria for handling anonymous complaints for reference. Paragraph 2 of Article 11 of Law no. 5/94/M of 1<sup>st</sup> August states that:

“(…)

2. *The petition is also rejected at the start if:*

- a) *It is anonymous and the person who files the petition cannot be identified;*
- b) *It is groundless.”*

We do not mean that it is unnecessary to handle all anonymous letters. Instead they should be handled carefully with comprehensive analysis and in-depth investigation. The relevant decision should only be made after basic information is obtained.

In addition, it is hard to understand that in the report of conclusion of the inspection, the DSAL’s staff suggested notifying the complainant (anonymous) of the result of the inspection by e-mail. This reflects that the law-enforcement staff of the DSAL did not clearly distinguish two different situations:

- a) The procedure of handling the application submitted by the person with legitimacy;
- b) The procedure of handling reports over illegal facts.

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<sup>30</sup> See the special report on *Va Kio Journal* dated 27<sup>th</sup> March 2010 (Saturday).

The administrative entities has the obligation to make response only in the first case, however, the prerequisite is that the applicant has given correct and complete information of his/her identity and contact and has the legitimacy to participate in the procedure.

In the second case, the administrative entity has the responsibility to decide whether to commence the procedure<sup>31</sup> and it does not need to notify the complainant of the result, not to mention an anonymous “invisible complainant”.

\* \* \*

#### **VI – Inadequate Consideration about Nature of the Facility**

From the documents submitted by the MASTV, the DSAL should have realized that the MASTV, located at Floor 4-5, First International Commercial Centre, which operates 24 hours a day, is a TV broadcasting company. Its business activities include production of news programmes. Therefore, the DSAL should have understood that the site inspection at such facilities should be especially prudent, just as banks, chemical factories, pharmaceutical factories and presses. The way of inspection of construction sites is not applicable (this does not mean that privilege or advantage can be given to certain professions). Different prudent measures should be adopted according to the nature of the facility. Otherwise, the case will become more complicated, resulting in failure of completing the task and even “minus effects”.

As mentioned above, administrative authority makes decision every minute, while all these decisions are based on information and materials. The so-called “principle of good administration” (*princípio da boa administração*) is based on the following principles:

- 1) Principle of comprehensive and true information;
- 2) Principle of timeliness (appropriate proportion between purpose and approach);
- 3) Principle of moderation;

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<sup>31</sup> See Rogério Soares, *On Administrative Law*, Faculty of Law, University of Macau, 2008, P.93 and subsequent pages.

4) Principle of fairness.

Therefore, every decision should be backed by sufficient bases, clear reasons, substantial materials obtained as well as its purpose.

In the case, the relevant department head did not have any explanation and analysis in this aspect.

Regarding public administrative management, Prof. Rogério Soares states that:

*“O dever de boa administração traduz-se num autêntico dever jurídico. Não se trata de afirmar uma exigência técnica, uma imposição para alcançar um fim, pois isso suporia deixar ao agente a liberdade de escolher os seus fins e a liberdade de os satisfazer ou não. Nem se trata, por outro lado, de um puro dever ético ou deontológico. Consequência a que se chegaria aderindo aos pontos de vista que concebem o controlo por desvio de poder como um controlo da moralidade administrativa. A lei, ao impor o dever de boa administração, não se preocupa com o valor individual do acto enquanto manifestação da personalidade do agente – apenas impõe uma conduta de adequação ao fim legal, porque, e só porque, isso é o instrumento indispensável para que o interesse público possa ser satisfeito.*

*A verdadeira qualificação é a de uma situação jurídica, situação jurídica passiva independente. Do exercício resultam consequências jurídicas imediatas. Aos actos praticados com o seu desconhecimento vai a lei atribuir resultados desvantajosos, maxime, a própria negação de consistência jurídica.”*<sup>32</sup>

English meaning:

(The obligation of good administration is a real legal obligation but not a technical requirement. It does not give the administrator the freedom to choose its purpose and to decide whether to fulfil it or not. In addition, it is also not a pure moral obligation to conduct supervision with unbalanced powers. When good administration is required by law, the focus is not on the act itself (as manifestation of the personality of the administrator), but is to coercively carry out an act which facilitates the fulfillment of statutory objectives. Therefore, the obligation of good

<sup>32</sup> See Rogério Guilherme Ehrhardt Soares, *Interesse Público, Legalidade e Mérito*, Coimbra, p. 198 and subsequent pages.

administration is a tool for seeking public interests.

The real nature of good administration should be considered a type of legal nature which can achieve a direct legal result. For the acts which are carried out contrary to this rule, there will be unfavourable results provided by the law. The most unfavourable result is that the existence of these acts is denied.)

The DSAL has allegedly violated the “obligation of good administration” in the case, since it has not strictly followed the fundamental principles of administrative law in handling the administrative procedures and in making decision.

\* \* \*

#### **VII – The DSAL Failed to Differentiate Between “Regular Inspections” and Other “Operations to Crack Down on Illegal Labour”**

The DSAL did not differentiate between “regular inspection” and “special inspection”<sup>33</sup>, because Administrative Regulation No. 26/2008 of 29<sup>th</sup> December (*Rules of Labour Inspection Operation*) is only applicable to administrative inspection procedure but not criminal investigation procedure. In the latter case, the *Code of Penal Litigation* shall be observed (see Articles 159-162).

Paragraphs 3-4 of Article 162 provides provisions specifically for search at certain special facilities:

*“3. In case of search at law firms or clinics, the search shall be presided by a judge at the site. Otherwise, it will be void. If there is an institution representing the profession, the judge shall notify the person-in-charge, so that the person or his/her representative will be present at the search.*

*4. In case of search at public health care facilities, the leader of the facilities shall be notified and s/he or his/her statutory substitute shall be present.”*

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<sup>33</sup> In reality, no doubt, a situation may occur: Illegal or illicit criminal behaviours are found during inspection. How to handle this case? The DSAL should have a system for its frontline staffs to follow.

This shows that the DSAL should know that the legal basis for procedures depends on their natures. Where is the limit of inspection? Where is the limit of the so-called operation “to crack down on illegal labour” (the term used by the DSAL)? The DSAL should have a set of clear rules.

The legislative has established a strict and special system of search at certain facilities in criminal investigation procedure. Therefore, for administrative procedure, there should be a set of special systems as well, while the types of nature of relevant facilities should be taken into account.

The fact that the DSAL did not differentiate “regular inspection” and “special operation to crack down on illegal labour” has led to a common interpretation: illegal labour exists wherever the DSAL’s staff appear for inspection. This interpretation will have negative effects on the places where the DSAL’s inspection is carried out and the DSAL itself – a misunderstanding, that only when illegal labour is detected, the operation is considered successful.

In the case, the complainant is a news entity and the service it provides is a kind of public service under strict supervision by law. See Article 12 of Law no. 8/89/M of 4<sup>th</sup> September:

*“Television broadcasting is a public service executed under concession contract.”*

The purpose of the inspection on the MASTV carried out by the DSAL is, certainly, to verify its staff’s legality to work in the site but not its works, and therefore, there was no interference in freedom of press. However, the problem is that there was no sufficient factual basis for the decision to conduct the inspection. In this sense, it is understandable that their motivation was called into question.

In fact, in order to achieve the so-called freedom of press, protections in some aspects are necessary, including:

- Independence and freedom of editorship and press of journalists [see Law no. 7/90/M of 6<sup>th</sup> August (*Press Law*)];
- Independence and freedom of management and operation of news entities

(see Article 9 of the abovementioned law);

- Protection of professional secrecy (Article 6 of the abovementioned law).

The operation of news entities cannot be interrupted or hindered directly or indirectly by any administrative means. Unless there is a rational reason, the interruption is illegal.

\* \* \*

#### **VIII – Partially Untrue Information in Document about Explanation to Public**

After the incident occurred, the DSAL stated in a press release that it decided to carry out an inspection at the MASTV based on the method of random selection. However, it was not the case as there was no evidence proving that this was the result of random selection in the information passed by the DSAL to the CCAC.

In fact, the DSAL confessed that it had made a mistake in a letter to the CCAC:

*“Facing the special attention to the inspection at the MASTV, since it happened all of a sudden, both the leadership and the supervisory staff of the DSAL gave the media an ordinary immediate response, that it was only a regular inspection by random. Later, we had a review on the relevant operation and the reason stated above and realized that the target of the relevant operation to crack down on illegal labour was chosen directly,<sup>34</sup> because...”*

This reflects that the DSAL has mixed up two situations, “deciding to carry out inspection at a certain facility” and “random selection”<sup>35</sup>. The latter is a way to execute the former. The key is the reason for carrying out inspection at the facility. Making decision based on random selection without collecting information, making analysis or explanation is equal to violation of the obligation of “making decision”.

<sup>34</sup> The underline is inserted by the CCAC.

<sup>35</sup> The method of “random selection” has been adopted for a certain period of time but its effectiveness is in question. Therefore, it is time to review it.



If every decision is made by random selection, the administrator has no need to make judgment and analysis. Such behaviour, strictly speaking, is equivalent to shirking from one's own duty. This is contrary to the fundamental principle of seeking public interests.

To establish a fair, rational and effective system, every detail and the whole process are crucial. The "result of inspection" should not be the only focus.

\* \* \*

#### **IX – The Case has Revealed Defects of the System**

Since this report focuses on DSAL's inspection at the MASTV instead of the entire system of illegal labour inspection, we do not conduct any analysis on other parts. However, this case has revealed some defects in the process of the crackdown on illegal labour. Therefore, the DSAL should have a holistic adjustment. The following aspects should be in priority:

- 1) Handling and analysis of source of information;
- 2) Law-enforcement methods adopted by decision-makers;
- 3) Approaches, preparation and execution of inspections (e.g. preliminary evidence search, independent inspection and joint inspection, etc.);
- 4) Mechanism to handle special cases;
- 5) Review on the current system (including regulations<sup>36</sup>).

\* \* \*

#### **4. Conclusion**

To conclude, the CCAC considers that:

1. **There is no sign showing that the DSAL had the intention of hindering the operation of news entity and subsequently interfered in the freedom of press through the inspection. However, there were many "inappropriate" acts**

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<sup>36</sup> We think that there are many loopholes in Administrative Regulation no. 26/2008, *Rules of Labour Inspection Operation*. Therefore, the DSAL should consider a revision.

which existed in the process of the inspection;

2. The DSAL's decision to carry out the inspection was a mere formality that it did not strictly observe the basic principles of administrative law (for three main parts: receiving complaints, ways to handle complaints and making decision). As a result, there were many defects in the process. The DSAL should draw on this experience.
3. The DSAL's staff were not sensitive enough and the ways they handled problems and the standard of law-enforcement need improvement. The review afterwards was not thorough and prudent.

\* \* \*

#### **Part IV: Recommendations**

Under Item 12 of Article 4 of Law no. 10/2000 of 14<sup>th</sup> August, the CCAC rendered the following recommendations to the DSAL:

1. To comprehensively review the current system of inspection of "illegal labour";
2. To differentiate between "regular inspection" and "special inspection" (a term used by the DSAL as "operation to crackdown on illegal labour");
3. To open different files according to the types of nature of investigations;
4. To establish relevant inspection systems according to the types of nature of commercial facilities;
5. To clearly state the reason and basis for making the decision to carry out an inspection;
6. To strengthen decision-making personnel's responsibility to lead and law-enforcement standard;

7. **To enhance the law-enforcement standard of staff responsible for carrying out inspections.**

\* \* \*

Finally, I make the following orders:

1. **To notify the Chief Executive of the content of this report;**
2. **To notify the Director of the DSAL and the MASTV (the complainant) of the content of this report;**
3. **To archive the case after executing the aforementioned measures and to assist the competent authority to improve the inspection system in compliance with the law.**

\* \* \*

Commission Against Corruption of Macao, 26<sup>th</sup> April 2010.

The Commissioner Against Corruption  
Fong Man Chong

\* \* \*

**Conclusion:**

Inspiration of the case:

- (1) The administrative authorities should always take factual and concrete facts into account when making any decisions, and should indicate the objectives of the decision.
- (2) In handling complaints, the administrative authorities should understand the core of the question in order to take appropriate and effective measures.
- (3) The disclosure of information should be based on its authenticity. The method of balloting is not the panacea to solve problems.

### **Case III – Arrangement of Public Servant’s Medical Check-up**

**Main points:**

- The approach and procedures that should be adopted by the supervisor when dealing with public servants’ application in their own department
- Time arrangement for public servants to attend the medical check-up at health centre during office hours
- The principle of “good father of the family” can also be applied in public service management

\* \* \*

**AN INVESTIGATION REPORT REGARDING STAFF’S COMPLAINT  
FROM THE MARITIME ADMINISTRATION**

**AND**

**RECOMMENDATION NO. 003/RECOM-OP/2010**

#### **Part I: Causes and Facts**

1. On 18<sup>th</sup> May 2010 morning, a driver named **Y** from the “Maritime Administration Shipyard” came to the Commission Against Corruption of Macao (hereafter the CCAC) to lodge a complaint. The details are listed below:
  - (1) His direct superior did not allow sufficient time for him to get to the “Areia Preta Health Centre” on time at 4pm on 17<sup>th</sup> May 2010 to receive the “Medical Check-up for Public Servants” (Appointment had been made earlier on 19<sup>th</sup> April 2010).

(2) On that day, the complainant only had 10 minutes' time to go to the "Areia Preta Health Centre" from the Maritime Administration Shipyard. According to the complainant: *"It could not guarantee him to arrive at the Health Centre on time in just 10 minutes; if he really went to the Health Centre at that time, he would be late and might only get an 'alternate ticket'. Besides, if the Health Centre could not arrange him to do the medical check-up, then he might not be able to get the 'Medical Certificate', and without the proof that he was attending medical check-up during that time, his department could count him as unreasonable absence in consequence. Therefore, the complainant believed that his superior did not allow sufficient time for him to get to the Health Centre meaning that his superior did not allow him to do the medical check-up. He also pointed out that even if he expressed this to the Director of the Maritime Administration, it would not make any difference. Hence, he insisted the CCAC should intervene in this case."*

(3) The complainant also pointed out that the attitude of his superior was not amicable and he was treated with no respect.

2. On 20<sup>th</sup> May 2010, the CCAC sent a letter to the Director of the Maritime Administration requesting related information and reports.
3. On 27<sup>th</sup> May 2010, the CCAC received a reply from the Director of the Maritime Administration, attached with a report written by the Head of XXX Division. Details are as follows:

*"On 17<sup>th</sup> May this year at around 5pm, Division Head A and I were on our way to drive on our own to the Ilha Verde Dock for the preparation of the blessings ceremony that was scheduled to start at 9:30am on 18<sup>th</sup> May. At that time Y was in the same lift going downstairs. In the lift, I was discussing with Division Head A about what other materials were to be sent to the Ilha Verde Dock.*

*After we got out of the lift, Y asked me if I had time for a few words and I said yes. Y said, 'Because I was assigned to work, I could not go for the medical check-up'. I immediately remembered what the chief clerk XXX told me earlier that morning saying Y had to go for a medical check-up at 4pm in the afternoon. Therefore, no work should be assigned to him after 4pm. I felt very guilty and replied, 'Now that the work has been assigned, could you please explain this to the doctor and re-arrange another time for the check-up?' He immediately responded, 'But it is*

*your arrangement!’ I did not understand what he meant. He then said, ‘I mean the medical check-up!’ I replied, ‘It does not matter then.’ At that time, Division Head A who stood beside me said, ‘This can be re-arranged.’ Then I said, ‘Do not worry, if you are blamed, I will explain to them that due to our limited manpower, you could not attend the medical check-up.’ After that he left. Division Head A and I then drove on our own to the Ilha Verde Dock.*

*Regarding the above matters, I checked the operation records of three cars from our shipyard and **found some unusual matters**.*

*In that afternoon, Y was assigned to send a colleague to pick up some fruits for offerings. Details are shown in the appendix (1), Vehicle Use Application Form. The setoff time of the car was 2:45pm; and the estimated return time was 3:20pm. In addition, the time in the above car operation record matched with appendix (2), the dedicated work diary.*

*At 3:20pm that day (17<sup>th</sup> May), Division Head B requested a car to fetch him from the Ilha Verde Dock to the shipyard. Y was assigned to pick him up (according to his record, his car was out at 3:35pm. For more details please see appendix (2)).*

*According to Division Head B, after Y arrived at the destination, he immediately got in the car and returned to the shipyard. If Y did not make the detour, or if Division Head B did not request to go to any other places, or if Y did not receive any new task, the distance would just be two kilometres. The travelling time should be less than one hour and five minutes. Therefore it was believed that the time of task completion written on the diary sheet was a mistake. The time should be 3:40pm.*

*Normally, there should be sufficient time for Y to go to the Areia Preta Health Centre for the medical check-up.*

*Head of XXX Division*

*(Signature)”*

4. This reply letter was also attached with three appendixes.

\* \* \*

## Part II: Analysis

1. After a comprehensive analysis of all the relevant information, it was discovered that there was still room for improvement for the Maritime Administration Shipyard in the process of handling the procedure of medical check-ups of staff. This situation not only will increase the conflicts between staff, but also will affect the efficiency of the department's operation and the image of public administration.
2. According to the documents from the Maritime Administration to the CCAC, (Appendix (3) – “Staff Absence Application Form”), the complainant had already filled in the form earlier, applying for a leave of absence at 4pm for a medical check-up on 17<sup>th</sup> May 2010 at the Health Centre. The related Division Head had also approved in writing on 13<sup>th</sup> May 2010.
3. This application form had two drawbacks that the Administration should correct immediately:
  - (1) In the Staff Absence Application Form, there was not a column for the applicants to fill out the date of application (there was only the date of his superior's approval. In this case the date was 13/05/2010, which means it can be presumed as the date of application by the complainant at the latest). The design of this form has created uncertain factors because there was no record of the exact application date. Due to various reasons, if there was no clear answer until the appointed date of the medical check-up, that would increase the chance of a dispute: one party might claim that the other party made the application very late; the other party might claim that he had made the application very early, but had not received any reply yet. When was the application made? It was difficult to be proved, which would indeed affect the efficiency of the administration.
  - (2) Another drawback was: there was not a column for the applicants to sign and write down the appropriate date (to prove that he was notified of the relevant result of his application) at the time when he received the notifications (whether approved or not approved).



If the Administration had another way to record the abovementioned information, for example, with alternate procedures or forms, the way that was used must be in written form (we believed that they did not have any as there was the applicant/complainant's signature in appendix 3, it was hard to envisage that they used another document to record the date of form received and the date of approval! If this were true, the handling procedure would be rather unorganized).

\* \* \*

4. Another point of the complaint was: On 17<sup>th</sup> May 2010, the superior of the complainant still assigned him a task and set off at 3:35pm, after completing the job, he had 10 minutes left to go for the medical check-up. The complainant considered that there was not enough time to go for the medical check-up; however his supervisor believed that it was enough. *Quid Juris?*

- (1) Apparently, this is not a question that can be answered directly by the laws. In theory, we can assume this: The complainant stated that he had medical check-up at 4pm, but what if his superior only let him leave at 3:59pm? It seemed that the Administration thought that they handle this correctly, because the time for his medical check-up would not start at 4pm – this could be testified through his superior's opinion:

*“ 1) According to the preliminary understanding of the leave request from the related staff for applying leave of absence on the 17<sup>th</sup> May 2010 at 16:00, his Division Head had already followed the procedure and made his approval earlier on 13<sup>th</sup> May 2010 (for more details please see Appendix (3) – “Staff Absence Application Form”), **having checked that the time the related staff completed his job duty (Driving) was at 15:50, which was earlier than the time he applied for his absence at 16:00.** As for other “dissatisfactions” involved in the complaint, further investigation is needed. (...)”*

- (2) Undoubtedly this was not the first time that the staff members of the department had to go for medical check-ups, so this case revealed its improper handling on some procedures.

- (3) Is it possible to arrive at the “Areia Preta Health Centre” in 10 minutes’ time? This is hard to conclude. It depends on various factors, including:
- a) The means of transportation adopted (taxi, bus, private car, motorcycle);
  - b) Traffic (congestion, car accident, etc);
  - c) Weather conditions (rain, storming, etc);
  - d) Whether or not the person concerned is clear about the exact location of the destination...etc.
- (4) From the management point of view, is it really required that the staff receiving a medical check-up should arrive the “Health Centre” at exactly 4pm, but not even a bit earlier or later? Or according to normal situation and in a good management standard to handle this case, allowing 20 to 30 minutes’ time for the staff to go for a medical check-up?

Experiences tell us: accidents often happen due to hurriedness. Therefore, a prudent person will always allow enough time to arrive at the destination earlier. Especially in the case of going to hospital or a health centre, under normal circumstances, if the interested party has not yet calmed down, the doctor cannot help him to do a medical check-up or a test.

In the management point of view, we use the standard of “good father of a family” (*bom pai da família*) to judge if the related behaviour is appropriate or not. Take this case as example. Assume that you are a parent, will you allow your family members (e.g. your children) to “**RUSH**” in 10 minutes’ time to the Health Centre for a medical check-up? If your answer is “NO” but in reality you have chosen this approach to handle this situation, the relevant approach is indeed inappropriate. This is definitely not the way a prudent management person should be thinking and doing!

- (5) Moreover, take the day of the incident as an example. Provided that the complainant did not go for the medical check-up due to his work, the Administration should immediately send a letter to the “Health Centre” to request for another appointment. However, it looked like there was no such arrangement!

- (6) It is necessary to point out that: public servants going for medical check-ups is not a procedure to directly fulfil public interest, but an indirect way of seeking it. The objective of the government in setting up this policy is to hope that all public servants can devote themselves to work in good health and energetically, to maintain the efficiency and quality of public services in order to completely perform the duties of the related department.
- (7) In addition, as a unit of the public administration, the Maritime Administration should be clear of this: when the “Health Centre” arranged the staff to go for a medical check-up at 4pm, the Maritime Administration should cooperate as much as possible. Otherwise, if it was due to some matters that the staff could not go for the medical check-up, then it would affect the workflow of the Health Centre as well as their work efficiency. Therefore, the coordination and cooperation between public entities are crucial to enhance the whole public administration’s efficiency.
- (8) Besides, all public entities should comply with the principle of good faith in carrying out administrative activities. Article 8 of the *Code of Administrative Procedure* regulates:  
  
*“1. In any forms of administrative activities and in any stage of administrative activities, the public administration and private individuals should comply with the principle of good faith and build up the relationship between with each other.*  
  
*2. When complying with the above stipulation, it is necessary to consider the basic values of law that should be observed according to actual situations, especially in considering:*  
  
*a) The trust that is generated to the counterparts by the related activities;*  
  
*b) The aims to be achieved in the completed activities.”*

The so-called good faith is a moral as well as a legal standard for judging human behaviours. It requires the person to adopt an honest, correct and truthful attitude in any activities. From another perspective, the principle of good faith prevents dishonest and inappropriate behaviours. From a positive point of view, it requires the participants' cooperation and respect, their honesty to each other, but not acting inconsistently or conducting any behaviour that is detrimental to the reasonable expectations of the other party.

- (9) At last, it is worth noting one point: smooth operations of the organizations and the harmony between the superior and the employees are the key factors to enhance work efficiency. A prudent manager should not neglect this fact!

\* \* \*

### Part III: Conclusion

In conclusion:

- (1) **In the handling process, the approach that the Maritime Administration adopted was indeed inappropriate and also suspected of violation of the principle of good faith;**
- (2) **After the problem occurred, the Administration did not immediately adopt any remedy or reviewing measure;**
- (3) **There is still room for improvement regarding the mechanism and procedures for staff of the Administration to have medical check-ups at the health centre.**

\* \* \*

Besides, concerning the complaint against the bad attitude of the related supervisory staff, due to a lack of detailed information, follow-up measures could not be taken. Therefore, this part was archived.

\* \* \*

#### **Part IV: Recommendations**

As it is not an occasional arrangement for the staff of the Maritime Administration to go for medical check-ups at the Health Centre, under the existing mechanism it is expected that there will still be other staff going for medical check-ups at the Health Centre. As a result, similar cases may still occur. In order to prevent similar mistakes from occurring again, according to Item 12 of Article 4 of Law no. 10/2000 of 14<sup>th</sup> August (*Organizational Law of the CCAC*), the CCAC rendered the below recommendations to the Maritime Administration:

- (1) Make improvement and take perfecting measures for the issues mentioned above in Part II (Analysis), point 3 and point 4;
- (2) Send a letter to the “Health Centre” to arrange another medical check-up appointment for the complainant unless the complainant rejects or alternative arrangement has been made;
- (3) Stipulate the standard of time management for leave or absence for staff of the Maritime Administration to go for medical check-ups; establishing an applicable system that is reasonable and consistent.

\* \* \*

To inform the Maritime Administration and the complainant about this report and recommendations.

\* \* \*

Archive the case upon execution.

\* \* \*

Commission Against Corruption, 4<sup>th</sup> June 2010.

The Commissioner Against Corruption  
Fong Man Chong

**Conclusion:**

Inspiration of the case:

- (1) The administrative authorities should always record the time when receiving application documents and also the date of notifying the applicants.
- (2) Good time management is an essential factor in civil activities, while poor time management can cause various problems.
- (3) Public servants that are unable to receive scheduled medical check-ups due to the reason that they have to perform their job duties should be given assistance from the department in order to re-arrange the medical check-up.

## **Case IV – Drug Trial Programme**

### **Main Points:**

- The relationship between the responsibility of administrative authorities and any trial programmes
- Matters that are within the scope of duties and acts/activities that are beyond that scope and impairment done to public interest
- The risks of participating in the “drug trial programme” and the issue that should be considered in decision making

\* \* \*

### **A SUMMARY REPORT OF CONSULTING OVER THE PARTICIPATION OF “DRUG TRIAL PROGRAMME”**

**AND**

### **RECOMMENDATION (SUGGESTION) NO. 004/RECOM-CE/2010**

## **Part I: Causes and Facts**

1. On 20<sup>th</sup> May 2010, the Commission Against Corruption of Macao (hereafter the CCAC) received a letter from the Fire Services Bureau. Details are listed below:

*“Regarding the subject matter, attached is the copy of the letter issued by the University Hospital dated 10/03/2010. The letter mentioned that ‘Upon successful completion of the trial programme, an amount of MOP300 will be given as a reward for assisting in the scientific research project.’ Will this constitute conflict with the professional ethics and conduct of public servants? Please kindly assist*

*and provide with us the reply of your Commission.”*

2. Concerning the abovementioned “Drug Trial Programme” that could trace back to 10<sup>th</sup> March 2010, a letter was sent from the University Hospital to the Fire Services Bureau. The content is:

*“Please assist in recruiting volunteers of fast-paced group to participate in health supplements trial programme*

*“The research on health supplements for fast-paced people” has been the key research project of the Faculty of Chinese Medicine of the Macau University of Science and Technology since 2006. This was highly supported by the Science and Technology Development Fund. The research progress is developing smoothly and is ready to enter clinical trial stage. We hope that through the development of the Chinese health supplements, people’s physical fitness and immunity can be enhanced so as to better devote themselves to life and work.*

*The eight types of health supplements for trialling were the result of screening and modification from more than twenty health supplement prescriptions from Chinese medicine of all dynasties which were all clinically tested to be effective. Each of these was approved as imported traditional medicine by the Department of Pharmaceutical Affairs of the Health Bureau with permission to be used clinically.*

*Two hundred and forty eligible participants will be needed for this trial programme. Knowing that the work of the Fire Services Bureau is busy and intense, fire brigades and administrative personnel shall always maintain a good mental state. Therefore, we would like to invite the Bureau to support our project and kindly organize staff to participate in this health supplements trial. We would be grateful if we could hear positive reply from your side!*

*Participants of this trial not only have the chance to receive a free body check, take health supplements and get a small amount of money reward upon completion of the required task, but also will promote the spirit of scientific research and make contributions to society. Our institute can arrange doctors to come over to conduct an introductory seminar (taking about 40 – 60 minutes, including the time needed for completing questionnaires). Should there be any inquiries, please feel free to contact Miss XXX, Marketing Director of the University Hospital at*



*phone number: XXXX-XXXX.*

*Once again, we would like to express our sincere gratitude to you and the volunteers!"*

3. The content of the query from the Fire Services Bureau is: will the acceptance of the trial programme be in conflict with the "Integrity Management Plan"?

It is worth pointing out that, unlike the judiciary entities, the CCAC should perform its duties based not only "the principle of legality" but also "the principal of appropriateness" to determine the legitimacy and rationality of administrative activities.

In response, the CCAC made a comprehensive analysis of the issues involved.

\* \* \*

## **Part II: Analysis**

First of all, there is certainly no direct connection between this "Drug Trial Programme" and the duties of the Fire Services Bureau. As an administrative institution, it should take the following elements into account before deciding whether to participate in this programme or not:

- (1) The nature of this programme;
- (2) The nature of the invited unit (the Fire Services Bureau);
- (3) The relationship between this programme and the pursuit of public interest.

\* \* \*

### **1. The Nature of the Programme:**

This programme is developed by a private institution with the objective to assess

the functions of some drugs. According to the information provided by the organizer, the drug had been tested before and qualified by the related units in Mainland China. They were then expected to be tried on human body in the Macao market.

The design, operation and evaluation of the entire project were handled by the organizer completely. The Government was not involved and should not get involved.

Since this is a private programme, the participation of public authorities should comply with one condition: participating in this programme has to fulfil public interests and has to benefit the region, such as coping with serious or sudden illness. However this case does not fall into this category.

In addition, there are many other private companies also under the process of research, development and trial of new drugs. The Government is not eligible and should not participate in these businesses in the private market because this is simply a type of economic activity of private organizations. Therefore, the conclusion is: in such matter, the Government and the administrative authorities should remain neutral and should neither directly nor indirectly involve in the related procedures.

\* \* \*

## **2. The Nature of the Invited Unit:**

The Fire Services Bureau is a disciplined service in the Government. It is responsible for fire fighting and rescuing people. Fire-fighters are strictly trained and must always possess sound physical conditions. Once poor physical or mental health conditions developed, the staff and the Fire Services Bureau are not the ones affected merely. Personal safety and property security are put at risk too. For this reason, the Fire Services Bureau can only mobilise its personnel under the following circumstances:

- (1) To fulfil its responsibility for fire fighting and rescuing people, or public tasks of other nature;
- (2) To carry out group training or perform duties assigned by their superiors

within the scope of their work.

Therefore it is inappropriate to mobilise its personnel to participate or involve in the drug trial programme of private institutions. Otherwise it can be suspected of acting beyond one's power. It has to be vigilant.

Besides, it should consider the problems that may occur to the staff after the drug trial (note: each person has different physical constitutions, which may react differently to drugs. If negative effects occur to the staff, they will reflect the problem and request the Bureau to deal with it. In that case, the Bureau will take a very passive role. Under serious circumstances, the Government can be held liable of legal responsibilities).

Moreover, participating in this drug trial programme has nothing to do with fulfilling public interests. It will actually bear the chance of resulting in unclear factors that may undermine the Bureau's performance of duties.

From the perspective of public administration management, when the administration authority makes a decision, it should analyse the reason and the motive of relevant activities. When it comes to this case, did some staff members ever report any mental disturbances to their superiors and the need to seek any drug treatments?

We do not have any data in this area, even if there are fire-fighters that have mental disturbances, the Bureau should resort to the specialists in the Hospital Centre S. Januario, instead of accepting the trial programme provided by private institution.

There is therefore no reason for the Bureau to agree with participating in the drug trial programme.

With regard to motivation, the role or intention for fulfilling public interests cannot be seen.

If there is a need for individual staff, this should be left for the (individual) staff to decide.

However, it should always note that: if there are a large number of fire-fighters participating in this drug trial programme in an individual way, certain measures should be taken as long as the leadership has gathered such information. For instance, providing recommendations or explaining the risks of participation as well as evaluating the situation.

\* \* \*

### **3. The Connection between This Programme and the Pursuit of Public Interest :**

(1) According to the programme, the organizer would hold a large-scale seminar (about this programme and its content). We believe that it would not arrange the staff to participate after they are off duty. It should be noted that fire-fighters are required to work on shifts and such type of group activities may affect the staff resting time.

(2) As for the problem of granting “reward” to participants, if the “reward” is obtained due to the individual behaviour, it will not be a big problem under normal circumstances. However, if they participate in this trial programme with their identity as “fire-fighters”, then problems will occur: if the administrative authority gain benefits due to its group participation in the programme provided by a private company, although there is no direct association with its duties, it can affect the image of the administrative authority. Besides, once the precedent is broken, how can similar requests be dealt with in the future if other private companies have similar proposals?

(3) In fact, the most fundamental problem is: the participation in the “drug trial programme” is not intended for pursuing public interests or performing the duty of the Bureau. For this reason, whether the Fire Services Bureau directly or indirectly participating in this drug trial programme is indeed inappropriate. The key point is that there is a lack of legal basis for the Bureau to participate in this programme.

\* \* \*

### Part III: Conclusion

According to the above analysis, the CCAC believes:

- (1) The “Drug Trial Programme” does not have any direct association with the duties of the Fire Services Bureau;
- (2) Participating in this programme does not help to increase the law enforcement standard. It has nothing to do with duty implementation either;
- (3) Participating in this programme can affect the image of administrative authorities (especially in complying with the “principle of neutrality”) and thus easily gives rise to misunderstanding by the staffs or the public;
- (4) Participating in this programme may result in factors that might undermine the management of the Bureau as well as the mental status or physical functions of the staff in the department, hence it may affect the normal operation of the department;
- (5) Once the precedent is broken, it will be difficult to handle similar trial programmes in the future;
- (6) As the organizer stated in the letter that they would invite two hundred and forty people to participate in this programme, which means other government departments may receive the same invitation, especially the disciplined services. If so, they would be facing the same problem;
- (7) As this case did not involve illegality or maladministration and the related department sought consultation before making the decision (such attitude is worth of recognition). The CCAC believes that recommendations or decisions that are applicable for all government departments should be made promptly. Therefore, it should consider clarifying the problem and setting a unified handling approach through the intervention of the Chief Executive.

\* \* \*

#### Part IV: Recommendations

Based on the above conclusions, the CCAC made the following recommendation:

**If your Excellency, the Chief Executive, agrees with the content of this report, through the supervisory entities, this report can be delivered to their subsidiary departments for execution by your order: all departments in the public administration should not participate in the related “Drug Trial Programme” neither in group nor in the way of departmental cooperation.**

For consideration and decision of your Excellency, the Chief Executive.

\* \* \*

**Since this report was made due to the enquiry from the Fire Services Bureau, a copy of this report will be sent to the Fire Services Bureau for appropriate follow-up.**

\* \* \*

**Upon completion, archive this document together with the letter sent by the Fire Services Bureau.**

\* \* \*

Commission Against Corruption, 11<sup>th</sup> June 2010.

The Commissioner Against Corruption  
Fong Man Chong

**Conclusion:**

Inspiration of the case:

- (1) There is no direct relationship between the drug trial programme and the duties of the Fire Services Bureau.
- (2) Participating in this programme can affect the image of administrative authorities (especially in complying with the “principle of neutrality”) and thus easily gives rise to misunderstanding by the staff or the public.
- (3) Participating in this programme may increase unsafe factors in the management as well as the mental status or physical functions of the staff in the department, hence it may affect the normal operation of the department.

### **Case V – Master Antenna Service**

#### **Main Points:**

- Administrative authority should accurately adopt legal means when performing duties
- Right approach for right problems, clear schedule and adequate reasoning are required when handling problems (especially complaints)
- For the complaints from outside the territory of Macao SAR, the administrative authority should face them in an active way and adopt effective measures
- As one party of concession contract, the administrative authority should abide by “the principle of *pacta sunt servanda* (‘agreements must be kept’)”
- Administrative authority should be clear about the rights and obligations under administrative contracts as well as strictly observe applicable laws
- The scope of business activities of master antenna service suppliers and the relationship between them and the concession contract should be clearly defined

\* \* \*

#### **INVESTIGATION REPORT ON THE MACAU CABLE TV, LIMITED AND THE MASTER ANTENNA SERVICE SUPPLIERS**

**AND**

#### **RECOMMENDATION (SUGGESTION) NO. 005/RECOM-OP/2010**



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\* \* \*

**INVESTIGATION REPORT ON THE MACAU CABLE TV,  
LIMITED AND THE MASTER ANTENNA SERVICE SUPPLIERS**  
**AND**  
**RECOMMENDATION (SUGGESTION) NO. 005/RECOM-OP/2010**

**Part I: Cause**

1. On 20<sup>th</sup> May 2010, the Commission Against Corruption (CCAC) received a complaint letter from the Macau Cable TV, Limited via its lawyer. The content is summarized as follows:
  - 1) - The Bureau of Telecommunications Regulation (DSRT) has never enforced the law or supervised against the illegal transmission of TV signals by the master antenna service suppliers<sup>37</sup>. The DSRT has been turning a blind eye to these illegal behaviours and situations;
  - 2) - The DSRT does not protect copyright and related rights according to law;
  - 3) - The long-term omission by the DSRT, which is responsible for supervising and regulating pay terrestrial television service;
  - 4) - These may make Macao SAR, a member of the WTO, liable for international responsibilities.
2. Following preliminary analysis on the complaint, on 24<sup>th</sup> May, the CCAC sent a letter to the DSRT to request for all information related to the case for the CCAC to follow up and analyse the issues.
3. In the letter, the CCAC pointed out that: according to the information obtained,

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<sup>37</sup> Although the general public calls these entities which provide TV signals through master antenna as “antenna companies”, no information shows that all these entities are established and provide service as a type of companies defined by the *Commercial Code*. Therefore, we call them “master antenna service suppliers”.

over recent years, a number of (public and private) institutions in Mainland China and other places have written to the DSRT, stating that the master antenna service suppliers transmitted their TV channels without their authorization. Such behavior has infringed upon their rights and interests. Therefore, the CCAC requested the DSRT to provide written information about how to handle these cases and solve the problems.

4. On 28<sup>th</sup> May, the DSRT, via the Office of Secretary for Transport and Public Works, sent the CCAC the official letter no. 1718/29-20.00-138 disclosed with 27 files which contained various documents, including:
  - Files and information about the Macau Cable TV, Limited and the master antenna service business [Please refer to Appendix 1 and 2];
  - Technical documents about recognition of the system and equipment of wireless telecommunication of the Macau Cable TV, Limited;
  - Complaint letters, proposals, orders, etc.
5. The 27 files contained a total of 8,213 pages of documents, some of which were duplicated. Except the first 2,000 pages (approx.), the remaining documents did not contain page numbers and they were not chronologically arranged. Only part of the documents was categorized by nature of issue by marks with pencil. Many of the documents were grouped together without categorization. Moreover, no documents about follow-up were found in the files although there were simple orders concerning case handling, reflecting that what the DSRT submitted was not a systematic and complete administrative file with page numbers.
6. The DSRT's letter on 28<sup>th</sup> May indicated that:

*"2. Concerning the copyright of TV programmes, for the important letters ever received by the DSRT, please refer to Appendix 1. **The DSRT has promptly followed up and responded to the complaints respectively concerning the master antenna service and the cable TV** (Please refer to Appendix 1. For details of the process, please refer to the file mentioned in paragraph 1.) The DSRT would like to explain here, since matters about copyright are beyond the scope of competence of the DSRT, after prompt co-ordination, the DSRT*

*has already declared to the Macao Cable TV, Limited that the holders of the relevant copyrights could resolve the disputes by legal means*<sup>38</sup>.

3. After many rounds of negotiation, the master antenna service suppliers and the Macao Cable TV, Limited ***did not achieve a solution for the conflict of operation accepted by both sides***<sup>39</sup>. Therefore, the DSRT proposed a solution actively in February this year (Appendix 2). The proposal indicated the background stories.

4. The occurrence of the problems can be traced back to the days when the Pay Terrestrial Television Service Concession Contract had just signed. The both sides signing the contract ***did not render solutions of the problems concerning the master antenna service, resulting in different understandings of the scope of the concession services. Due to different reasons and considerations, the two sides in the dispute*** (the master antenna service suppliers and the Macao Cable TV, Limited) ***tended to collaborate with each other*** instead of filing lawsuit to the court. ***Therefore, the authorities have been fully cooperating with them and expediting relevant negotiation with an aim to seek a solution accepted by both***<sup>40</sup>.”

7. Since the submitted documents were plentiful and unorganized, the CCAC designated certain staff to arrange the documents in a systemic way and conduct preliminary analysis in order to follow up the case.
8. On 6<sup>th</sup> August 2010 (Friday), the CCAC received a phone call from the Director of the DSRT, saying that due to needs from work, the DSRT would like to dispatch three staff members to the CCAC to retrieve some documents on 9<sup>th</sup> August. On that day three staff members came to view the documents until the afternoon. They selected 827 pages of the documents. In the morning on 12<sup>th</sup> August, the CCAC made an authenticated copy of the 827 pages of document in request and gave it to the staff of the DSRT.
9. The documents and files were plentiful and many of them were incomplete and undated, order based on the natures of issues or page numbers, which are necessary for administrative files. Therefore, the CCAC arranged the documents

<sup>38</sup> The underline is inserted by the CCAC.

<sup>39</sup> Same as above.

<sup>40</sup> Same as above.

and inserted file numbers for reference. At the same time, a list of summary of the important facts related to this complaint in the 27 files was made. The list is the Appendix of this recommendation.

10. In the afternoon on 16<sup>th</sup> August 2010 (Monday), the CCAC received another request from the DSRT for some information in the files. In the morning on 19<sup>th</sup> August (Thursday), the CCAC made an authenticated copy of the requested 125 pages of documents and gave it to the DSRT.
11. Following preliminary analysis of all information, it was discovered that the DSRT did not submit all information about the case to the CCAC. Therefore, on 6<sup>th</sup> September 2010, the latter wrote to the former again to request for supplementary information and staff members to provide explanation about the documents provided.
12. On 8<sup>th</sup> September 2010, the DSRT replied the CCAC with an official letter (no. 1425/STOP/2010) via the Office of Secretary for Transport and Public Works disclosed with the supplementary information in request. Two supervisory staff members were dispatched to the CCAC to explain and clarify relevant questions and suspicions.

\* \* \*

## Part II: Facts

1. On 22<sup>nd</sup> April 1999, the Macau Cable TV, Limited and the then Macao government signed the **Pay Terrestrial TV Service Concession Contract**<sup>41</sup>(*contrato de concessão do serviço terrestre de televisão por subscrição*). The concessionaire shall transmit audio-visual signals to users who have paid for the exclusive service according to the terms and conditions in the concession contract. The term of the contract was 15 years. (Please refer to Article 3 of the contract.)
2. The then Portuguese government of Macao commissioned a third party to conduct a research report (for details, please refer to the Macao CATV research report provided on 7<sup>th</sup> October 1998 by the Pan Asian Systems Limited (Incl. A.S Watson and Hutchison Whampoa Limited. [P.5-379])

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<sup>41</sup> Published in Series II, Issue no. 18 of the *Official Gazette of the Macao SAR Government* dated 5<sup>th</sup> May 1999 .

3. On the other hand, the fact commonly known by the public is that: Since the 1960s-1970s when free TV channels such as the Television Broadcasts Limited (TVB) and the Rediffusion Television (RTV) were founded in Hong Kong, master antenna service suppliers have emerged in Macao to provide wireless television signals for consumers in a simple way (e.g. microwave transmittance and later amplifier).
4. Due to development of technologies and broadcasting, traditional wireless television service started to develop and thus complicated services with partial pay items have emerged. Various master antenna service suppliers emerged and many of them established joint service networks with property management services.
5. The main master antenna service suppliers in Macao include:

No.	Name of company
1	Tak Va Electronic System Engineering Company
2	Fai Chit Electronic Company
3	Sai Kai Electrical Engineering Company
4	Kong Seng Paging Ltd.
5	Tak Chou Electronic System Eng.
6	Hoi Ying Ocean Electronic System
7	Kou Fong Elect. System Eng. Co.
8	Son Ton Electronic System Eng.
9	Son Vo Electronic Security Engineering Company
10	Hi-Tech Communication Company
11	Sing Fei Technological Engineering Company
12	Hap Heng Hong Property Agency and Electronic Engineering
13	Kam Weng Electronic Engineering
14	Fat Kei Engineering Company
15	Jin Hung Material Technology
16	Kou Tat Hong Elect. System Eng. Co.

6. The information from the DSRT showed that “when it was first set up, the Macau Cable TV, Limited expected to increase the number of clients to 10,000 in the end of 2000 and cooperated with five master antenna service suppliers already. [See P. 1185 of the documents and a news article in *Macao Daily News* dated 8<sup>th</sup> August 2000.]”

\* \* \*

7. Besides, the government conducted consultation on the “communicator licensing system” under telecommunication regulations and made the relevant document on 8<sup>th</sup> September 2000. [See P. 994-1023]
8. “The case of dispute and negotiation about antenna service” occurred in 2000. A news article entitled “**Macau Cable TV, Limited expects to increase clients to 10,000 and has cooperated with five master antenna service suppliers**” was published in *Macao Daily News* dated 8<sup>th</sup> August 2000. [See P. 1185]
9. Since 2001, leaders of many international channels have filed complaints about “**stolen channels**” to relevant entities in Macao as below:
  - 1) - On 31<sup>st</sup> July 2001, the manager of the development department of STAR sent a letter entitled “The Copyright of STAR’s Channel” to Mega Media Broadcast Network with c.c. to the Office of Telecommunication and Information Technology Development.<sup>42</sup>[See P. 854-855]
  - 2) - On 20<sup>th</sup> September 2001, the Deputy Chief Consultant of ESPN STAR Sports sent a letter entitled “The Copyright of ESPN STAR Sports’ TV Broadcasting Service” to the Coordinator of the Office of Telecommunication and Information Technology Development and the master antenna service suppliers for complaint. [See P. 1675-1680]
  - 3) - On 7<sup>th</sup> January 2003, the ESPN STAR Sports sent a letter entitled “About Infringement upon Copyright of ESPN STAR Sports” to Hotel Lisboa Macau. [See P. 2542-2543]

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<sup>42</sup> The Office was founded on 30<sup>th</sup> June 2000. On 15<sup>th</sup> May 2006, it was renamed the Bureau of Telecommunications Regulation.



- 4) - On 16<sup>th</sup> December 2004, the China International Television Corporation sent a statement to the Office of Telecommunication and Information Technology Development indicating that the company is the exclusive overseas distributor of copyrighted programmes and channels. [See P. 2720]
- 5) - During 30<sup>th</sup> March to 11<sup>th</sup> April 2004, some citizens filed a complaint alleging that “the Macau Cable TV, Limited inserted the advertisement of Wei Ai Hospital of Zhuhai during the advertising time on TVB”. [See P. 2963-2968]
- 6) - On 10<sup>th</sup> January 2005, the Macau Cable TV, Limited sent a letter about “illegal transmission of CCTV and ETTV” to the Office of Telecommunication and Information Technology Development. [See P. 2717]
10. In January 2005, the Office of Telecommunication and Information Technology Development sent letters to the master antenna service suppliers, stating that their behaviour had infringed upon the copyright and urging them to stop it. The content was:

*“The Office of Telecommunication and Information Technology Development has recently received the certificate and joint statement from the Eastern Broadcasting Co. Limited (EBC) and the Macau Cable TV, Limited (Attachment 1) and a statement from the China International Television Corporation (Attachment 2), which are summarized respectively as below:*

- i. The EBC and the Macau Cable TV, Limited jointly declare that the latter is the exclusive receiver and transmitter of the TV programmes of ETTV channels in Macao. Receiving or distributing the signal of ETTV channels by any third parties except the Macau Cable TV, Limited is illegal and constitutes infringement upon the copyright of the programmes and the right of the company to broadcast the programmes.*
- ii. The China International Television Corporation declares that it has never authorized any TV channels, companies or individuals to transmit CCTV-1 and CCTV-5. Therefore, transmitting CCTV-1 and CCTV-5 in Macao is illegal.*

***We hereby remind your company to strictly abide by the regulations on the copyrights of TV programmes. Without authorization, the programmes shall not be transmitted in Macao SAR.”***

11. On 2<sup>nd</sup> March 2005, the Office of Telecommunication and Information Technology Development sent another letter to a master antenna service supplier indicating that:

*“Recently, we have received a letter from the United Broadcasting Corporation Plc. (UBC) via the Macau Cable TV, Limited (see the attachment) which indicated the following statement about concession:*

*‘Under such concession, we broadcast UBC programs only in Thailand. We do not have the right to overseas broadcast and never authorize any individual and company to sell or redistribute UBC programs.’*

*Therefore, we hereby remind your company again to strictly abide by the regulations on the copyrights of TV programmes. Without authorization, the programmes shall not be broadcasted in Macao SAR.”*

12. On 16<sup>th</sup> November 2007, the DSRT received a complaint from TVB:

**“Unauthorized Retransmission of TV signals**

*We, Television Broadcasts Limited (“TVB”), are a well known television broadcast company in Hong Kong SAR. We act for TVB group of companies which respectively own various television channels such as “TVBS News”, “TVB 8”, “TVB星河”, “TVBS Asia”, “TVBS-G”, “TVBS” (collectively “Channels”).*

*It has recently come to our notice that you have been illegally receiving and retransmitting the signal of the Channels without TVB group of companies’ authorization. (...).”*

13. On 6<sup>th</sup> October 2008, the DSRT sent a letter to another master antenna service supplier, indicating that:

*“The DSRT has received a letter enclosed with relevant documents from the ESPN STAR Sports (hereinafter designated as “ESS”) dated 28<sup>th</sup> August 2008, indicating that it was authorized and offered sub-license by the Football Association Premier League Limited to exclusively transmit the English Premier League Seasons 2007/08, 2008/09 and 2009/10 in Macao SAR. Currently, the Macau Cable TV, Limited is the one exclusively sub-licensed by the ESS to broadcast the aforementioned matches. In other words, retransmission of any of the matches in Macao without ESS’s sub-license is illegal.*

*The DSRT hereby urges your company to pay attention to the regulations of copyright and applicable laws in order to avoid infringement upon copyrights due to illegal transmission.”*

14. According to the supplementary explanation made by the Deputy Director and the Chief of Division of Regulation Affairs of the DSRT in the CCAC on 10<sup>th</sup> September 2010, the DSRT’s method to deal with the problems concerning copyright of TV programmes was to notify the master antenna service suppliers of the cases. Also, in 2005, the DSRT co-organized seminars with other associations in order to promote the importance of copyright of satellite TV programmes as well as published and distributed leaflets to the mailboxes of units at residential buildings in Macao. Meanwhile, the DSRT also had a meeting with the Macao Customs Service and Economic Services Bureau to discuss possible solutions. (However, there was no written record.) [See the “record” of the statements made by the Deputy Director and the Chief of Division of Regulation Affairs of the DSRT at the CCAC on 10<sup>th</sup> September 2010.]
15. On 5<sup>th</sup> September 2001, the Coordinator of the Office of Telecommunication and Information Technology Development sent a registered letter entitled “Master antenna service suppliers have no right to receive or transmit satellite TV programmes (CCTV and UBC)” to Chi Fu and other electrical companies. [See P. 807-830]
16. On 10<sup>th</sup> October 2001, the Coordinator of the Office of Telecommunication and Information Technology Development sent a registered letter about illegally “receiving and transmitting ESS’s TV programmes” to a number of master antenna service suppliers, including:
  - 1) - *Proprietário de Material Technology Jin Hung;*

- 2) - *Gerente de Macsat-Ser. Saté., Lda.;*
  - 3) - *Gerente de Hi-Tech Com. C. Lda.;*
  - 4) - *Gerente de C. de Fomento e Inv. Predial Hopson Lda.;*
  - 5) - *Proprietário dos Artigos Elétricos Tico;*
  - 6) - *Proprietário dos Artigos Elétricos Chi Fu;*
  - 7) - *Proprietário da Agência Comercial Electrónico Kam Wing;*
  - 8) - *Gerente da Megamedia;*
  - 9) - *Rede de Comunicação (Hong Kong / Macau) Lda.;*
  - 10) - Others included Sai Kai Electrical Engineering Company, Tak Va Electronic System Engineering Company, Fai Chit Electronic Company, Hoi Ying Ocean Electronic System, Tak Chou Electronic System Eng., Sing Fei Technological Engineering Company, Kong Seng Paging Ltd. and Son Vo Electronic Security Engineering Company, etc. [See P. 1552-1582]
17. On 18<sup>th</sup> December 2001, the Chairman of Board of Directors of the Macau Cable TV, Limited sent a letter to the Office of Telecommunication and Information Technology Development to complain that there were “some cable companies of low quality” transmitting TV programmes illegally and property management companies intervening the company’s development. The company thus requested for permission of lowering the company’s capital share to less than the minimum percentage as required by Article 27 of the concession contract (25%). [The original version is in Portuguese, see P. 4640-4641.]
  18. In 2002, many property management companies refused the Macau Cable TV, Limited to install public TV cables in the flats [see P. 1434-1435], but some citizens hoped that cable TV channels would be available in their flats (for example, on 7<sup>th</sup> January 2002, XXX sent a letter entitled “Wa Po Management Company rejects Macau Cable TV, Limited to install cable network” to the

Chief Executive of Macao SAR Government, XXX from a consumer protection service, XXX (RAEM), XXX (GDTTI), the Judiciary Police and daily newspaper *Hoje Macau*). [See P.1365]

19. The shares of the Macau Cable TV, Limited has been transferred a few times (for example, on 23<sup>rd</sup> January 2002, the Coordinator of the Office of Telecommunication and Information Technology Development submitted a proposal to the Secretary of Transport and Public Works about “Purchase of shares of the Macau Cable TV, Limited by the China Cable Net Co., Ltd”) [see P. 1271-1273]
20. In the same year, the Macau Cable TV, Limited filed a lawsuit to the Administrative Court against the payment of terrestrial television general fees. [See P. 1698-1747]
21. Many master antenna service suppliers continued to illegally transmit TV programs and infringe upon the regional retransmission rights of some TV channels including UBC, CCTV4, CCTV5, FTV and ESPN ASIA Mandarin. (See a signed report by an individual dated 25<sup>th</sup> September 2002) [See P. 2627-2632]
22. On 3<sup>rd</sup> October 2002, ESPN STAR Sports sent another letter entitled “About the Infringement upon the Copyright of ESPN STAR Sports” to the Coordinator of the Office of Telecommunication and Information Technology Development. [See P. 2620-2625]
23. Since 2003, the Macau Cable TV, Limited basically applied to the Secretary for Transport and Public Works for exemption from payment of reward fees each year for its “loss caused by the infringement upon its concession by many illegal operators”. [See P. 2620-2625]
24. Between 2004 and 2010, many TV channel operators and the Cable and Satellite Broadcasting Association of Asia (CASBAA) also sent complaint letters after knowing the situation of illegal transmission in Macao. Some of them even sent a letter to the Director of DSRT for enquiry and objection. For example, on 31<sup>st</sup> December 2004, the EBC publicized a certificate to prove that the Macau Cable TV, Limited was the only operator authorized to receive the signal of its TV channels. [See P. 2717-2720]

25. Over many years, the Macau Cable TV, Limited, the government and the master antenna service suppliers have proposed their own solution methods and conditions. For example, on 30<sup>th</sup> April 2003, the Executive Director-General of the Macau Cable TV, Limited sent a letter about “the meeting of consultative committee of Macau Cable TV, Limited” to the Secretary for Transport and Public Works with c.c. to the Coordinator of the Office of Telecommunication and Information Technology Development. [See P. 6476-6479]
26. The master antenna services suppliers made different responses respectively (on 2<sup>nd</sup> September 2005, Kong Seng Paging Ltd., Tak Chou Electronic System Eng., Sai Kai Electrical Engineering Company, Fai Chit Electronic Company, Tak Va Electronic System Engineering Company and Hoi Ying Ocean Electronic System released a statement entitled “Suspension of Transmission of Some Channels According to the Instruction of DSRT” to the general public.) [See P. 3235]
27. On 17<sup>th</sup> November 2003, the High-Tech Communications Company sent a letter entitled “Response to the Response by the Macau Cable TV, Limited on the Case of Interference in TV Signal on 13<sup>th</sup> November” to the Coordinator of the Office of Telecommunication and Information Technology Development. [See P. 3129]
28. Since the problem had not yet been solved until 2005 and due to technological development, changing of the situation, re-distribution of interests and new competitors, the case became more complicated (on 12<sup>th</sup> July 2005, the master antenna service suppliers, such as Kong Seng Paging Ltd., Tak Chou Electronic System Eng., Sai Kai Electrical Engineering Company, Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Hoi Ying Ocean Electronic System and Hi-Tech Communications Company sent letters about “Effect by the transmission of copyrighted TV programmes by new operators” to the Coordinator of the Office of Telecommunication and Information Technology Development. Also, some unknown “master antenna service suppliers” entered the market). [See P. 3320]
29. In 2005 (as shown by the news reports contained in the file), the Office of Telecommunication and Information Technology Development stated that it would carry out patrol and suppress unlicensed satellite stations. On 11<sup>th</sup>

November 2005, the Office of Telecommunication and Information Technology Development, the Macau Cable TV, Limited and the master antenna service suppliers had the first meeting with minutes. [See P. 4564-4572]

The main points discussed in this meeting are:

*“The Coordinator of the Office of Telecommunication and Information Technology Development continued to point out that the following principles should be observed during negotiation:*

- *The negotiations should be conducted under the framework of the cable TV concession contract;*
- *Part of the consensus reached by previous negotiations between the Macau Cable TV, Limited and the master antenna service suppliers will be the base of this meeting;*
- *The extent of the government’s recognition, lowering the influence and economic burden on citizens, creating good investment environment, introducing new technologies and improving current network building should be the factors of the suggestions brought up in this meeting.*

*As for making the minutes, the Office considered that since the related parties were the Macau Cable TV, Limited and the suppliers, it suggested both sides conducting the work based on mutual agreement. After discussion, they decided to make the minutes on rotation, while the minutes for the first meeting was made by the Macau Cable TV, Limited.*

*The suppliers first suggested that this meeting should not be based on any frameworks and the government should consider issuing licenses to relevant companies and retreat or repeal the concession contract with the Macau Cable TV, Limited. The Office explained that there were difficulties in the legal aspects on issuing such licenses, while currently the government did not intent to retreat or repeal the contract. The Office suggested that all of them should try to reach a consensus in the meeting in order to solve the existing problems.*

*The representative of the Macau Cable TV, Limited, Mr. XXX, requested*

*the master antenna service suppliers explain how many and which suppliers attended this meeting. They replied that those which attended this meeting were the suppliers that had attended the previous negotiations and were designated by the Macau Cable TV, Limited. The Office suggested the master antenna service suppliers choose one of them as their representative to attend the meetings in the future so that the results would be representative. The suppliers that attended the meeting promised to notify other suppliers of all contents of this meeting and notify the Office of their representative by the end of next month. Then the Macau Cable TV, Limited described its understanding of the current TV signal retransmitting market:*

- The Macau Cable TV, Limited provides exclusive terrestrial cable TV transmission service in Macao;*
- The master antenna service suppliers are companies for maintenance of TV network;*
- The master antenna service suppliers transmit terrestrial TV signals, satellite TV signals which are not encrypted, encrypted satellite TV signals being broadcasted by the authorised companies in Macao and encrypted satellite TV signals which are uncopyrighted in Macao.*

*The Macau Cable TV, Limited also thought that before carrying out the negotiation to resolve the conflict about operation, the suppliers should stop transmitting uncopyrighted satellite TV channels. The suppliers replied that it was not appropriate to stick to the aforementioned stance of the Macau Cable TV, Limited for the time being. Otherwise, the progress of the negotiation would return to the beginning and it would be a waste of time. The Office thought that copyright should be respected and the government's stance concerning copyright had not changed, but it stressed that both sides should be sincere in order to resolve the conflict as soon as possible.*

*The master antenna service suppliers mentioned the company's pledge about building and possession of network in the past was that the former possessed the network, while the latter rent the network. They also mentioned the situation of division of channels transmitted, i.e. the master antenna service suppliers broadcast the four Hong Kong-based terrestrial TV channels, while*



*the Macau Cable TV, Limited transmits the satellite channels. The suppliers noted that they possessed the authorization of some satellite channels but did not submit any substantial proofs during the meeting. The Macau Cable TV, Limited asserted that during the previous meetings with the suppliers, although they discussed different solutions, the discussions could not be considered as any agreement or promise.”*

30. On 10<sup>th</sup> November 2005, the master antenna service suppliers (Sing Fei Technological Engineering Company, Jin Hung Material Technology, Hap Heng Hong Property Agency and Electronic Engineering, Son Ton Electronic System Eng., Fat Kei Engineering Company, Kam Weng Electronic Engineering, Kou Fong Elect. System Eng. Co. and Kou Tat Hong Elect. System Eng. Co.) sent a letter about “we would like to discuss the solution ‘united master antenna service’ proposed by your Office” to the Coordinator of the Office of Telecommunication and Information Technology Development. [See P. 3858]
31. On 11<sup>th</sup> November 2005, the minutes of the first meeting between the Office of Telecommunication and Information Technology Development, the Macau Cable TV, Limited and the master antenna service suppliers indicated that: issues such as the master antenna licensing under the current legal framework, property management and the suspension of antenna channels by the government in August were discussed in the meeting. [See P. 3801-3806]
32. On 15<sup>th</sup> November 2005, the Coordinator of the Office of Telecommunication and Information Technology Development rejected a lawyer’s “enquiry on files” through a reply letter. At that time, the master antenna service suppliers were going to hire a lawyer to intervene in the case but were rejected by the Office. [See P. 3860-3861]
33. On 6<sup>th</sup> March 2006, the person-in-charge of Fai Chit Electronic Company sent a letter about the statement of Fai Chit Electronic Company to the Coordinator of the Office of Telecommunication and Information Technology Development. [See P. 4573]
34. On 17<sup>th</sup> March 2006, the CEO of the Macau Cable TV, Limited sent a letter entitled “*Antenna companies-Negociação*” (Antenna companies-Negotiation) to the Coordinator of the Office of Telecommunication and Information

Technology Development. [See P. 5280-5281]

35. On 5<sup>th</sup> April 2006, eight master antenna service suppliers (Sing Fei Technological Engineering Company, Hap Heng Hong Property Agency and Electronic Engineering, Kou Fong Elect. System Eng. Co., Kou Tat Hong Elect. System Eng. Co., Fat Kei Engineering Company, Kam Weng Electronic Engineering, Jin Hung Material Technology and Son Ton Electronic System Eng.) made a reply to the Macau Cable TV, Limited about “Nine principles of negotiation”. [See P. 4560]
36. On 15<sup>th</sup> February 2007, Sing Fei Technological Engineering Company, Fat Kei Engineering Company, and Material Technology Jin Hung sent a letter about “comments on solving the problems concerning operation of master antenna service in Macao” to the DSRT. [See P. 4538-4543]

\* \* \*

37. In 2007, the Macau Cable TV, Limited introduced new shareholders and CEO, while Lao Si Io assumed the position of the Secretary for Transport and Public Works – the hierarchical superior of the DSRT.
38. During the negotiation period, the CEO of the Macau Cable TV, Limited sent a letter about “safeguard of the right to broadcast English Premier League possessed by the Macau Cable TV, Limited” to the Director of the DSRT on 9<sup>th</sup> June 2007. [See P. 3547]
39. The CEO of the Macau Cable TV, Limited sent a letter about “seeking suppression of unauthorized broadcasting of English Premier League by the master antenna service suppliers” to the Director of the DSRT on 9<sup>th</sup> June 2007. [See P. 5569]
40. On 8<sup>th</sup> March 2007, the Director of the DSRT sent a letter about “construction of cable network” to Sing Fei Technological Engineering Company, Fat Kei Engineering Company and Jin Hung Material Technology. [See P. 4527-4530]
41. On 20<sup>th</sup> August 2007, the master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai

Electrical Engineering Company, Tak Chou Electronic System Eng., Hi-Tech Communication Company, Hoi Ying Ocean Electronic System, Kou Fong Elect. System Eng. Co. and Son Ton Electronic System Eng.) sent a letter about “request for suspension of all actions of removal of antenna networks” in the name of “Master Antenna Network Co. Limited” to be established soon. [See P. 4485] Later, the DSRT stated in newspapers that construction of antenna network by the master antenna service suppliers without the government’s approval was illegal; therefore the networks should be removed.

42. In December 2007, some reports indicated that digital broadcasting was going to be launched in Hong Kong, while analog broadcasting would be replaced gradually in four years. The DSRT stated that it hoped to resolve the chaotic situations the Macau Cable TV, Limited and the master antenna service suppliers were facing and that the problems should be solved in three steps: to avoid aggravation of the situation, to take the initiative to negotiate and to clearly identify the services that the Macau Cable TV, Limited and the master antenna service supplies provide respectively. [See P. 7371]
43. The DSRT sent letters to the master antenna service suppliers, indicating that they should not receive or transmit the digital TV programmes of Hong Kong through unauthorized networks across public roads. Otherwise, the DSRT would suppress such behaviours. [See P. 4521-4537]
44. In early 2008, the DSRT proposed a cooperation plan for the Macau Cable TV, Limited and the master antenna service suppliers but the Macau Cable TV, Limited replied that the cooperation plan would severely violate the Pay Terrestrial Television Service Concession Contract and thus would not accept it. [See the letter “Response to Cooperation Plan for the Macau Cable TV, Limited and Master Antenna Service Suppliers” to the Director of the DSRT from the CEO of the Macau Cable TV, Limited dated 4<sup>th</sup> January 2008 (See P. 7767-7814)]
45. Between 2007 and 2008, the Macau Cable TV, Limited and the representatives of the TV channels and the Cable & Satellite Broadcasting Association of Asia (CCSBAA) continued to meet with the DSRT many times to discuss the serious problems concerning unauthorized transmission in Macao. [See P. 7355]

46. In early 2008, some foreign channels continued to send warning letters to the master antenna service suppliers about “unauthorized transmission of English Premier League” and “unauthorized transmission of TV channels”. Such as:
  - 1) - The letters “The TV Signals Broadcasted without Authorization” dated 17<sup>th</sup> January 2008 sent by the Deputy CEO of FTV, to Hi-Tech, Hoi Ying Ocean, Tak-Chou, Sai Kai, Tak Va and Fat Chit, etc. [See P. 5958-5964]
  - 2) - The letters entitled “The English Premier League transmitted without authorization” dated 15<sup>th</sup> January 2008 sent by ESPN Director, Hi-Tech, Kao Fong, Fai Chi, Hoi Ying Ocean, Tak Va and Sai Kai, etc. [See P. 5965-5966]
47. In January 2010, the DSRT indicated many times on newspapers that it was illegal for master antenna service suppliers to transmit high-digital TV signals. [See P. 7361 and after]
48. According to the information provided by the Macau Cable TV, Limited, during the meeting between the representative of the Macau Cable TV, Limited, the Secretary for Transport and Public Works, Lao Si Io, and the Director of the DSRT on 7<sup>th</sup> January 2010, Lao asserted that the DSRT should enforce the law with the support from the Macau Cable TV, Limited. [See P. 7387]
49. In January 2008, the DSRT continued to remove illegal cable networks and adopt relevant measures, including:
  - 1)- On 22<sup>nd</sup> January 2008, the DSRT and the Macau Cable TV, Limited had a meeting about “the follow-up on removal of the cable network of Tak Va”; [See P. 4235]
  - 2)- On 22<sup>nd</sup> January 2008, the Director of the DSRT wrote to the CEO of the Macau Cable TV, Limited about “removal of illegal cable networks” so that when the next phase of the removal started, the company would transmit its signal to cover related areas. [See P. 3534]
  - 3)- On 29<sup>th</sup> January 2008, the Director of the DSRT sent a letter to the Director of the Judiciary Police about “removal of the illegal **coaxial cable** newly

installed by Tak Va” with explanation. [See P. 4442]

50. On 29<sup>th</sup> January 2008, the transmission of TV signals in some areas of Macao was suspended. On 30<sup>th</sup> January, the Director of the DSRT sent a letter about “Follow-up on suspension of transmission of TV signals in some areas of Macao” to some master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai Electrical Engineering Company, Tak Chou Electronic System Eng., Hi-Tech Communication Company, Hoi Ying Ocean Electronic System, Kou Fong Elect. System Eng. Co. and Son Ton Electronic System Eng.). [See P. 4431-4438]
51. Since the case of suspension happened, the DSRT has never taken any actions. Therefore, the Macau Cable TV, Limited, via its lawyer, urged the DSRT many times to immediately suppress illegal networks and transmission of TV signals through letters, Since then, the DSRT and the lawyer had a series of interactions – on 11<sup>th</sup> March 2008, the Macau Cable TV, Limited authorized its lawyer to send a letter “Complaint to the DSRT and request for prompt suppression of illegal transmission of high digital TV signal under the law” to the Director of the DSRT. [See P. 4399-4401 and P. 6232-6239]
52. On 9<sup>th</sup> May 2008, the lawyer of the Macau Cable TV, Limited sent a letter to the Director of the DSRT to complain about “illegal transmission of TV signal and violation of copyright”. [See P. 6226-6231]
53. On 19<sup>th</sup> May 2008, the Director of the DSRT replied to the lawyer of the Macau Cable TV, Limited to “request for relevant proofs for authorization of TV signals transmission possessed by the Macau Cable TV, Limited”. [See P. 6225]
54. On 3<sup>rd</sup> June 2008, the Director of the DSRT sent a letter entitled “response to the complaint over illegal transmission of TV signals and infringement upon copyright” to the lawyer of the Macau Cable TV, Limited, indicating that it had written to TVB to request for clarification of the problems concerning high digital signal. [See P. 6224]
55. On 3<sup>rd</sup> July 2008, the lawyer of the Macau Cable TV, Limited sent a letter to the Director of the DSRT for criminal report and complaint concerning “response to the DSRT’s letter no. 2729/03-811 (about illegal transmission of TV signals

and infringement upon copyright)". [See P. 6219-6223]

56. On 31<sup>st</sup> July 2008, the Director of the DSRT replied to the lawyer of the Macau Cable TV, Limited concerning "illegal transmission of TV signals and infringement upon copyright"/ matters concerning failure of fulfillment by the Macau Cable TV, Limited. [See P. 6217]
57. In the meantime, some legislators and media concerned and intervene in the case, making the situation more complicated. It was clearly reflected in the DSRT's response to a legislator's query<sup>43</sup>.
58. On 14<sup>th</sup> March 2008, the DSRT pointed out in its response to a query of the Legislative Assembly that: the construction and operation of master antenna networks do not conform to legal requirements. However, it is necessary to respect the problems left by the history. It also noted that the government would continue to take into account the operational and technical aspects while expediting commercial cooperation between the master antenna service suppliers and the Macau Cable TV, Limited. The government would identify the scope of services provided by both sides respectively under the law in order to properly solve the problems that had existed for a long time. [See P. 7391]
59. On 14<sup>th</sup> March 2008, the Director of the DSRT sent a letter to the Macao Master Antenna Network Co. Limited about "construction and removal of cable networks". [See P. 7816-7820]
60. On 10<sup>th</sup> April 2008, the Director of the DSRT sent a letter "about opening the cable networks to master antenna service suppliers" to the CEO of the Macau Cable TV, Limited for enquiry. [See P. 4396]
61. On 26<sup>th</sup> May 2008, the CEO of the Macau Cable TV, Limited sent a letter "about deliberate damage to the antenna amenities of the Macau Cable TV, Limited (Hoi Van Garden at Taipa)" and "about deliberate damage to the antenna amenities of the Macau Cable TV, Limited (*Rua do Canal Novo*)" to the Director of the DSRT. [See P. 4377 (same as P. 6429) and P. 4378 (same as P. 6430)]
62. On 9<sup>th</sup> February 2009, the Director of the DSRT reported to the Secretary for

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<sup>43</sup> The Legislative Assembly's query letter no. 015/E12/111/GPAL/2008 on 7<sup>th</sup> January. [See P. 7391]

Transport and Public Works about “response to the request made by the Macau Cable TV, Limited (exemption of a number of fees)”. [See P. 6407-6411]

63. On 16<sup>th</sup> and 19<sup>th</sup> February 2009, the lawyer of the Macau Cable TV, Limited (with a letter of authorization attached) sent a letter about “unidentified reasons for recovery of radio frequency 2.5-2.7Ghz and problems concerning master antenna service” to the DSRT and the Secretary for Transport and Public Works respectively. [See P. 4060-4083]
64. On 25<sup>th</sup> February 2009, the lawyer of the Macau Cable TV, Limited sent a letter about launching “(new) multi-functional interactional TV service” to the Director of the DSRT. [See P. 7625-7630]
65. In March 2009, the lawyer of the Macau Cable TV, Limited sent a letter to the DSRT to complain that the Macao government had violated the concession contract, the law and international obligations and request for feasible solutions of the illegal situations. [See P. 7624-7665]
66. According to the files submitted by the DSRT, between 2008 and 2009, the DSRT still received many written reports about copyrights and illegalities from local and foreign TV signal broadcasters. For example:
  - 1) - On 9<sup>th</sup> July 2008, the STAR Group Limited sent a letter “response to the transmission of TV signal without authorization” to the DSRT. [See P. 4342-4347]
  - 2) - The report made by the CEO of the Macau Cable TV, Limited to the DSRT about “the illegal satellite receivers at Kam Fu Court, San Ip Building and Mayfair Court” (enclosed with some photos) on 19<sup>th</sup> August 2009. [See P. 3997-3999]
  - 3) - On 26<sup>th</sup> August 2009, the Macau Cable TV, Limited sent a letter “complaint over illegal transmission of English Premier League” to the Director of the DSRT. [See P. 3996]
67. In November 2009, the Macau Cable TV, Limited applied for conservatory measures for the ban on transmission of English Premier League taken by the

court (see the proposal “Remedy for the Macau Cable TV, Limited” made by the Director of the DSRT to the Secretary for Transport and Public Works on 19<sup>th</sup> November 2009). [See P. 6399-6401]

68. The “Association of Master Antenna Engineering of Macao” also sent a letter about the adjudication of conservatory measures by the court to the Chief Executive to seek help. (See the letter “FW: the letter from the Association of Master Antenna Construction of Macao” sent by the Chief of Cabinet of the Chief Executive to the Chief of Office of the Secretary for Transport and Public Works). [See P. 7891-7899]
69. On 21<sup>st</sup> January 2010, six master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai Electrical Engineering Company, Tak Chou Electronic System Eng., Hoi Ying Ocean Electronic System and Kou Fong Elect. System Eng. Co.) sent a letter to the Director of the DSRT to propose solutions to the dispute with the Macau Cable TV, Limited. [See P. 7477]
70. On 27<sup>th</sup> January 2010, the Macau Cable TV, Limited sent a letter to the DSRT via its lawyer to reject the solution proposed by the DSRT. [See P. 4312-4318]
71. The DSRT had meetings with the Macau Cable TV, Limited on 27<sup>th</sup> January and 3<sup>rd</sup> and 24<sup>th</sup> February 2010. [See P. 7673-7674]
72. On 26<sup>th</sup> February 2010, the Director of the DSRT sent a letter to the CEO of the Macau Cable TV, Limited about “the 3-in-1 solution to dispute over operation between the master antenna service suppliers and the Macau Cable TV, Limited (which was, the government would purchase the service of transmission of TV signals in the two ways and both sides cooperate with each other to operate the service)”. [See P. 3976-3980]
73. According to the information provided by the Macau Cable TV, Limited, on 12<sup>th</sup> June 2008, the representative of the company attended the administrative meeting hosted by the Chief Executive and also attended by members of the Executive Committee, the Secretary for Transport and Public Works and the Director of the DSRT. The Director of the DSRT did not raise any questions or objections after hearing the plan and the proposed solution introduced by the



Macau Cable TV, Limited. [See P. 3977-3980]

74. On 28<sup>th</sup> June 2010, the Chief of Cabinet of the Chief Executive sent the legal comment on retrieval of the exclusive operation of cable TV service made by the advisors of the Cabinet to the Secretary for Transport and Public Works and the DSRT [See P. 8397-8399]. The content is as follows:

*“The proposal no. 132/03-811 of the DSRT dated 28<sup>th</sup> May 2010 indicated a solution to the problems concerning cable TV and master antenna service. There are two of the points of the suggestion:*

- 1) - To hire an independent consultant or audit company to estimate the value of cable network; to negotiate with the Macau Cable TV, Limited about the matters, including revision of the concession (exclusive operation) contract, when the data is available;*
- 2) - If the abovementioned suggestion is not feasible, to commence the procedure of retrieval of the (exclusive right of) Pay Terrestrial Television Service Concession Contract.*

*(...)*

*If the former plan is adopted (total retrieval), evaluation is unnecessary because the contract expressly stipulates the criteria and calculation method for compensation.*

*If the latter plan is adopted (partial retrieval), it will serve as alternation of terms of contract instead of retrieval. The retrieval stipulated by the concession contract refers to retrieval of the whole exclusive right, not partial retrieval.*

*Alternation of terms also involves the negotiation between concerned parties. Before the agreement between both sides on the alternation of terms is reached, evaluation made by either one side is useless. Therefore, the appropriate time for evaluation should be after the general agreement on revision of terms of the contract is reached.*

*(2) Legal analysis on retrieval (of exclusive right)*

1. The so-called “retrieval” means that the government retrieves the exclusive right by paying a statutory amount of compensation. Under Article 10 (Termination) of the Pay Terrestrial TV Service Concession Contract, the contract is terminated in the following cases:

- a) Expiration of concession period;
- b) Mutual agreement;
- c) Retrieval;
- d) Repeal due to violation of the contract;
- e) Repeal due to public interests.

The government can retrieve the exclusive service when the service has been providing for 10 years, but the government has to notify the concessionaire one year in advance. In other words, the government could bring up the suggestion in 2009. However, when it is retrieved, the concessionaire has the right to receive compensation. (Article 11)

Amount of compensation: The net asset value calculated by accounting method, plus 80% of the average net profit for the latest three years, multiplied by the number of years stated in the objective of compensation. (Article 16)

The official letter no. 801-08-811 of the DSRT proposed a solution for the Macau Cable TV, Limited, which was an integrated plan instead of a statutory “retrieval” method. The retrieval system under the concession contract was not applicable to this idea because the retrieval stipulated by the law refers to total retrieval, not partial retrieval.

2. The retrieval procedure suggested by the DSRT should be total retrieval stipulated by the concession contract (otherwise it is not retrieval). Therefore, I think it is necessary to conduct a research on the issues related to afterward operation of the Macau Cable TV, Limited after the retrieval, including who and how to operate the service, and how to cooperate with master antenna service

suppliers, etc. In fact, it is easy to retrieve the concession, but the crux is how to operate the service after retrieval. Therefore, whether and when to commence the retrieval procedure should depend on the comprehensive evaluation on how to operate the cable TV service after retrieval. However, this part was not indicated in the proposal made by the DSRT. Therefore, further analysis on whether to commence retrieval procedure cannot be made so far.

(3) *Observance to the concession contract and unilateral alternation*

1. *Observance to the concession contract is the government's obligation. In particular, in view of the significant role of gaming industry in Macao under concession system, the government should more respect the credibility of the execution of concession contracts.*

*However, as administrative contracts, concession contracts are subject to the Code of Administrative Procedure. According to Article 167 (Power of Administrative Authority), the public administration can unilaterally alter the terms it offers on condition, which should conform to the objectives of the contract and maintain the concessionaire's financial balance (Item a).*

*In other words, the government possesses the power to unilaterally alter administrative contract, but there are two restrictions: the alternation should conform to the objectives of the contract; the alternation should maintain the company's financial balance. If the solution proposed by the government includes alternation of nature of concession and affects the financial balance of the concessionaire, the government will not have the power to unilaterally alter the terms and it should negotiate with the concessionaire in an equal position.*

(...)"

75. On 23<sup>rd</sup> July 2010, the Acting Chief of Cabinet of the Chief Executive referred the "Application for permission of vehicle parking and maintenance by the Macau Cable TV, Limited" to the Secretary for Transport and Public Works. [See P. 8365-8383]
76. On 16<sup>th</sup> August 2010, representatives of the DSRT (the Director, the Deputy Director, the Head of the Regulation Affairs Division, the Head and a staff of the Administrative and Financial Division and a minutes-taker), legislators

and representatives of master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai Electrical Engineering Company, Tak Chou Electronic System Eng., Hi-Tech Communication Company, Hoi Ying Ocean Electronic System and Kou Fong Elect. System Eng. Co.) had a meeting about “understanding the details of the suspension of transmission of English Premier League from master antenna service suppliers”. [The minutes is indicated in P. 8324-8327]

77. The explanation was indicated in the “record of statement” summarized as follows:

- *CCAC staff asked Declarant 1: We found that the documents submitted by the DSRT were not arranged in a systematic way. What do you think?*
- *Declarant 1 stated that the DSRT was not founded until 2006. Its precedent, the Office of Telecommunication and Information Technology Development, did not have a clear organizational structure. Its operation was only in charge by a coordinator, a deputy coordinator and some supervisors. The documents about this case were arranged in chronological order, while the documents submitted this time were taken from different divisions. Therefore, the documents were not systematic relatively.*
- *CCAC Staff asked Declarant 1: Among the documents submitted to the CCAC, some have page numbers but some do not. Why?*
- *Declarant 1: Since the Administrative Court has requested the DSRT to submit some of the documents for assessing the case about MMDS charge, the page numbers might be written by the staff of the court.*
- *CCAC Staff: Has the DSRT reported the cases about copyright of TV channels to competent authorities?*
- *Declarant 1: The DSRT did not refer the cases to the Customs Service or the Economic Services Bureau, but the DSRT discussed these problems with them in a meeting in 2005. In the same year, the Office jointly published a leaflet with them to promote the importance of copyright of satellite TV (See Appendix 1). As to practical solution, the DSRT notified the copyright authorizer, the Macau Cable TV, Limited, that it could file a complaint to*

*the court.*

- *CCAC Staff asked Declarant 1: Are pages 3254-3257 of the documents about the methods of handling complaints over copyright?*
- *Declarant 1: They were the letters sent to international organizations to respond to queries about copyright under the superior's instruction.*
- *CCAC Staff asked Declarant 1: As to the international organizations related to the handling of problems concerning the copyrights by Macao, did DSRT open any independent administrative files?*
- *Declarant 1: No.*
- *Declarant 1: Before the DSRT was established, the cable TV network was not set up completely. Therefore, the Macau Cable TV, Limited could not transmit TV signal for all Macao citizens. Giving due consideration to public interests and that citizens can watch TV, the Office did not immediately suppress the master antenna service suppliers, though it did not grant relevant licenses to them either.*
- *CCAC Staff asked Declarant 1: As to the problems concerning master antenna service, why did the DSRT handled them in different ways in different phases?*
- *CCAC Staff asked Declarant 1: Why didn't it consider solving the problems by granting license to master antenna service suppliers?*
- *Declarant 1: Considering that the Macau Cable TV, Limited has the concession contract, its scope of operation was not clearly defined and and the support needed for the development, the Office did not grant any license to the master antenna service suppliers.*
- *CCAC Staff asked Declarant 1: Did the DSRT consult any legal adviser about handling the problems concerning master antenna service or copyright?*

- *Declarant 1: Yes, but not any independent analysis report was made.*
- *CCAC Staff: Did the DSRT study on solving the problems by legislation?*
- *Declarant 1: So far, we have not made any suggestion on law revision.*

The facts above show that the dispute between the Macau Cable TV, Limited and the master antenna service suppliers has a span of 10 years, starting from the grant of concession to the Macau Cable TV, Limited, many complaints over “stolen frequency” filed by leaders of many regional and international TV channels, until the suspension of transmission by master antenna service suppliers. The dispute has become a case that interrupts citizen’s life, obstructs the development of government’s policy in telecommunication and even affects the image of the Macao SAR. It is also a dilemma which was “born” with the SAR and has been worse and worse over 10 years. There has been no solution yet. Many complicated problems are involved. The related aspects are listed as follows:

- 1) - Policy;
- 2) - Technology;
- 3) - Law-enforcement;
- 4) - To formulate the future blueprint and plan of telecommunication and broadcasting can solve the existing problems as well as regulate possible conditions in the future.

However, the information submitted by the DSRT shows that over many years, the DSRT did not have any consistent methods to deal with these problems: The complaints over copyrights it has received were referred to the master antenna service suppliers in order to “make correction”. At the same time, it merely insisted to seek negotiation and that the problems mainly involved copyright regulated by private laws. It always stressed “elaborately” that “the construction and operation of master antenna network do not conform to legal requirements, but it is necessary to respect the problems left by history”, saying that the government would consider classifying the scopes of operation of the Macau Cable TV, Limited and the master antenna service suppliers according to law by coordinating the commercial cooperation between both sides and taking into account the factors in operation and technologies,

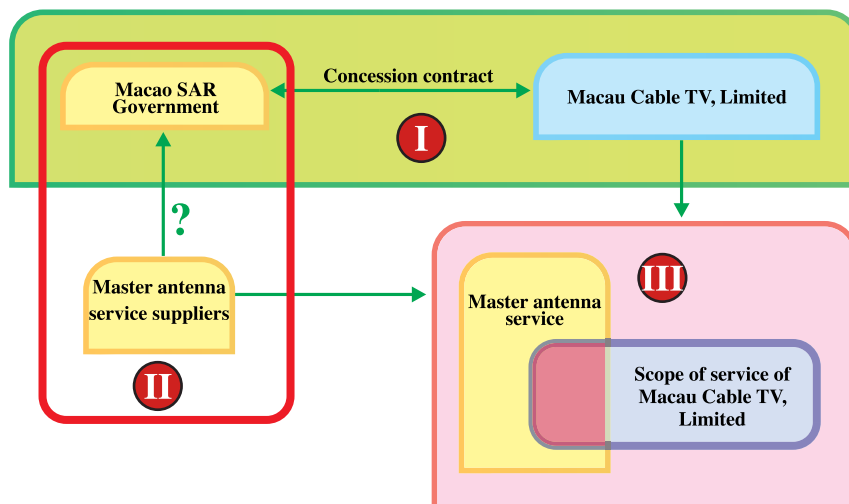
with an aim to properly deal with the problems that have existed for a long time.

The facts prove that all these sayings and actions seem useless. Over the 10 years there was no legal and professional technical analysis or confirmed direction for solution. The DSRT only stated to propose some simple solutions which were not backed by detailed technical and legal analysis between 2009 and 2010 and thus they were eventually rejected by the Chief Executive. Our analysis on the case is as follows.

\* \* \*

### Part III: Legal Analysis and Basis

In order to make the issues that the problems involved (*amplitude da problemática*) and the aspects that the administrative authorities have the power (obligation) to intervene in simple, we will introduce the organizations or entities involved in the case by using the below simple “diagram”:



We can classify the problems they are facing into three categories, which are **I**, **II** and **III**.

1. In the scope of **I**, the key to the problems is to clarify:

- 1) - The scope of **rights and obligations** of both sides stipulated by the **concession contract** (*contrato de concessão*);
- 2) - The execution of the agreement of both sides;
- 3) - Whether or not the competent government department strictly enforces the applicable law and implement the concession contract.

\* \* \*

2. **In the scope of II**, the problems that should be solved first include:

- 1) - **The legality of existence of the master antenna service suppliers and of their operation of TV channel transmission;**
- 2) - The scope of service they provided and the extent of duplication between their service and the objectives of **the abovementioned concession contract;**
- 3) - The current status of the master antenna service suppliers and the problems they caused;
- 4) - Insufficiency of related provisions and the urgency of their formulation.

\* \* \*

3. **In the framework of III**, the key is to know:

- 1) - The extent of duplication between the **master antenna service** and the **cable TV service;**
- 2) - The room for their separate operation of both parties;
- 3) - Application of related law.

\* \* \*



Before analyzing the practical problems, we have to solve the problems concerning procedure first.

**I - Problems Concerning Procedure: the Eligibility of the Macau Cable TV, Limited to Complain**

According to the letter from the Macau Cable TV, Limited, its complaint against the DSRT and even the Macao SAR Government mainly covers the following aspects:

- 1) No strict enforcement of the regulations on telecommunication and TV broadcasting;
- 2) No strict compliance with the terms of the concession (exclusive operation) contract;
- 3) No legal and rational proposals for solving the problems concerning master antenna service;
- 4) The complainant's (the Macau Cable TV, Limited) financial loss has been caused.

In fact, the information in the file shows that since as early as 2001, the Macau Cable TV, Limited, copyright owners of some Chinese and international TV channels and various master antenna service suppliers have filed complaints directly to the DSRT. However, in the file we seldom see that the DSRT had adopted any constructive measures under applicable law<sup>44</sup>(such as the *Code of Administrative Procedure* and the *General Regime and Procedure against Illegal Administrative Acts*- Decree Law no. 52/99/M of 4<sup>th</sup> October).

Since the Macau Cable TV, Limited has entered into a concession contract with the government, under this agreement, the complainant possesses certain special rights which are protected by law and the contract. Now it is claimed that these rights have been infringed upon and that the government, as another interested party in the contract, did not exactly fulfil the terms. (Whether it is true is a practical problem.

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<sup>44</sup> At least the complaints should be handled under the procedure provided by the *Code of Administrative Procedure* and related provisions.

We will analyze it later). It is not difficult to make a conclusion: the complainant is eligible to request the administrative authorities to rectify illegal or irregular situations. Moreover, the one being complained against is a government department. In this sense, the complainant, without doubt, has the eligibility (legitimacy) to complain. Therefore, the CCAC has the responsibility to intervene in the case.

Moreover, according to Item 4 of Paragraph 1 of Article 3 of Law no. 10/2000 of 14<sup>th</sup> August (*Organizational Law of the CCAC*),

*“1. The Commission Against Corruption aims, within its scope of activity, at:*

*(...)*

*4) promoting the protection of rights, freedoms, safeguards and legitimate interests of the individuals, and ensuring, through the means referred to under Article 4 and other informal means, that the exercise of public powers abides by criteria of justice, legality and efficiency.*

*(...)”*

This complaint involves the interests of the following parties:

- The Macau Cable TV, Limited;
- Master antenna service suppliers;
- The legality and rationality of acts and omissions carried out by the administrative authorities;
- Citizens’ interests of watching TV.

To sum up, the Macau Cable TV, Limited, as a legal person, has the legitimacy to complain. In addition, since there is lack of reason that causes the CCAC to reject the case at the start, the CCAC conducted a comprehensive and in-depth analysis according to applicable law and basic legal principles.

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## **II. Practical Problems**

### **(A) The Competent Department's Actions**

First of all, the CCAC, as a supervisory entity, comprehensively analyses the measures which have been adopted by the competent departments, especially the DSRT, for the dispute over 10 years. In particular, these measures' effectiveness, usefulness for problem solving and the DSRT's responsibilities, to make it simple, how the DSRT handled the case will be analysed.

#### **1. Criteria and Bases for Assessing Administrative Acts**

Under the administrative regime of Macao, whether the decisions and acts of administrative departments and even the execution are appropriate are assessed based on legality (*legalidade*) as well as appropriateness [or rationality (*mérito*)]. Therefore, the legislator stipulates that rationality is the basis of administrative complaint.

The legal theoretical analysis on the rationality can be seen in the report of the CCAC's investigation into the Labour Affair Bureau's inspection over illegal labour at the Macau Asia Satellite TV and Recommendation no. 002/RECOM-SEF/2010.

The information mentioned above clearly showed that there were many problems existing in different steps in the procedure of the DSRT's handling of the case. The problems involved legality as well as appropriateness. Therefore, review is necessary.

We will analyse a few key points.

First of all, it is necessary to stress that: both the organizational regulation of the Office of Telecommunication and Information Technology Development<sup>45</sup> (the Chief

<sup>45</sup> According to Article 2 of the Chief Executive's order no. 67/2000 of 22<sup>nd</sup> May, under which the Office of Telecommunication and Information Technology Development was established, the Office aims to enhance and coordinate all activities related to telecommunication and information technology. Its main duties include:

1) *To assist the government in exerting the function of supervision and establishment and execution of related policies through conducting research on future development of telecommunication and information technology and its system and regulative structure and adopting relevant measures;*

Executive's order no. 67/2000 of 22<sup>nd</sup> May) and the organizational regulation of the DSRT established on 15<sup>th</sup> May 2006 (the Administrative Regulation no. 5/2006 of 10<sup>th</sup> April 2006) stipulates that the department has the responsibility and power<sup>46</sup> to supervise the operation of telecommunication, cable and wireless broadcasting industry as well as enhance the application of international conventions, international agreements and other international rules concerning the area of telecommunication and information technology in Macao. That means these are its main duties since its establishment.

- 2) *To enhance establishment and operation of telecommunication and information services which fulfil the demand of the market;*
- 3) *To enhance the development of basic amenities of telecommunication and information technology;*
- 4) *To issue licenses to telecommunication and information service operators;*
- 5) **To supervise the quality and price of public telecommunication and information services provided by the operators;**
- 6) **To supervise the compliance to applicable laws and regulations by the telecommunication and information service operators;**
- 7) *To ensure the management and supervision of radio frequency spectrum;*
- 8) *To regulate and approve materials and amenities of telecommunication and information technology;*
- 9) **To enhance the application of international conventions, international agreements and other international by-laws in the area of telecommunication and information technology.**

<sup>46</sup> Under Article 3 (Duties) of Administrative Regulation no. 5/2006 of 15<sup>th</sup> May, the law of organization and operation of the DSRT, the duties of the DSRT include:

- 1) **To regulate, supervise and enhance telecommunication sector and ensure fair competition within the sector;**
- 2) **To enhance the application of international conventions, international agreements and other international by-laws and to be the representative of Macao in the area of telecommunication and information technology;**
- 3) *To enhance, participate in and follow-up regional and international partnership in the area of telecommunication and information technology;*
- 4) **To enhance competition in and healthy development of the telecommunication market;**
- 5) *To ensure the rights and interests of users of telecommunication services;*
- 6) *To enhance the execution of and compliance to the applicable laws and regulations within its scope of competence, including access to database of public telecommunication service users under the law;*
- 7) *To ensure that telecommunication service operators have fully fulfilled the obligations under the licenses or concession contracts;*
- 8) **To bring up opinions on concession, license and permission of operation of telecommunication network or service or renewal in exception of the case of betting service on internet;**
- 9) *To conduct analysis or render opinions on applications for permission of establishment and operation of systems of broadcasting, cable TV and satellite broadcasting;*

Since the Office was elevated to be a bureau levelled entity in 2006, the DSRT has more powers to regulate, supervise and enhance the telecommunication industry, ensure fair competition, enhance competition and healthy development of telecommunication market, render comments on construction and operation of telecommunication networks or grant and renewal of concession, license or permission of telecommunication services, including suggestions about legislation

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- 10) To supervise the quality, price and charges of the services provided by public telecommunication network operators and public telecommunication service providers;
  - 11) To supervise the compliance to the provisions under the regime of installation of **basic telecommunication equipments within buildings** and connection to public telecommunication network;
  - 12) To ensure management and supervision of radio frequency spectrum under applicable local and international laws;
  - 13) To ensure coordination and **supervision of wireless communication** service;
  - 14) To arrange the general allocation of radio frequency spectrum and the usage of satellite orbit and make the plan of numeration and other telecommunication resources and submit these to the superior for approval;
  - 15) To manage and enhance effective and reasonable usage of telecommunication resources;
  - 16) To ensure the existence and operation of universal service of telecommunication;
  - 17) To establish technical criteria of telecommunication appliances and equipments and to regulate, approve, homologate, supervise and inspect them;
  - 18) **To flexibly and rapidly solve conflicts over interests among telecommunication service operators according to the development of the market at request by interested parties;**
  - 19) To carry out the procedures of granting, renewal and recognition of licenses for radio operators;
  - 20) To cooperate with other public and private entities to promote application of information technologies among enterprises and citizens;
  - 21) To submit administrative disciplinary proposal about violation of laws, rules, licenses or contracts related to telecommunication activities by any network operators, service providers, other enterprises, entities or individuals;
  - 22) To execute the administrative procedures of all acts regulated by the administrative system of wireless telecommunication service – Decree Law no. 48/86/M of 3<sup>rd</sup> November and make relevant decision only in the cases which are not subject to other regulations;
  - 23) To approve and supervise certification entities according to the legal regime governing electronic documents and signatures;
  - 24) **To assist the government in establishing policies in the area of telecommunication and information technology and conduct relevant studies;**
  - 25) To render regulative guidance to network operators and service providers in order to ensure systematic development of telecommunication activities;
  - 26) To fulfil other statutory duties.
- (The words are bolded by the CCAC.)

**and law enforcement for cable TV and satellite broadcasting systems and licensing and operation of master antenna service, or revise various provisions on telecommunication, especially:**

- 1) Planning the measures for the use of wireless communication – see Decree Law no. 18/83/M of 12<sup>th</sup> March;
- 2) About the approval of rules for radio stations and satellite TV broadcasting services licensing system – see Decree Law no. 3/98/M;
- 3) Ensuring observance of the regulations of the International Telecommunication Union (UIT);
- 4) Approving the Administrative Regulation no. 9/2005 - the *Table of Charges and Fines of Wireless Telecommunication Service License* (it repeals Decree Law no. 60/97/M which was applicable before 2005).

These show that the DSRT has unshirkable responsibility on related matters.

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## 2. No Prompt and Precise Legal Acts

In fact, the dispute began in 2000 and many related problems emerged since then (please refer to the previous part “Facts”). The Macau Cable TV, Limited insisted that the pay terrestrial TV service they provided covered a certain part of services currently provided by the master antenna service suppliers<sup>47</sup>. **The deficit that the company recorded over the past years was mainly triggered by the improper competition led by the master antenna service suppliers.** In fact, for the disagreement on the understanding of “whether the pay terrestrial TV service has conflict with the telecommunication business of the master antenna service suppliers, the law has already provided a mechanism for statutory interpretation apart from that stipulated

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<sup>47</sup> For details, please see the Pay Terrestrial TV Service Concession Contract entered into between the Macao government and the Macau Cable TV, Limited in 1999 ([http://bo.io.gov.mo/bo/ii/99/18/extractosdsf02\\_cn.asp](http://bo.io.gov.mo/bo/ii/99/18/extractosdsf02_cn.asp)).

by the concession contract.

According to Article 165 of Chapter 4 (Administrative Contract) of Part 4 of the *Code of Administrative Procedure*, the concession contract is also an administrative contract. Therefore, both the government and the Macau Cable TV, Limited can make the final interpretation of the scope of service that the concession contract covers via the Administrative Court according to Article 173 of the *Code of Administrative Procedure* and Articles 113-117 of the *Code of Administrative Litigation*.

It is sure that since as early as 2002, the Macau Cable TV, Limited did file a tax affairs judicial appeal to the Administrative Court via its lawyer (on 2<sup>nd</sup> April 2002) concerning the complex legal problems about whether the wireless telecommunication charge under Decree Law no. 60/97/M needed to be paid [see P. 1727-1735]. Over the years, the complainant has sent letters and responded to the DSRT via its lawyer and even taken legal actions to protect its rights and interests.

As to the responsibilities to the deficit of its operation, we have noticed that the scope of services operated by the Macau Cable TV, Limited under the concession contract, in addition to the supplementary services under Article 19 (such as the advertising business stated in Items a-f of the article, professional training and technical support, seeking sponsorship for TV programmes, discussing the schedule of studios, production and film editing, recording, publishing and discussing audio-visual products and related products, and relinquishing channels or broadcasting time for channels with prior approval of the concessor), the company also has the right provided by Article 33 to operate. The rights enjoyed and the scopes of services provided by the master antenna service are not comparable to these.

At the same time, as to the illegalities and violation of copyright involving the master antenna service suppliers, as previously mentioned, according to the organizational regulation of the Office of Telecommunication and Information Technology Development established on 30<sup>th</sup> June 2000 and the duties and powers of the DSRT established on 15<sup>th</sup> May 2006, **the DSRT, in fact, definitely has unshirkable responsibility of supervision and regulation on the possession and provision of unlicensed telecommunication, wireless technology or TV services.** We also noticed that the DSRT, from the early days as the Office of Telecommunication and Information Technology Development to now a bureau levelled entity, is entrusted by the law with the powers and responsibilities that involve such tremendous public

interests (e.g. liberalization of telephone market, TV services and coordination of radio service) and professions which do not balance with its personnel allocation<sup>48</sup>, however the DSRT has never sought any effective solutions.

Paragraph 1 of Article 11 (the principle of decision making) of the *Code of Administrative Procedure* stipulates that:

*“1. Administrative authority has the obligation to make decisions about all matters brought out by private individuals which are within the scope of its powers, especially:*

*a) Matters directly related to the administrative authority;*

*b) Any pleading, petition, complaint, objection or appeal for protection of legality or general interests.”*

For the matters directly related to the administrative authority or any pleading, petition, complaint, objection or appeal for protection of legality or general interests, the administrative authority has the obligation to make decision about all matters brought out by private individuals which are within the scope of its powers, unless the administrative authority has carried out an administrative act for the individual's request and the latter makes the same request within two years since the day the administrative act is carried out.

The **private individual** who makes the request shall certainly have the legitimacy as the interested party under Article 55 of Chapter 2 (Interested Party) of the *Code of Administrative Procedure*. The initial request for commencing an administrative procedure shall conform to the condition stipulated by Article 76 of Section 1 (Commencement) of Chapter 5 (The Process of Procedure). Nevertheless, even though the initial request does not conform to the provision of Article 76, the administrative authority still has the obligation to invite the applicant to redress the deficiencies existing in his application (Article 78 of the *Code of Administrative Procedure*).

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<sup>48</sup> According to the DSRT's supplementary statement, there were only around 30 staff members in early days, including chiefs, supervisory staffs, drivers and auxiliary staffs. Even after its staff allocation was enlarged by Administrative Order no. 73/2010, there are only some 50 staff members now, including 10 chiefs and supervisory staffs and 12 senior officers (not including functional supervisors).



Facing quite a few of requests made by local operators and entities outside the territory, the DSRT should open relevant administrative files systematically and carry out proper acts according to the provisions of administrative procedure in order to ensure private individual's right to file administrative appeal<sup>49</sup> and take judicial action<sup>50</sup>. Even though there was no act that constituted commencement of administrative procedure, the DSRT still had the obligation to respond to the requests<sup>51</sup>.

Otherwise, tacit rejection might be constituted under Article 102 of the *Code of Administrative Procedure*. However, in this case, if the parties of interest (especially the master antenna service suppliers) do not have interest in altering the status quo, it is believed that tacit rejection, as a statutory appeal method, would not be adopted. Even if they wanted to commence the relevant administrative or judicial appeal, the legal nature of this tacit act would still lead to difficulty in executing the rights<sup>52</sup>. Therefore, Professor Sérvulo Correia asserts that “*Tacit rejection is definitely illegal because the administrative authority rejects individual's requests by means of omission and, at the same time, evades the obligation to explain the reason for the rejection.*”<sup>53</sup>

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### **3. Failure in Identifying Key Points While Handling Complaints**

Although the ideal approach is to seek cooperation and compromise between the Macau Cable TV, Limited and the illegal acts of the master antenna service suppliers,

<sup>49</sup> See Articles 145-164 about declaration of objection and administrative appeal in Chapter III, *Code of Administrative Procedure*

<sup>50</sup> See Article 12, *Code of Administrative Procedure* and Lino Ribeiro/José Cândido de Pinho, *Código do Procedimento Administrativo de Macau anotado e comentado (Code of Administrative Procedure: Annotation)*, 1998, Fundação de Macau e SAEP, P. 135-141.

<sup>51</sup> See Article 8, Law no. 5/94/M (Regulation and guarantee of execution of the right to petition in order to safeguard human right, legitimacy or public interests).

<sup>52</sup> See Lino Ribeiro/José Cândido de Pinho, *Código do Procedimento Administrativo de Macau Anotado e Comentado (Code of Administrative Procedure: Annotation)*, 1998, Fundação de Macau e SAEP, P. 509-513.

<sup>53</sup> The original text: “O indeferimento tácito é sempre ilegal, por que através da inércia, a Administração rejeita a pretensão do particular, subtraindo-se do mesmo passo ao dever que sobre ela incumbia de, querendo rejeitar, exprimir fundamentos da decisão”. See Lino Ribeiro/José Cândido de Pinho, *Código do Procedimento Administrativo de Macau anotado e comentado (Code of Administrative Procedure: Annotation)*, 1998, Fundação de Macau e SAEP, P. 120.

the DSRT's approach and procedure of handling the complaints reflect that it failed to identify the key points, the problems concerning fulfilment of the administrative contract of the Macau Cable TV, Limited and the master antenna service suppliers' infringement upon copyright. At least, in the documents it submitted to the CCAC, no systematic legal and professional comments on the two large problems are found. Therefore, in the proposals regarding various issues raised by the Macau Cable TV, Limited made by the Director of the DSRT, the order indicating **"legal and professional comment should be given first"** issued by the Secretary for Transport and Public Works is often seen (for example, in the documents dated 2007 and the proposal about "the request for suspension of payment of reward fee by the Macau Cable TV, Limited" by the Director of the DSRT to the Secretary for Transport and Public Works on 14<sup>th</sup> July 2010). [See P. 8267-8269]

As seen from the negotiations and the principle of agreement proposed by different parties, it is proven by the facts to be difficult to reach a consensus that caters to the interests of all parties. As 10 years has passed, no way out is seen (since the year of 2000 when the Macau Cable TV, Limited announced to cooperate with five master antenna service suppliers in a news clipping). [See P. 1185]

According to the supplementary materials and declaration sent to the CCAC, the DSRT **has still not managed to get the complete information about the legitimate representatives of the master antenna service suppliers that are providing TV service for buildings in Macao.** Sometimes (when conservatory measures or negotiations were not successful) they appear to be "commercial facilities" without legal personality (Please see the legitimacy of conservatory measures in 2009). Even if it had the information of all or a majority of the legitimate representatives of the master antenna service suppliers that are providing TV service for buildings in Macao, negotiations alone created few chances of success, as reflected by the numerous unsuccessful experiences.

For example, on 21<sup>st</sup> January 2010, six master antenna service suppliers (Tak Va, Fai Chit, Sai Kai, Hoi Ying Ocean, Tak Chou and Kou Fong) sent a letter to the DSRT, in which they proposed eight principles for solving the dispute between the master antenna service suppliers and the Macau Cable TV, Limited [See P. 4317] and a plan of cooperation between the Master Antenna Network Co. Ltd and the Macau Cable TV, Limited. The proposal **might involve division of the market and monopolistic approaches, which seems to contradict the DSRT's duty to**

**enhance free competition according to the Telecommunication Law and the organizational law of the DSRT. However, the DSRT has never expressed its stance clearly.**

Without any legal basis, whether the agreement can be implemented gradually, whether it can be really executed and fulfilled, especially the interests of the Macau Cable TV, Limited, Kong Seng Paging, and the master antenna service suppliers, which are in the opposite sides of a scale, are still in question. In fact, there were some promising suggestions in the proposed agreement. For example, the master antenna service suppliers promised that they would fully protect and abide by the international regulations on copyright and clean up all abandoned antenna networks across streets and related equipment. [See P. 4564-4572, P. 4217-4257, P. 3977-3980, P. 7667-7674 and P. 7477]

**The DSRT excessively believed in and relied on negotiation, did not accurately identify the conflicts of interests which were hard to be resolved and neglected legality and punctuality when handling the matters** and even the importance of diversifying the approaches and long-term planning. For example, on 30<sup>th</sup> January 2008, the Director of the DSRT sent a letter “concerning follow-up on the letter dated 4<sup>th</sup> June 2007, due to unsuccessful negotiation, the cable network built without the government’s approval should be removed” to Hoi King Property. However, they were not willing to sign the relevant documents, on which “unwilling to sign” with a date was written by some unknown personnel. In addition, the name of the staff who delivered the document and further analysis with legal effect are not seen. [See P. 4429]

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#### **4. The Handling Methods Turned Out to be Mere Formalities and Lacked Substantial Solutions**

Concerning the complaint letters and applications received since 2000, we have seldom found related written research. What we saw were only simple orders (by the Directors or leadership) in related documents, such as:

- “Handle with urgency” (*Tratar com urgência*); or

■ “Attention” (*Atenção*), etc.

In addition, we also saw the subordinate units assigned to handle the matters [only simple chops of the units’ names without the purpose of assignment, such as ordinary “execution”, “report” or “acknowledged”, etc. During the period of the Office of Telecommunication and Information Technology Development, there were only “Coordinator (Coordenador)”, “Telecom, Information (Telecom, Informática)”, “Administration (Admin)”, “Personnel, Accounting (Pessoal, Conta)” and “Legal (Jurista)”. Later on after the DSRT was established, there are “Director (Director)”, “Deputy Director (Subdirector)”, “(Two) Departments (Departamentos) (including DGAT and DTGET)”, “(Six) Divisions (Divisões) (including DAR, DPC, DGRT, DNTT, DDTI and DAF)” and “Legal (Jurista)”. After the subordinates received the relevant letters, they seldom made execution reports or proposals. At least, from the abovementioned points and the 27 files sent to the CCAC, we seldom saw that the matters were handled according to the methods adopted by normal administrative procedures.

According to the DSRT’s explanation (see the above “record of statement”), the matters were dealt with by the personnel in charge of related subordinate units properly but written records and summaries were not made every time. The staff of the DSRT stressed that all problems (including those involving very complicated legal and technical issues) have been handled properly but admitted that there was no separate research report.

The so-called administrative procedure, under Article 1 of the *Code of Administrative Procedure*, refers to a succession of orderly acts and formalities conducted to formulate and express the idea of the administrative authority, or the execution of such idea, while administrative files refer to a set of documents that reflect the acts and procedures that formulate an administrative procedure. In theory, an administrative procedure comprises a series of acts and procedures, which may differ from one another in terms of structure and function, but they have a common objective, which is to serve the final decision of the administrative procedure (to perform administrative acts which administrative and judicial appeal can be filed against).

These decisions include the administrative acts, rules and contracts made by the

administrative authority that may directly affect private individual's legitimate rights and interests. The purpose of standardizing administrative procedure is to control the internal operation of every institution of the administration and, most importantly, to enhance administrative efficiency and urge the administrative authority to make decision rapidly through reasonable utilization of resources. Administrative files refer to a set of documents that reflects the acts and processes that formulate an administrative procedure, including application papers, evidence, position papers, reports, results of investigation, proposals and records of hearing, etc.

Apparently, for the aforementioned initial and afterward requests made by the Macau Cable TV, Limited, the master antenna service suppliers and foreign organizations concerning matters which are, either within or beyond its scope of competence, the DSRT neither had proper investigation, research, hearing and response nor made proper records in the 27 files sent to the CCAC.

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Article 112 of the *Code of Administrative Procedure* stipulates that:

*“1. Administrative act shall be made in written form, when the law does not stipulate other ways or does not demand for other ways due to the nature of the act and the conditions of conducting the act.*

*2. Only when there is clear legal stipulation, the acts of collegial entities shall be conducted in written form, but such acts shall be indicated in minutes, otherwise they will not be effective.”*

In addition, Article 113 of the same code also stipulates that:

*“1. The following shall be indicated in an administrative act without affecting the matters involving other special requests:*

- a) The authority that carries out the act;*
- b) Authorization or delegation, if there is any;*

- c) Appropriate information for identifying counterpart or counterparts;*
- d) The important facts or acts that lead to the administrative act;*
- e) Reasons when requested;*
- f) Content or definition of the decision and relevant objectives;*
- g) The date of the act;*
- h) The signature of the person who carried out the act, or of the chairperson of the collegial entity that carried out the act.*

*2. The items mentioned above shall be indicated in a clear, accurate and complete way in order to clearly define their meaning and scope as well as the legal effect of the administrative act.*

*3. Item b) of Paragraph 1 is not indicated in the regulations about the Governor's authorization to an Administration Secretary published on the Official Gazette of the Macao Government."*

These show that administrative decision shall be made in written form when the law does not stipulate other ways or does not demand for other ways due to the nature of the act and the conditions of conducting the act. Without affecting the prerequisite and other special requests, the administrative act shall indicate the abovementioned content.

At the same time, the items mentioned above shall be indicated in a clear, accurate and complete way to clearly define their meaning and scope as well as the legal effect of the administrative act so as to ensure that appeal can be filed against the act.

Therefore, even though in some cases the DSRT has conducted simple investigations, hearings, proposals or reports, on complicated problems, they never made in-depth analyses, legal studies and long-term sustainable researches, let alone effective and practical solutions (for example, on 24<sup>th</sup> April 2008, the Director of the DSRT submitted a report and analysis on the case of Macau Cable TV, Limited's default in payment of wireless license fee for 2007 and 2008 to the Secretary for

Transport and Public Works. On 24<sup>th</sup> April 2008, the latter issued an order to request the DSRT to render legal and professional opinions on the feasibility to exempt the company from payment of wireless license fee and its default in the payment for this reason). [See P. 4151-4168]

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## 5. No Measures Directly Targeting the Problems

In fact, even though the dispute over copyright involving the master antenna service suppliers does not fall within the DSRT's scope of competence and duties, the DSRT still has the obligation to refer the complaints beyond its competence in a formal way (in general, it only needs to keep a copy and refer the original documents to the competent authority). When conflict of competence occurs, it only needs to report to the superior for solution (Article 44 of the *Code of Administrative Procedure*).

Judging from the 8,213 pages of unorganized documents in the 27 files sent to the CCAC, **the DSRT never opened a separate administrative file to seriously handle the complaints about copyrights, legal matters, litigations and legitimate rights of related international entities, organizations and individuals**. Its staff was not sensitive enough and there is room for improvement of the way they handle problems and the quality of law-enforcement. In addition, the review on the suspensions of transmission of TV signals was not careful and prudent.

As for the suggestions of regulating private construction, management and operation of telecommunication network (for example, on 5<sup>th</sup> January 2008, eight suppliers, including Fai Chit and Tak Va, brought out these suggestions and requests but no results were achieved.) [See P. 4426] and providing rules of telecommunication service, or request for granting operation licenses, which were brought out by master antenna service suppliers many times over the years, **the DSRT has never made any formal and serious research or response**.

According to its explanation to the CCAC, the DSRT still insisted that it has already followed up and made responses promptly and respectively to the complaints by the suppliers, Macau Cable TV, Limited and other organizations.

Moreover, it stressed that the problems concerning copyrights were beyond its scope of competence. Therefore, after making prompt coordination, it notified the Macau Cable TV, Limited that the relevant copyright holders could resolve the disputes by legal means and insisted that after many rounds of negotiation, a solution for the disputes over operation between the master antenna service suppliers and the Macau Cable TV, Limited that is agreed by the both sides had not been made. Although it took the initiative to propose another solution in February this year, it still insisted that these problems which have existed for 10 years are problems left by the history.

Judging from such attitude, it seems that the DSRT has not planned to propose any alternative measures, such as researching on possible law revision and enforcing the law in a gradual and strategic way for substantial preparation. As for the complaints and cases that seriously affect residents' daily life, the DSRT did not work out or implement any holistic plans to handle them. Also, it did not pay proper attention to the matters related to law and the international image of Macao SAR. After the suspensions of TV transmission, it still has not learnt a lesson.

In fact, according to Chapter 9 of Decree Law no. 18/83/M of 12<sup>th</sup> March (Supervision of Radio), Chapter 11 about mechanism of violation and punishment, or Chapter 5 about disciplinary regime of Law no. 8/89/M, illegal operation or assistance in illegal operation of broadcasting business can be dealt with effectively.

As we see from the above "Facts" about copyright problems, the problems might involve the *Universal Copyright Convention*, the *Paris Convention for The Protection of Industrial Property* and related regulations set up by the World Trade Organization which are effective in Macao. The Macao SAR might be held liable for international responsibilities.

In the 27 document files sent to the CCAC, there is no record showing that the DSRT did formally report the problems concerning copyright of TV channels to the competent authorities. According to the explanation of the DSRT's staff (see the "record of statement"), it did not refer the problems to the Macao Customs Service or the Macao Economic Services in a formal way. However, the problems were discussed during a meeting with staff of the two authorities in 2005. The Office of Telecommunication and Information Technology Development also joined hands with them to publish a leaflet (see Appendix 1) to promote the importance of intellectual property of satellite television. As to practical solution method, the DSRT's representatives thought that as the copyright authorizer, the Macau Cable



TV, Limited could file a complaint to the court. This is merely a solution based on private law remedy. The DSRT has totally neglected its own duties and the mechanism of public law remedy.

It is an undeniable fact that many master antenna service suppliers once played an important role in the history of TV broadcasting in Macao, but we should not forget that Item c of Article 18 of Decree Law no. 18/83/M of 12<sup>th</sup> March states that: *“a person shall not receive or attempt to receive undue wireless telecommunication signals on any ships or air **within Macao** or areas bound by its law. If the person receives such signals unintentionally, s/he shall not re-broadcast, transmit it to a third party, use it for any purpose and even reveal its existence.”* The relevant equipment and operation, especially some business with profit-making purpose or related to commercial interests, should only exist under a license.

Although many master antenna service suppliers asserted that the equipment they owned falls under the situation of exemption allowed by the government under Article 7 of Decree Law no. 18/83/M, or that their business only involves “maintenance” of TV signal receiving and transmitting equipments. **These statements apparently do not tally with facts.** Take a similar but not totally same situation as an example, which is also the excuse made by some people accused of infringement upon copyright: a businessman who provides pirated VCDs claims that he is innocent because he is only responsible for delivering or transporting these VCDs. Does it make any sense that the person who only transports pirated VCDs is not liable for any responsibilities?

**Look at another example. A person who runs a grocery store also sells drugs. When s/he is prosecuted, s/he claimed that this is a grocery store but not a pharmacy. Therefore it is not subjected to the law that regulates pharmacy. Is this an argument acceptable by a society under rule of law?**

Facts are more convincing than arguments. Such argument in attempt to “sidestep the law” is not valid. The related problems have now been solved basically after failure of law-enforcement and proposing law revision. The key is to face the problem correctly and positively.

The “bargaining behaviours” in response to the public authority’s legitimate law-enforcement, such as “suspension of transmission from malice”, behaviours that might even constitute an criminal offence, is definitely unacceptable as they sacrificed

thousands of innocent citizens by suspending the TV broadcasting services as their bargaining chip (for example, after several times of suspension by a number of the service suppliers, although the DSRT claimed that the government would persist in enforcing the law and was seeking negotiation, it tended to compromise. It is proven that such attitude would largely affect the government's prestige and reliance. [See P. 4431-4438]). The government should play its overseeing role by handling the matters according to law if negotiation does not succeed.

As to the requests for granting licenses to the master antenna service suppliers over many years (for example, in August 2007, the Master Antenna Network Co. Limited, co-founded by master antenna service suppliers – Fai Chit, Tak Va, Sai Kai, Tak Chou, Hi-Tech, Hoi Ying, Kou Fong and Son Ton – urged the DSRT to legislate and suggested granting licenses. [See P. 4485]). Without doubt, the authority **can invite experts to conduct a demonstration or in-depth research, since the government still needs to find a way out. However, no idea has been seen so far.**

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#### **6. No Adequate Consideration of the Legal Status and Severity of the Complained Matters**

As to the copyright declarations sent from some TV channels directly or indirectly, although part of them do not have the legitimacy in the aspect of declaration of rights and interests stipulated by relevant law of Macao (for example, notarized authorization which conforms to the law of Macao), the DSRT should deal with them carefully due to the “administrator’s duty of care”. At least it should pass these cases to the relevant legal advisers for integrated handling, jointly deal with them with the relevant competent public departments, or transfer them to the competent entities appropriately.

As seen from the 27 files, as to the matters involving complicated legal problems or responsibilities, the DSRT seldom passed them to legal advisers or requested for professional opinions. Although there was a separate stamp “Legal (*Jurista*)” for categorizing the documents passed to subordinate units for handling in addition to the stamps of other units (for details, please see the chops on the documents), no result of follow-up and legal opinions are seen.

According to the DSRT, it has only one legal adviser, who is usually responsible for doing the tasks assigned by the Director. However, the legal advisor did not independently deal with the complaints over copyright but provided legal opinions for the Director usually. In fact, except the “legal opinions” given by the advisers of the Cabinet of the Chief Executive [See P. 8398-8399], **the CCAC did not find any similar written legal opinions in the 27 files.**

When the DSRT received the letters from lawyers, foreign TV channels and international organizations many times, its handling approach reflected that it did not pay adequate attention (such as the way the DSRT handled the letter about “unidentified reasons for recovery of radio frequency 2.5-2.7Ghz and problems concerning the master antenna service” sent by the lawyer of the Macau Cable TV, Limited to the DSRT and the Secretary for Transport and Public Works on 19<sup>th</sup> Feb 2009 [See P. 4036-4059], and the minutes of the first meeting between the Office of Telecommunication and Information Technology Development, the Macau Cable TV, Limited and the master antenna service suppliers on 11<sup>th</sup> November 2005, which involved the complicated problems concerning the master antenna service licensing under the current legal framework, property management and the cases of the government’s cancellation of master antenna channels in August, but the relevant documents were only passed to “Telecom, Information” and “Personnel, Accounting” for follow-up and acknowledgement). [See P. 3801-3806]

According to the aforementioned “record of statement”, the staff of the DSRT pointed out that the DSRT had been exploring the matters about the master antenna service suppliers and the Macau Cable TV, Limited. However, the relevant analyses and researches were not compiled into a detailed research report.

In fact, as early as on 20<sup>th</sup> May 2003, the CCAC referred the relevant problems to the Office of Telecommunication and Information Technology Development for handling [see P. 2334-2338], but there has been no follow-up work. It is hard to imagine that the problems still exist seven years later.

\* \* \*

## 7. Unsatisfactory System and Handling Method Revealed by the Case

According to the analysis and facts mentioned above, we know that the DSRT’s

procedure of dealing with complicated legal problems is full of defects. Therefore, the DSRT should make a comprehensive amendments to it. The following aspects should be given priority:

- (1) To establish mechanisms to prevent and effectively response to the significant incidents involving citizens' daily life;
- (2) To handle complaints by following administrative procedure;
- (3) To deal with problems by practical legal means instead of "verbal policies";
- (4) To consider setting up cross-departmental operation mechanism to deal with problems involving international responsibilities and reputation;
- (5) To comprehensively review the current legal regimes (including the regimes governing telecommunication and broadcasting and the organizational law).

The DSRT always asserts that "history should be respected". In this sense, we think the better saying would be "do our best to deal with what confronts us. The history will be what we make of it."

We will talk about the practical measures for solving the problems in the following.

\* \* \*

**(B) The CCAC's Analysis on the Existing Problems and Proposed Measures**

Items 4 and 11 of Article 4 of Law no. 10/2000 of 14<sup>th</sup> August (*Organizational Law of the Commission Against Corruption, Macao SAR*) stipulate that:

*"The function of the Commission Against Corruption are:*

*(...)*

4) *To conduct or request to conduct inquiries, comprehensive investigations, investigation measures or any other measures aimed at examining the legality of administrative acts and proceedings with regard to relations between public entities and individuals;*

(...)

11) *To propose to the Chief Executive the adoption of administrative measures for the purpose of improvement of public services;*

(...)”

The problems involve citizens’ daily life and affect the government’s policies of telecommunication and broadcasting market and its development in the future. In addition, during the investigation, the Commission had accessed to some documents which the Chief Executive had read and approved. When inquiring into the cases, we also received the Chief Executive’s instruction that the CCAC should propose solution plans on condition that it is legal and possible. Therefore, the CCAC decides to propose the direction of solution and practical measures to the Chief Executive based on the provisions quoted above.

# **1. The Problems Caused by the Concession (Exclusive Operation) Contract between the Macao SAR Government and the Macau Cable TV, Limited:**

First of all, let us see the problems existing between the government and the Macau Cable TV, Limited. As mentioned before, both sides are bound by an agreement – the concession (exclusive operation) contract. The so-called “concession” (concessão) means that the administrative authorities transfers a certain public right to a private entity. The latter executes it under strict supervision. There are two situations:

- a) This **right** already exists and is possessed by the administrative authority. Now it is transferred to the concessionaire;
- b) This **right** does not exist but it is originated with the establishment by the administrative authority. It is subsequently transferred to a private individual. Under the latter circumstance, concession is a behaviour of

establishment (constitution)<sup>54</sup>. Such regime is commonly adopted in the management or operation of public activity. The most common types of concession include:

- (1) concession of public construction projects;
- (2) concession of operation of public properties
- (3) concession of operation of gaming activities;
- (4) concession of operation of health care facilities, ports, bridges and airports;
- (5) concession of public services, etc.

TV service, without doubt, is a type of **public services (*serviço público*)**, which is a part of citizens' daily life and an important access to information. There are a number of ways for the government to provide this service, including concession or grant of licenses to private entities. Take Portugal as an example. The law clearly stipulates that the TV service is operated by the RTP on a concession basis<sup>55</sup>.

It is worth pointing out that TV service and TV transmission are two different concepts. The latter is clearly defined by the legislator as a public service<sup>56</sup> (see Article 12 of Law no. 8/89/M of 4<sup>th</sup> September). The definition is:

*“TV transmission is a public service executed through concession contracts.”*

Regarding public service, Professor Marcello Caetano from Portugal asserts that:

*“Public service, as the objective of concession, shall be a kind of activity which cannot give rise to any competition by others. Only the activity which cannot give rise to any competition by others can be awarded to a certain individual.*

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<sup>54</sup> See Pedro Gonçalves, *A Concessão de Serviços Públicos*, Almedina, 1999, P. 54-55.

<sup>55</sup> See P. 112 in the book mentioned above.

<sup>56</sup> E.g. the television broadcasting concession contract between the Macao government and the T.D.M. published in the *Official Gazette of Macao SAR Government* on 5<sup>th</sup> May 1999 (P. 2513 and the following few pages).

*Therefore, concession makes sense only when its objective is exclusively owned by the administrative authority<sup>57</sup>.*

To make it simple, a model of indirect management of public service by a private entity is established through **concession**. In the case, Article 2 of the concession contract between the government and the company stipulates that:

*“The concessor grants the following rights to the concessionaire with this contract:*

- a. Providing **exclusive service** of pay terrestrial cable TV” (Prestar **em exclusivo** o STTvS);*
- b. Establishing and operating a public telecommunication system (Instalar e operar um sistema de telecomunicações público);*
- c. Providing video service **on an exclusive basis**, except the video telephone service (Prestar **em exclusivo** os serviços de vídeo, excepto o de vídeo-telefone).”*

When analyzing the documents from the DSRT, **we did not see any comprehensive and in-depth analysis on the objectives and scope of the concession contract conducted by the DSRT, especially clear definition of the scope of business of the Macau Cable TV, Limited, for identifying the core of the disputes between the company and the master antenna service suppliers.**

Item a) of Article 2 of the concession contract is “**providing exclusive service of pay terrestrial cable TV**”. We should first confirm the meaning and scope of this item so that we can identify the core of the problems.

As to the explanation of the aforementioned item a) based on the content of the entire concession (exclusive operation) contract and the background when it was entered into, we think that the key points include:

- (1) **The provision of cable (TV signals);** in other words, **providing TV signals through the technology and medium via cable networks;**
- (2) **The provision of (...) terrestrial (TV signals) service;** in other words,

<sup>57</sup> See *Manual do Direito Administrativo (Manual of Administrative Law)*, Volume II, P. 1000.

the signal is transmitted on the ground, not under water or in the air (sometimes receiving signals has to be in the air due to technical reasons. But this is not for the purpose of transmitting signals to the users directly);

- (3) The provision of **TV signal service** (not other types of service);

The definition here does not refer to shooting or producing TV programmes but providing TV signals – re-broadcasting<sup>58</sup> the signals of other TV stations.

- (4) Operating the business mentioned above **on a pay basis**.

Here it is necessary to distinguish between the **cable transmission service** and the **wireless broadcasting** transmission services.

- (1) Using frequency bands to transmit signals is wireless broadcasting;
- (2) Using cables (including circuits, cables, optical fibers and microwave, etc.) or any other conductors to transmit sounds, images or both of them is cable transmission.

The aforementioned methods of transmission are distinguished by these technological media<sup>59</sup>.

Although this does not directly regulate the way of cable or wireless re-broadcasting, one thing that is worth to be a reference: as far as the protection of copyright is concerned, the legislator foresees and clearly regulates that products can be re-broadcasted by means of both cable and wireless diffusion. To make it simple, these two ways are separate.

The example we cite is Article 11*bis* of the *Berne Convention for the Protection of Literary and Artistic Works*<sup>60</sup>:

<sup>58</sup> This is a rather abstract concept: “re-broadcasting” is one of the cases of retransmission, while “recorded broadcasting” is a way of retransmission; “live broadcasting” is also another way. Regarding these concepts, see Pedro João Fialho da Costa Cordeiro, *Direito de Autor e Radiodifusão*, Almedina, 2004, P. 329 and the following few pages.

<sup>59</sup> See Pedro João Fialho da Costa Cordeiro, *Direito de Autor e Radiodifusão*, Almedina, 2004, P. 295 and the following few pages.

<sup>60</sup> Published in the *Official Gazette of the Macao SAR Government*, issue no. 28, 19<sup>th</sup> July 1999.



*“(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:*

*(i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;*

*(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;*

*(iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.*

*(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.*

*(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.”*

Thus, a conclusion can be made:

Other master antenna services should not disappear simply due to the existence of the concession (exclusive operation) contract of the Macau Cable TV, Limited, because:

**(1) As far as the historical background is concerned, the master antenna**

service has already existed for a long time. When the “cable TV service concession contract” was signed, the government did not intend to adopt cable as the only way to transmit TV signals (it is not possible in fact. The experience of Hong Kong can be taken as reference). Otherwise, the terms and contents of the concession (exclusive operation) contract would have been different.

- (2) There is a clear message: The purpose of introducing cable TV service is to provide one more choice for citizens, and of course the users have to pay a higher fee.
- (3) Apart from gradually improving the broadcasting market, introducing competition and elevating the standard of the sector, as well as making the irregular operation methods be fitted into the norms and international requirements to enhance the standard of rule of law of Macao.

Therefore, the existence of concession of exclusive operation does not prevent the government from allowing the existence of master antenna service by means of licensing on condition that the latter does not have conflict with the scope of the exclusive service and breach applicable law.

For this reason, Article 3 of Decree Law no. 18/83/M of 12<sup>th</sup> March states that:

*“Wireless telecommunication is public interest which is executed under the direct management regime of the administrative authority or a group of individuals who possess public right. Nevertheless, the possibility that the administrative authority will indirectly manage it through concession or licensing system is preserved.”*

Therefore, this **exclusive operation** refers to the one with the objective to transmit TV signals with specialised technology and method (simply speaking, concession of the media and method of transmission of signals), but not exclusive operation of signals or the content of the programmes, which is a matter about copyright.

It is absolutely possible that, for example, the copyright owner of a TV programme authorized the Macau Cable TV, Limited to broadcast his/ her programme or production, but the letter of authorization does not state that the authorization is

exclusive. Therefore the copyright owner can authorize other TV service suppliers to broadcast the programme by means of wireless diffusion.

In the hypothesis above, how does the market react? The answer is:

- (1) In case of exclusive broadcasting, the copyright fee paid by the authorized company must be more expensive;
- (2) On the contrary, if the authorization is not exclusive, the copyright fee will be less expensive normally.

Such market mechanism is the way to adjust and regulate free competition and development of the communication industry, while the government plays the role as the supervisor who does not intervene in the market. Its duty is to ensure the environment and conditions of fair competition and punish the behaviours of disrupting the order in the market.

**Therefore, clarifying the respective scope of activity of the Macau Cable TV, Limited and the master antenna service suppliers is the prerequisite of the solution as well as the necessary and only approach and method.**

\* \* \*

Let us take a look at other parts of content of the concession (exclusive operation) contract.

Article 33 of the same contract bestows upon the Macau Cable TV, Limited a set of rights, including:

*“Apart from the rights foreseen by the law and the contract, the exclusive operator also enjoys the follow rights:*

*a) **To establish and operate a public telecommunication system and provide cable terrestrial TV service** under the contract and other applicable regulations;*

*b) **To connect with the telecommunication systems of other operators** under*

*equal conditions according to the relevant agreements;*

*c) In compliance with applicable regulations, to construct allocated public communication systems on public or private lots or other lots belong to other legal persons that possess public rights in the Macao SAR;*

*d) To install, repair or maintain the communication systems at public roads or underground;*

*e) To travel public areas freely with its personnel and vehicles identified appropriately when needed;*

*f) To gratuitously possess the easement bestowed upon by the construction of telecommunication system;*

*g) To receive user fees and other charges from users;*

*h) To have access to the places of installation of the basic facilities which constitute a part of the system, such as equipment, antennas, wires, conductors and cables with respect for users, to reach the locations where the terminal device is installed;*

*i) To install basic telecommunication equipment needed for the construction of allocated system inside and outside public and private buildings according to other applicable regulations on public telecommunication systems;*

*j) To connect the basic telecommunication equipment in buildings;*

*k) To construct and launch, in compliance with current regulations, any special telecommunication systems necessary for meeting the development objectives within or outside the territory;*

*l) To enter into contracts and receive rewards upon broadcasting other telecommunication operators' programmes or selling its own audio visual programmes to a third party or retransmitting them."*

At the same time, the concessionaire shall fulfil the obligations including:

*“1. The concessionaire shall provide the cable terrestrial TV service which is able to respond to the demands of citizens and economic activities in cultural and social aspects and introduce the latest technologies for supporting the service. Meanwhile, the design of the device shall be able to rapidly respond to the demand of every corner of Macao.*

*2. The exclusive operator shall especially:*

*a) **Observe the current local laws, the current international laws applicable in Macao, the orders, instructions, suggestions and guidelines issued by the relevant authorities according to law and the orders issued by the concessor and the DSRT according to the contract;***

*b) Provide good quality and safe cable terrestrial TV service and guarantee that paid users receive local, regional and international services, programmes and messages;*

*c) Assign qualified staff residing in the territory necessary for local cable TV service to maintain good operation of cable TV terrestrial service and fulfil the obligations under the contract;*

*d) Introduce the latest technologies which keeps up with the pace of the technological development of audio-visual broadcasting to support the transmission system;*

*e) Establish the basic facilities necessary for controlling the system and other properties for the concession, maintain good and safe operation and correct and adjust its functions when necessary so as to ensure normal operation and proper provision of service;*

*f) **Ensure that the basic facilities meet technological standards at local and international levels, especially those mentioned in the charter and guidelines of the International Telecommunication Union;***

*g) Provide the information necessary for execution of its duties and its reasoning to the DSRT;*

*h) Have necessary breakdown maintenance;*

*i) Request for and receive appropriate fees from paid users, provide terminal device that gets the service for them and ensure the maintenance of the device;*

*j) Provide consultation and maintenance services for users;*

*k) **Fulfil other obligations stipulated by the law and the contract.**” (See Article 34 of the contract)*

Since the concessionaire enjoys the rights mentioned above, the concessor/ government, vice versa, enjoys another set of rights, including:

- (1) Termination of the contract (see Article 10 of the contract);
- (2) Approval of programmes and fees (see Article 59 of the contract);
- (3) Right of punishment (see Item b of Articles 59 and Article 65 of the contract);
- (4) Right of supervision (see Articles 7 and 61 of the contract).

Academics usually categorized the rights possessed by concessor into<sup>61</sup>:

- (a) Right of leadership;
- (b) Right of supervision;
- (c) Right of punishment;z
- (d) Right of alternation of concession contract.

This is in harmony with the above terms of the contract.

\* \* \*

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<sup>61</sup> See Pedro João Fialho da Costa Cordeiro, *Direito de Autor e Radiodifusão*, Almedina, 2004, P. 239 and the following few pages.

In the analysis of the contract, one of the important concepts is **exclusive operation** (*exclusivo*), which is defined in Article 1 of the contract as:

*“Exclusive operation: **it refers to establishing and operating a public telecommunication system and provide pay terrestrial TV service on an exclusive basis according to the right bestowed upon by the contract.**”*

It is worth noting that **operating pay cable TV service is within the scope under the exclusive service of the Macau Cable TV, Limited, but the public telecommunication system is not within this scope. This point has to be made clear.**

\* \* \*

Moreover, Article 35 of the contract also stipulates that:

*“1. The exclusive operator has the duty to gratuitously transmit two channels which are permitted to broadcast the audiovisual programmes of public services within Macao;*

*2. For the purpose mentioned in the preceding paragraph, the relevant programmes shall be produced gratuitously by the competent entities on good technological conditions and free of charge. The entities shall ensure they have obtained the authorization and rights, especially the copyright and other associated authorizations, so that the exclusive operator will not be held liable for any additional responsibilities caused by the receipt, production, integration and transmission of the programmes.*

*3. The exclusive operator shall promise to re-broadcast the programmes mentioned in Paragraph 1 completely and without any modification.”*

Article 54 of the contract states that:

*“1. For the arrangement of programmes, **the exclusive operator shall observe the regulations on audiovisual broadcasting.**”*

2. For the content of TV programmes, including those broadcasted by a third channel in any names, the exclusive operator is accountable to the concessor.

3. The exclusive operator shall block the electronic or other types of equipment used for receiving images and sounds from direct access to the relevant channels broadcasting TV programmes for adults only.”

Article 57 of the contract states that:

“1. Except the announcements for public interests and the TV programmes broadcasted under Article 35, the exclusive operator enjoys protection of the copyrights and other protections for the programmes it broadcasts.

2. The exclusive operator shall observe the current local regulations on copyright.”

Concerning external contractual relationships, Article 56 of the concession (exclusive operation) contract states that:

“The exclusive operator shall, in the first priority, enter into agreements with producers of Portugal and other producers of the People’s Republic of China on the acquisition, supply and transmission right of TV programmes.”

This reflects that the concessionaire shall observe not only the concession (exclusive operation) contract but also all laws which are on this aspect and effective in Macao SAR, including local and international laws.

\* \* \*

Another point worth analyzing is the legal nature of the concession. As to the legal nature of concession contract, there are different theories in the history of law. However, nowadays the mainstream considers that it has a dual nature, i.e. it is an integrated act of public law which is of regulative nature (*natureza regulamentar*) and of contractual nature (*natureza contratual*).

In other words, certain terms of the contract is of regulative nature (*natureza*



*regulamentar*) – which mainly refers to the terms related to the organization and operation of the public service, which binds the third parties, especially the people who enjoy the service (e.g. consumers). The terms of contractual nature (*natureza contratual*) are mainly related to the guarantee of the concessionaire’s financial and technological conditions and its privilege against competition (*privilégio contra a concorrência*).

In this sense, a simple conclusion is made: not only a contractual relationship (a relationship based on contract) exists between the conessor and the concessionaire, but also an organizational relationship exists. The concessionaire, in its name and on its own, enjoys the rights and fulfils the obligations provided by the contract – to manage and provide a public service. This is the relationship between the administrative authority and the concessionaire.

As to the relationship with a third party, the concessionaire who acts as an autonomous body, is conferred upon by the administrative authority the eligibility to manage a public service (executed based on a contract with regulative nature). Due to such regulative effect, the concessionaire has a “position that transcends the contract”. Since the public service is managed by a private company, it should definitely be under the government’s strict supervision; otherwise the public interests will be vulnerable.

\* \* \*

After the positions of conessor and concessionaire and the relationships between them are clarified, it is time to explore another key point, which is about exclusive operation or exclusive rights.

The right to manage a public service usually connects with a concept of “privilege” – offering an exclusive protection for the concessionaire. Therefore, the concessionaire usually enjoys exclusive rights and absolute rights (*direito exclusivo e absoluto*). Within the scope of exclusive rights, the concessionaire has the right to oppose or prohibit a third party’s operation of the same activity.

Such privilege may originate in two ways:

- a) The terms of the contract clearly state that the concessionaire enjoys exclusive rights (*direito exclusivo do concessionário*); or
- b) Tacitly from the obligations of the administrative authority/the concessionaire – not to confer the eligibility to operate the same activity upon any third party (or other competitive enterprises or companies).

According to mainstream legal viewpoints, if the law does not prescribe, it should be interpreted that the concessionaire enjoys the exclusive rights<sup>62</sup>.

This concession can define according to different criteria:

- a) The scope of exclusivity based on geographic areas;
- b) The scope of exclusivity based on the type of a certain business activity.

In the case, it seems that there is no doubt that the Macau Cable TV, Limited enjoys the exclusive concession of which the only objective is **to operate pay terrestrial TV service by means of cable device.**

In other words, the government cannot issue another concession of cable TV service. Otherwise, it will violate the concession (exclusive operation) contract entered into with the Macau Cable TV, Limited, unless the law is revised just as the case of gaming industry. It is because under any circumstances, the regulations can be modified by legal means.

Where is the limit (scope) of exclusive rights? One of the criteria to define the scope is TV channels, meaning the TV channels broadcasted by the Macau Cable TV, Limited as permitted by the government, but the prerequisite is to prove that it has the right to broadcast the signals of these channels, i.e., to fulfil Article 57 of the concession contract.

The following are the main TV channels broadcasted by the Macau Cable TV, Limited under permission (this is only a list of examples as there are other newly added channels):

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<sup>62</sup> See Pedro João Fialho da Costa Cordeiro, *Direito de Autor e Radiodifusão*, Almedina, 2004, P. 267.

#### **Chinese channels**

- |    |                                     |
|----|-------------------------------------|
| 1  | MCTV Channel 1                      |
| 3  | ATV Home                            |
| 4  | TVB Jade                            |
| 5  | TVB 8                               |
| 6  | TVB Xing He                         |
| 7  | TVBS Asia                           |
| 8  | Zhujiang TV                         |
| 9  | East Asia Satellite Television Life |
| 10 | Five Star TV Economy                |
| 11 | GuangDong TV                        |
| 12 | Zhuhai TV                           |
| 13 | Fujian TV                           |
| 14 | Phoenix Chinese                     |
| 15 | MSTV Travel                         |
| 16 | Five Star TV                        |
| 17 | MSTV/MSATV                          |
| 18 | CCTV-4                              |

#### **Asian channels**

- |    |                   |
|----|-------------------|
| 20 | NHK World Premium |
| 21 | Arirang           |

#### **Sports channels**

- |    |             |
|----|-------------|
| 30 | ESPN Asia   |
| 31 | STAR Sports |

#### **Movies channels**

- |    |             |
|----|-------------|
| 40 | STAR Movies |
|----|-------------|

#### **Education/Documentary channels**

- |    |                     |
|----|---------------------|
| 50 | Discovery Channel   |
| 51 | National Geographic |
| 52 | Animal Planet       |

#### **Cartoons/Series/Drama channels**

- |    |                 |
|----|-----------------|
| 60 | Cartoon Network |
|----|-----------------|

61	Nickelodeon
62	AXN Action TV
63	STAR World
64	Hallmark

#### **Music/Fashion channels**

70	FTV
72	MTV Asia
73	Channel [V] International
74	Channel [V] North Asia

#### **International channels**

80	Info Channel (English)
82	RTPi
83	TVB Pearl
84	ATV World
85	CCTV-9
86	CNN
87	BBC World News
88	CNBC Asia
89	Deutsche Welle TV
90	TV5Monde Asie
91	RAI
(...)	

How does the government supervise the company's fulfilment of Paragraph 2 of Article 57 of the contract?

It is such an unimaginable fact that the number of TV channels broadcasted by the master antenna service suppliers reaches 60 to 70 but they are under no supervision. The following is an example [see appendix 2, P. 7398]:

*"4<sup>th</sup> April 2008*

*To proprietors of XXX Building,*

*The master antenna system of our company can receive, without using decoder,*

*a total of 73 TV channels and FM signals, including TVB HD Jade, TVBJ, TVB Lifestyle, aTV2 (aTV News & Business Channel), aTV3 (His TV), aTV4 (Her TV), etc.*

*Should you have any queries, please contact our company at 2821-XXXX.*

*Yours sincerely,*

*XXX Electric Company”*

The effective approach to handle the matter is to clarify the following points:

- 1) Among these channels, which are protected by copyright, i.e. non-public signals?
- 2) Which channels are fully open for the public?

The DSRT’s approval of the Macau Cable TV, Limited’s transmission of some channels reflects that the government is playing its supervisory role. Therefore it should not allow other service suppliers to transmit the same TV signal without any authorization documents from the copyright owner. Otherwise, the government will violate the terms of the concession contract.

The conclusion of our in-depth analysis on all information from the DSRT is: the competent authority did not adopt the aforementioned thought and approach to handle the problems between the Macau Cable TV, Limited and the master antenna service suppliers and improve the telecommunication market order.

This also clearly proves that the DSRT does not have adequate ability to solve the problems.

In fact, the disputes between the Macau Cable TV, Limited and the master antenna service suppliers as well as the “verbal arguments” between the duo and the government have continued for over ten years. However, the conflicts we have analysed still exist, but there is no clear direction to solve the problems. As far as public management is concerned, it is hard to be accepted. In addition, these problems

have been hindering the governance over ten years, infringing upon citizens' rights and interests and the Macao SAR's image. In comparison with the example of a person's birth and growth, ten years on, a new baby who does not know a word has already grown up as an adolescent, a primary student who can talk and walk. On the contrary, it seems that this case is in no progress.

Today, this problem cannot and should not be handled with "procrastination". Even if the authority had legislated from scratch as soon as the problem emerged, a result or achievement of any kind of research should have been made within ten years. However, it is a pity that we still have not seen any practical and feasible solution plan.

\* \* \*

**Improper Handling of Infringement upon Copyright and No Suppression by Coercive Legal Means**

We can prove the above conclusion with some other facts.

The aforementioned facts clearly point out that many TV channels outside the territory have sent letters to the DSRT to complain over infringement upon copyright – that their signals were transmitted without their authorization. The DSRT's approach was only to warn the master antenna service suppliers in written form. **Legal coercive means were never adopted.** For example, the complaint of the China International Television Corporation (CITVC) is as follows:

***"China Central Television's Statement about the Copyright of Its TV Programmes in Macao***

*To the Telecommunication Regulatory Committee of Macao,*

*We hereby would like to make the below statement.*

*Our company is the only distributor authorized by the China Central Television (CCTV) that has the exclusive right to distribute the programmes of all channels of the CCTV in the world. Currently, the TV programmes which are transmitted by*

*the TV entities in Macao with our company's authorization are those of CCTV-4 and CCTV-9 only. We have never authorized any TV entities in Macao to transmit channels of the CCTV other than CCTV-4 and CCTV-9. The transmission of other channels of the CCTV except CCTV-4 and CCTV-9 by any TV entities in Macao is unauthorized and constitutes infringement upon the copyright of the CCTV. As the only distributor authorized by the CCTV, our company is not liable for all consequences of illegal behaviour of transmitting of other channels of the CCTV except CCTV-4 and CCTV-9 in Macao without any written authorization. We hope that the relevant regulatory entity of Macao government can adopt effective measures to suppress the infringement upon copyright. At the same time, we reserve the right to adopt legal approaches to protect the legitimate rights and interests of the CCTV and our company.*

*Yours sincerely,  
China International Television Corporation"*

Facing these complaints, the Office of Telecommunication and Information Technology Development made the following response in 2001:

*"Subject: Receiving and Transmitting TV Programmes*

*Our Office has recently received a letter from the CNBC Asia Pacific. The content is as follow:*

- *The CNBC Asia Pacific declares that it is the copyright owner of the CNBC's TV programmes for Asia in Macao.*
- *The CNBC Asia Pacific stresses that the transmission of CNBC's TV programmes for Asia by any entities in Macao without the company's approval constitutes infringement upon the company's copyright.*

*We would like to call the attention of your company to the fact that the regulations on the copyright of the aforementioned TV programmes shall be strictly observed. Without official authorization, the programmes shall not be broadcasted in Macao SAR."*

In 2005, the Office of Telecommunication and Information Technology Development rendered a response in the same way. For example:

*“Since our Office has recently received a number of complaints from international media entities or the official organizations of the place they are located, alleging that their TV programmes were illegally broadcasted in Macao without authorization. Our Office hereby calls for your company’s attention to the fact that the stipulations on copyright of TV programmes and current applicable regulations shall be strictly observed. When official authorization is not obtained or violation of current regulation occurs, the relevant programmes shall not be transmitted in Macao SAR. All alleged irregular acts shall be redressed by 15<sup>th</sup> July. Our Office will take actions to suppress the irregular acts which still exist after the deadline.”*

\* \* \*

Let us see another example.

Take the case of the DSRT’s retrieval of frequency band 2.5-2.7GHz as an example to look at the approach adopted by the DSRT in the aspect of management.

- (1) The frequency band was used by the Macau Cable TV, Limited on a concession basis in the year 98/99. The content of the application is as follows:

**“1. Reserva de frequências adequadas em bandas típicas de MMDS**

*A empresa solicita, preferencialmente, a reserva de 200MHz de banda de frequência no intervalo do espectro radioelétrico de 2,5 a 2,7GHz. Sabendo-se das recomendações da ITU para a utilização desta banda em serviços móveis, a empresa disponibiliza-se para a respectiva devolução num prazo razoável (mas se possível e salvo acordo entre as partes num período não inferior a 5 anos), apesar da intenção expressa da empresa em iniciar a implementação de uma rede de distribuição em fibra óptica a partir do terceiro ano do projecto. Este período de transição do sistema MMDS para o sistema por cabo e a potencial liberação progressiva de espectro, depende, principalmente, da procura do serviço interactivo em*



*Macau e da respectiva rentabilidade económico-financeira do projecto multimédia.” [See P. 596]*

*[English meaning: **Reservation of appropriate frequency band of MMDS***

*Regarding our company’s application for the reservation of frequency band of 200MHz out of the frequency range 2.5-2.7GHz, although our company has clearly stated that fibre optical communication network is scheduled to be constructed in the third year after the operation begins, our company can return the relevant frequency band within a reasonable period according to the UIT’s suggestion about the usage of the frequency band for mobile service (in case of approval or mutual agreement, the time limit can be no less than five years.) Nevertheless, the transition from MMDS into cable system takes time. Also, gradual liberalization of frequency spectrum depends on the demand in Macao for interactive services and the economic effect brought by multimedia.]*

(2) The response of former Telegraph and Post Service was:

*“3. A utilização da faixa 2,5 – 2,7 GHz não pode causar quaisquer interferências nas redes estabelecidas nos territórios vizinhos do Território de Macau, e por isso, a coordenação anterior ao lançamento do serviço é considerada imprescindível;” [See P. 586]*

*[English meaning: 3. The use of frequency 2.5-2.7GHz should not cause any interference of the networks located at the regions near Macao. Therefore, it is necessary to make coordination before launching the service.]*

(3) The proposal by the Office of Telecommunication and Information Technology Development was:

*“Since the Macau Cable TV, Limited is filing a taxation judicial administrative appeal, the original copy of this letter has been referred to the Administrative Court. In view of the various services existing in frequency 2.5-2.7GHz and some variable factors, for example, the satellite mobile business frequency band (2.500-2.520GHz) which came into effect on 1<sup>st</sup> January 2005 and the additional frequency bands which might be used by IMT-2000 are*

*within the frequency bands being used by the Macau Cable TV, Limited. Therefore, the long-term usage by the company may cause inconvenience to the development of Macao. We hereby suggest extending the expiration day of the company's usage of the frequency band to 31<sup>st</sup> December 2003* <sup>63</sup>. We appreciate your consideration.”

*“Em conformidade com as cláusulas trigésima oitava e trigésima nona do Contrato de Concessão, vimos solicitar o prolongamento da utilização da faixa de frequências de 2,5-2,7GHz para o sistema de MMDS, que nos foi concedida até 30/6/2002, por um período de 5 anos, para que a empresa consiga o desenvolvimento necessário à efectivação do investimento na rede HFC, sistema de distribuição final, uma vez resolvidos os actuais bloqueamentos relacionados com a “concorrência ilegal”, que são do conhecimento de V. Exa..”*

*[English meaning: According to Articles 38 and 39 of the concession contract, we would like to request for extension of the time limit for usage of MMDS frequency band 2.5-2.7GHz, which was granted to the company until 30<sup>th</sup> June 2002, for five years. When the obstacles related to “illicit competition” are eliminated, the company's investment on hybrid fibre-coaxial (HFC) system – a terminal transmission system – will proceed as scheduled.]*

(4) On 26<sup>th</sup> September 2002, the Coordinator of the Office issued an order indicating the “agreement on the proposal”.

(5) Later on 30<sup>th</sup> September 2002, the Office made the following response:

*“With regard to your letter no. FIN-AA029/0202 on 15<sup>th</sup> February this year, upon the meeting between the Office and your company and related analysis conducted, we would like to inform you that the deadline for using the frequency band allocated to your company (2.5-2.7GHz) will be extended to 31<sup>st</sup> December 2003. Nevertheless, in case there is request for your company to use other frequency bands due to public interests or compliance with*

<sup>63</sup> Strictly speaking, we think that this reasoning is contradictory, but finally the extension of usage of the relevant frequency was approved. However, this issue is not the main point of this report, so we do not conduct more detailed analysis.

*international regulations, compensation for the alternation or cancellation of the relevant allocation will not be offered.” [See P. 4022]*

- (6) Later, the competent department even extended the deadline for usage to 31<sup>st</sup> December 2004 as follows:

*“With regard to your letter no. FIN-AA137-0903 on 25<sup>th</sup> September this year, after conducting related analysis, we would like to inform you that the deadline for using the frequency band allocated to your company (2.5-2.7GHz) will be extended to 31<sup>st</sup> December 2004. Nevertheless, in case there is request for your company to use other frequency bands due to public interests or compliance with international regulations, compensation for the alternation or cancellation of the relevant allocation will not be offered.” [See P. 4024]*

- (7) Subsequently, **the deadline of the usage was extended again to 30<sup>th</sup> June 2009** as indicated in the following response:

*“With regard to the frequency band 2.5-2.7GHz allocated to your company until 31<sup>st</sup> December this year, due to the need of development of radio service, we would like to inform you that the government will retrieve the frequency band on 1<sup>st</sup> July 2009. Therefore, your company is advised to have preparation before the deadline in order not to affect the relevant service.” [See P. 4033]*

- (8) What is the function of the frequency band 2.5-2.7GHz? The following is the clear description by the Macau Cable TV, Limited:

*“We have received the letter from you on 7<sup>th</sup> April. Our response to the matter about the frequency band 2.5-2.7GHz allocated to the exclusive cable service provider is as follow:*

*The DSRT must be very clear about the reason and background of the fact that the Macau Cable TV, Limited uses the frequency band 2.5-2.7GHz to transmit TV signal. Up to now, since the network on which company has invested a large amount of fund can cover the buildings in Macao, the company still needs to maintain its operation by using wireless frequency*

band and citizens still need to watch TV by using the wireless frequency band. Such problems are caused by the fact that the master antenna service suppliers and the property management companies which are, for their interests, illegally hindered the access of cable network to the respective buildings. The reason why these companies can hinder the access is that the DSRT disregards the existence of the exclusive cable TV service concession contract and has never enforced the law regarding telecommunication for a long time, especially the regulations about satellite TV stations. The government's indulgence has caused the existence of numerous illegal satellite TV stations and enabled illegal operators to occupy a large market share by transmitting a lot of pirate programmes. As a result, the illegal operators, property management entities and even some citizens think that pirate TV programmes can be transmitted since the government does not suppress. Therefore, they hindered the access of our company's cable network to the buildings. **Our company can only maintain the operation by using frequency band 2.5-2.7GHz to transmit signals.** Currently, there are still some buildings in which the cable network cannot be installed. The dwellers of these buildings only can receive cable TV signals through wireless frequency band. Therefore, **the frequency band 2.5-2.7GHz is the requirement for maintaining normal operation of the Macau Cable TV, Limited and the necessary way for the dwellers mentioned above to watch TV.** If the government retrieves this frequency band, the Macau Cable TV, Limited will not be able to transmit TV signals for the aforementioned buildings and a lot of citizens will not be able to watch TV.

Over many years, the DSRT has never proposed any feasible solution for the problems concerning master antenna service. In particular, there has been a large discrepancy between its words and actions over these two years. The DSRT has stated that the retrieval under international agreement is for future development. Since it is so important, the government should have found out the real core of the problems and regulated the illegal operators under the law. The company has done the best to do all what we can according to the DSRT's requirements. We hope that the DSRT will actually enforce the relevant law and safeguard the dignity of law. **Before the problems concerning the master antenna service and illegal satellite TV stations are solved, the company shall continue to use the frequency band 2.5-2.7GHz in order to provide TV signals to the citizens who observe**

*the law and receive legitimate TV signals.” [See P. 4007-4008]*

Regardless of whether or not the facts indicated in this complaint letter are true, it is sure that:

- a) No technical opinions about any in-depth research and analysis on the complaint are seen;
- b) The complaint is, in fact, related to whether the government has fulfilled the obligations under the concession contract. Therefore, the analysis aforementioned is very important. Unfortunately, no related information is seen.

The document above has once again reflected the DSRT’s hesitant attitude when handling problems.

Another conclusion is that: The DSRT has never proposed a specific, effective and feasible solution over very long time!

So far, we have never seen that the DSRT has adopted any coercive measures, including fining.

Do the acts of infringement upon copyrights by the master antenna service suppliers violate the telecommunication law? Do they conduct administrative illegal acts?

If yes, why is the respective procedure not commenced? Is it because of the fear that the master antenna service suppliers will suspend their transmission of TV signals? If it is so, where is the power and dignity of law? What is the value of the existence of the DSRT?

Article 3 of Decree Law no. 18/83/M of 12<sup>th</sup> March states that:

*“Wireless telecommunication concerns public interests which is executed under the direct management regime of the administrative authority or a group individuals who possess public right. Nevertheless, the possibility that the administrative authority will indirectly manage it through concession or the licensing system is preserved.”*

Article 5 of the same decree law states that:

*“1. All operators of wireless telecommunication services, including transmission of sounds and wireless TV signals, are under the supervision and protection of the Governor.*

*2. The supervision and protection prescribed by the previous clause are executed by the Telegraph and Post Service under Paragraph 4 of the previous article.<sup>64</sup>”*

Article 6 of the decree law states that:

*“1. **Any person, on a ship or air within Macao or areas bound by its law, shall neither possess any equipment for transmitting and/or receiving wireless telecommunication signals nor establish or use wireless telecommunication transmitter or network without the government’s permission,** except the situation prescribed by Article 7.*

*2. The permission mentioned in Paragraph 1 neither hinders similar authorizations to other people nor exempts those holders from observing all laws or restrictions effective or to be effective.*

*3. For the effect of this decree law, existence of outdoor antenna is considered as use of wireless telecommunication transmitter or equipment.”*

Article 49 of the decree law also states that:

*“1. Landlords or proprietors of units within a building shall not reject the installation of antenna and leading wires outside or across their properties, except for the situation in which proper reason is given and the department supervising wireless telecommunication has granted permission.*

*2. For installation of antenna device, streets, plazas, highways and public roads may be occupied upon approval of the Service of Public Works and Transport.*

*3. The approval mentioned in the preceding paragraph is granted by the*

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<sup>64</sup> Nowadays, according to the organization law of the DSRT, this is one of its duties.

department supervising wireless telecommunication after making proper reports based on application of parties of interests.

4. The landlords or proprietors of units within a building mentioned in Paragraph 1 and the government always have the right to carry out maintenance, construction, reconstruction or expansion works which deemed appropriate. Even if the antenna device, its supporter or leading wires need to be moved or removed for these works, it is not necessary to pay the owners or users of the device the compensation for the loss caused by the move or removal or the commercial interests which may be led by the move or removal. However, they shall be notified at least 15 days in advance in written form, except for the case in which there are adequate reasons.”

Regarding punishment, Article 51 clearly stipulates that:

**“Violation of Article 6 of the Decree Law is liable for a fine of MOP1,000-10,000 and the equipment of the station will be detained temporarily and subjected to the following measures:**

- a) *If the fine is paid and the station is granted a license, the equipment will be returned;*
- b) *If the fine is paid but the station is not granted a license, the equipment will still be returned. However, the equipment will be returned but its certain parts may be ensealed or removed based on whether it has the characteristics that are qualified for a license;*
- c) *If the fine is not paid, Article 53 will be executed.”*

In fact, the DSRT has never adopted the legal mechanism mentioned above!

In addition, the legal regime concerning administrative illegality is mentioned in Decree Law no. 52/99/M of 4<sup>th</sup> October, but the DSRT has never commenced any procedure against illegal acts under the decree law!

\* \* \*

Besides, Article 70 of Law no. 8/89/M of 4<sup>th</sup> September states that:

*“1. Illegal operation of broadcasting service leads to closure of transmission stations and related equipment and the operator shall be subject to the following punishments:*

*a) In case of transmission by decimetric waves, the operator is liable for an imprisonment up to two years and a fine of MOP300,000-600,000 (TV broadcasting);*

*b) In case of transmission by hectometric waves, the operator is liable for an imprisonment up to one year and a fine of MOP150,000-300,000 (radio broadcasting: Amplitude Modulation);*

*c) In case of transmission by metric waves, the operator is liable for an imprisonment up to six months and a fine of MOP75,000-150,000 (radio broadcasting: Frequency Modulation).*

*2. The assets within the facilities closed down under the preceding paragraph are declared to be owned by Macao, without damage to the rights and interests of the third parties with good faith.”*

Also, we have never seen that the DSRT has commenced these mechanisms, quoted these regulations or even commenced the most basic administrative procedures.

As mentioned above, three staff members of the DSRT have come to the CCAC to clarify and explain some questions, one of which is about why the DSRT “knows but ignores the problems, deals with them but does not make any decision, and when decision is made, it is not executed”?

In response to these questions, the staff provided the following explanation:

- *CCAC’s staff asked Declarant 1: Regarding the problems between the master antenna service suppliers and the Macau Cable TV, Limited, has the DSRT conducted any research and analysis?*
- *Declarant 1 answered: The DSRT has been exploring the problems but has not compiled the relevant analyses and researches into a detailed report.*



- CCAC's staff said to Declarant 1: *The DSRT has discussed those problems internally but has not commenced any research officially. There is no internal document to prove that, but it is seen in some proposals made in different periods.*
- CCAC's staff asked Declarant 1: *Has the DSRT opened any independent administrative file to handle the matters about some international organizations' copyrights?*
- Declarant 1 answered: *No.*
- Declarant 1 continued: *Before the DSRT was established, the network of the Macau Cable TV, Limited has not completely installed. The company was not able to provide TV signals to all Macau citizens, so the Office of Telecommunication and Information Technology Development neither suppressed the master antenna service suppliers nor issued any relevant licenses for public interests and ensuring that Macao citizens could watch TV.*
- CCAC's staff asked Declarant 1: *Why did the DSRT adopt different approaches to deal with the problem concerning master antenna service in different phases?*
- CCAC's staff asked Declarant 1: *Why didn't the DSRT consider issuing licenses to master antenna service suppliers in order to solve the problems?*
- Declarant 1 answered: ***Since the Macau Cable TV, Limited has the concession contract, without clarification of the scope of operation and any plan of cooperation, the DSRT did not grant any license to the master antenna service suppliers.***
- CCAC's staff asked Declarant 1: *Has the DSRT sought any opinions from legal advisers about the problems concerning master antenna service or copyright?*
- Declarant 1 answered: ***Yes, but no independent research report has been made.***

- CCAC's staff asked Declarant 1: *Has the DSRT ever thought of solving the problems concerning master antenna service or copyright through legislation?*
- *Declarant 1 answered: No suggestion about law revision has been made so far.*

The conclusion is: No solution has been come up with for the problems.

\* \* \*

## **2. The Relationship between the Macao SAR Government and the Master Antenna Service Suppliers**

The leadership of the DSRT has stressed on various occasions and in many letters that the existence of master antenna is illegal.

Since its nature is so clear, why no practical measure or approach has been adopted to solve this problem over the ten years?

On 28<sup>th</sup> May 2010, the DSRT indicated the following in its reply letter (for the delivery of all information to the CCAC):

“(…)

*2. Concerning the copyright of TV programmes, for the important letters ever received by the DSRT, please refer to Appendix 1. **The DSRT has promptly followed up and responded to the complaints respectively concerning the master antenna service and the cable TV** (please refer to Appendix 1. For details of the process, please refer to the file mentioned in point 1). The DSRT would like to explain here. Since matters about copyright are not covered by the scope of activity of the DSRT, after prompt co-ordination, the DSRT has already declared to the Macau Cable TV, Limited that the holders of the relevant copyrights could resolve the disputes by legal means<sup>65</sup>;*

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<sup>65</sup> The underline is inserted by the CCAC.

3. After many rounds of negotiation, the master antenna service suppliers and the Macau Cable TV, Limited did not achieve a solution to the conflict of operation accepted by both sides<sup>66</sup>. Therefore, the DSRT proposed a solution actively in February this year Appendix 2, which indicates the background stories.

*The occurrence of the problems can be traced back to the days after the Pay Terrestrial Television Service Concession Contract was signed. The both sides signing the contract did not render solutions to the problems concerning the master antenna service, resulting in different understandings of the scope of the services under the concession contract by the master antenna service suppliers and the Macau Cable TV, Limited. Due to different reasons and considerations, the two sides in the dispute (the master antenna service suppliers and the Macau Cable TV, Limited) tended to collaborate with each other instead of filing a lawsuit to the court. Therefore, the authorities have been fully cooperating with them and expediting relevant negotiation with an aim to seek a solution accepted by both*<sup>67</sup>.

Finally, in view of the complexity of the problems and the fact that they have lasted for over 10 years, the DSRT is willing to provide more related information for the CCAC in oral or written form.”

After that, the DSRT’s staffs went to the Commission to explain that:

- CCAC’s staff asked Declarant 1: Has the DSRT opened any independent administrative files to handle the matters about some international organizations’ copyrights?
- Declarant 1 answered: No.
- Declarant 1 continued: Before the DSRT was established, the network of the Macau Cable TV, Limited has not completely installed. The company was not able to provide TV signals to all Macau citizens, so the Office of Telecommunication and Information Technology Development neither suppressed the master antenna service suppliers nor issued any relevant licenses for public interests and ensuring that Macao citizens could watch TV.

<sup>66</sup> The underline is inserted by the CCAC.

<sup>67</sup> Same as above.

- *CCAC's staff asked Declarant 1: Why did the DSRT adopt different approaches to deal with the problem concerning master antenna service in different phases?*
- *CCAC's staff asked Declarant 1: Why didn't the DSRT consider issuing licenses to master antenna service suppliers in order to solve the problems?*
- *Declarant 1 answered: Since the Macau Cable TV, Limited has the concession contract, without clarification of the scope of operation and any plan of cooperation, the DSRT did not grant any license to the master antenna service suppliers.*

In fact, the DSRT did not concretely point out which aspect such illegality involved.

By summarizing the information above, **we make the following conclusion. The so-called illegality involves the following aspects:**

**(1) The commercial activities carried out by the master antenna service suppliers were different with the objective of business (aim of the business) they declared to the Financial Services Bureau when they were established, because there was no declaration and statement of receiving and transmitting TV signals (if yes, special permission would be required. However, there was not any special permission in fact). For this reason, the existence of the master antenna service suppliers violates some laws:**

a) Paragraph 1 of Article 9 of Decree Law no. 18/83/M of 12<sup>th</sup> March states that:

*"1. The government's permission of the establishment and use of wireless telecommunication facilities can be granted to one or more than one person, or the combination of both.*

*2. The government's permission of establishment of wireless telecommunication network can be granted to one or more than one person, no matter it is for individual or common use.*

*In case of common use, the communication of the mobile stations of each one or more than one person shall be ensured through the common terrestrial stations.*

*3. People who are granted any one of the permissions mentioned in Paragraphs 1 and 2 shall be liable for the violation of this decree law and other regulations necessary for the execution of this decree law. The people shall also be totally liable for loss caused to themselves or third parties in any forms, no matter the loss is caused by the safety or shortcomings of their stations or any other reasons related to the stations.”*

The fact is: there is no information showing that the master antenna service suppliers have had any permission in this regard.

b) If the master antenna service suppliers operate as companies, they will violate Article 24 of the preamble of the *Commercial Code*. The outcome is that the Public Prosecutions Office can request from the court a declaration of dissolution of these “companies” under Clause 3 of Article 315 of the *Commercial Code*.

**(2) The second point is that the master antenna service suppliers have never applied for any permission of telecommunication service operation to the government, Therefore, their operation is illegal.** Facing this fact, the DSRT has the responsibility to clearly explain to operators and citizens that illegal situations can never be the “bargaining chips” in negotiation with the government.

Although we understand that the master antenna service suppliers play an important role in the history, they should move on. Since the Decree Law no. 18/83/M of 12<sup>th</sup> March entered into force, they should have observed the related provisions under the law.

Such illegalities have existed for ten years and the DSRT, without doubt, is duty-bound for this, since this situation is caused by its equivocal and indecisive policies. From a legal viewpoint, it is equivalent to allowing the existence of illegal situation due to omission, which is also the same as negligence of its duty. It is because according to the principle of legality, one of the duties of the entities which possess public powers is to ensure the legality of all kinds of situations and suppress illegalities by legal means. It is a pity that there was no concrete measure over the ten years.

(3) Moreover, the DSRT's stance is that the both sides in the dispute have to solve the problems by negotiation. This is another wrong approach. From a legal viewpoint, it is impossible for the government to always play the role as the middleman to coordinate in legal and illegal activities. On the contrary, the government should take the initiative to establish measures and related systems as soon as possible, regulate the actual situations, as well as strictly observe the terms of the concession contract. At the same time, it should strictly suppress illegal transmission of TV signals.

When exercising our duties, we realized that the Macau Cable TV, Limited submitted an application to the Court of First Instance on 22<sup>nd</sup> September 2010 to request for nomination of an arbitrator to arbitrate the matters concerning the objectives of the concession contract. The relevant procedure is still ongoing.

It shows that there is one more setback!

\* \* \*

### **3. The Scopes of Services of Master Antenna Service Suppliers and the Macau Cable TV, Limited:**

Regardless of the illegal operation (without license) of the master antenna service suppliers do the scopes of services provided by the two types of commercial entities overlap each other? The answer of this question is not complicated, which is partly reflected by the complaints received by the DSRT.

The Macau Cable TV, Limited has complained to the DSRT concerning the copyright of the following companies, leading to the latter's warning to the master antenna service suppliers:

- (1) ESPN STAR SPORTS;
- (2) Discovery Channel;
- (3) UBC programs (Thailand);
- (4) Star Movies International;
- (5) Star Movies;
- (6) National Geographic;

- (7) Channel [V] Asia;
- (8) AXN Channel;
- (9) ANIMAX Channel;
- (10) CNBC Asia Pacific;
- (11) ...

The signals of all TV channels mentioned above are non-public signals, which are transmitted with the copyright owner's authorization. Therefore, it is illegal for the master antenna service suppliers to transmit these TV signals unless the copyright owner states in the authorization document that any of the master antenna service suppliers and the Macau Cable TV, Limited are authorized to broadcast certain channels. However, no such authorization is seen in any documents.

To make it simple, when the Macau Cable TV, Limited transmits the signals of a certain TV channel (certainly, the DSRT has approved in advance), other transmission stations, in principle, cannot transmit the same signal to the consumers in Macao unless it is public signal. Otherwise, what is the significance of concession?

It is necessary to remember that: every decision made by the concessionaire is almost subject to the government's supervision and approval. On the contrary, master antenna service suppliers are under no supervision. Typical examples include:

- (1) The organizations (enterprises) operating signal transmission do not obtain administrative licenses;
- (2) The objectives of registered enterprises (the business they run) are not consistent with the business they are actually running;
- (3) The government never conducts any actual supervision on the signal transmission process;
- (4) No application is filed for the equipments which should only be possessed with permission and registration.

Here is the question we would like to post: Should wireless transmission be subject to regulation? Or can it be totally free from restriction? Do the relevant government departments know the real meaning of "legal administration" and

fulfilling statutory duties?

In addition, there are many public channels, including:

- (1)TVB Jade of Hong Kong;
- (2)ATV of Hong Kong;
- (3)TVB Pearl of Hong Kong;
- (4)ATV World of Hong Kong;
- (5)CCTV-4;
- (6)CCTV-9;
- (7)...

There is a brief story worth mentioning.

In the past, the TV signals transmitted by the master antenna service suppliers are, basically, the aforementioned public channels. Therefore, there was no infringement upon copyright or competition among the suppliers. Nevertheless, due to technological development and introduction of new equipments, especially the popularity of dish antenna and equipment for receiving satellite signals, the master antenna service suppliers introduced new TV channels in order to attract more customers and enhance their own competence in the market, resulting in more intense conflicts about transmission of TV signal. Therefore, the problems concerning infringement upon copyright or illicit competition did not exist until the 1980s.

It is a fact that the master antenna service suppliers are liable for the aggravation of the situation. The government's inadequate supervision and failure to enforce and observe the law is also one of the main factors. There is no regulation on the matters which should be regulated, no law-enforcement when strict law-enforcement is required and no legislation when legislation is urgently needed. Such attitude has led to aggravation of the conflict between the master antenna service suppliers and the Macau Cable TV, Limited.

In fact, if the problems are not solved promptly, the situation will get worse. The ultimate victim will be the consumers. Therefore, to realize the core of the problems and promptly adopt appropriate measures to solve the problems is the only approach.

\* \* \*



## Part IV: Solution to the Problems

The disputes caused by TV signals and their influence on the society and citizens have been clearly and thoroughly described above. Finally, the most important questions are: how to resolve the disputes effectively? How to completely solve the problems which has lasted for over 10 years?

It is found in the related information that in November 2009, the DSRT submitted a report to its supervisor, the Secretary for Transport and Public Works, in which a few solution plans worth considering are proposed:

### 1. Three Solutions Proposed by the DSRT:

#### (1) - The First Proposal [See Official Letter no. 303/03-811]:

“(…)

Proposal 1: Negotiation between the Macau Cable TV, Limited and the master antenna service suppliers

*In fact, after Macao’s handover, the department in charge of telecommunication has taken the initiative to coordinate with both sides to seek the room of cooperation. However, due to significant discrepancy concerning interests between them, the existing cooperation covers only a few areas, which cannot help solve the problems.*

Proposal 2: The government takes the initiative to identify the scopes of services provided by the two sides

*In view of the general definition of the exclusive service under the concession contract, which is that pay terrestrial TV service refers to transmission of terrestrial audio-visual signals to pay users by the exclusive operator, it is difficult to identify the scope of service of the master antenna service suppliers.*

Proposal 3: Maintaining exclusive operation and suppressing master antenna service

*To suppress the services which violate the terms about the scope of service*

*under the concession contract. Based on the description of Proposal 2, in order to maintain the exclusive service, full suppression on the master antenna service suppliers is required. However, it seems that it is hard for the public to extensively accept this plan under the current circumstances.*

**Proposal 4: Suspension of the exclusive operation and maintain the status quo of the master antenna service suppliers**

*According to the concession contract, the exclusive operation can be terminated in the following cases:*

- a) Expiration of exclusive operation period;*
- b) Agreement by both sides;*
- c) Retrieval;*
- d) Repeal due to violation of the contract;*
- e) Repeal due to the public interests.*

*The enduring disputes between the Macau Cable TV, Limited and the master antenna service suppliers were caused by the fact that there was not any concrete solution to the situation of the master antenna service suppliers when the concession contract was entered into<sup>68</sup>. Therefore, termination of the exclusive operation should satisfy the general public's demand for open competition as well as enable the government to regulate TV transmission service. If the status quo of the master antenna service suppliers is maintained, although the society will be peaceful temporarily, the future development will finally be hindered since they are unregulated and the antenna networks are chaotic.*

**Proposal 5: Termination of exclusive operation and purchase of networks of the master antenna service suppliers**<sup>69</sup>

*The cases of suspension of TV transmission are due to the fact that the master antenna service suppliers possess networks of TV channel transmission which are not subject to any norms. Therefore, although termination of the exclusive operation may bring them interests, the government still has to control their transmission networks*

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<sup>68</sup> The underline is inserted by the CCAC.

<sup>69</sup> Same as above.

*by means of purchase in order to ensure that the signals will not be suspended, while the master antenna service suppliers can concentrate on establishment and maintenance of networks within buildings.*

*In this case, it is still necessary to consider the following ways of TV signal transmission:*

*1) The Macau Cable TV, Limited transmits TV signals exclusively. When the concession is terminated, the government can consider entering into another contract with the company, that will broadcast basic TV channels (terrestrial and satellite signals which are received without violating copyright) for all users. The advantage is that the government will easily control the sources of signals so that problems will be solved immediately.*

*2) To maintain the status quo. The Macau Cable TV, Limited and the master antenna service suppliers provide TV signals. In this case, the master antenna service suppliers, with no doubt, should stop transmitting the channels in violation of copyrights. The advantage is that too much alternation and adjustment is not needed and the citizens' common practice will not be affected significantly. However, from another angle, the government will face another problem in the future<sup>70</sup>.*

*4. After the interim review on the Macao's Public Telecommunication Service Concession Contract was signed, the general idea of the future development of the telecommunication sector has emerged. In particular, the establishment of the second telecommunication network and convergence of telephone, internet and television services, will be launched in order according to the schedule. At the same time, it will be a good time to consider resolving the pay television service concession contract in order to satisfy social demand as well as facilitate the future development of telecommunication sector.*

*5. By analyzing the five proposals above comprehensively and, especially, taking into account the purpose of enabling citizens to have access to some basic TV programmes without interruption at a lower price, the tendency of future development mentioned in point 4, the social acceptance of the proposals and the technical viability and effects of the government's possession of controlling power*

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<sup>70</sup> The underline is inserted by the CCAC.

*in exchange of paying the price, the DSRT considers that the Proposal 5 above can solve the problems between the Macau Cable TV, Limited and the master antenna service suppliers more completely.*<sup>71</sup>

6. As to termination of exclusive right, the government should decide the approach. Under the current circumstances, the acceptable methods are b), c) and e) mentioned in Proposal 4. In cases of c) and e), based on the terms of the concession contract, the government has to compensate the Macau Cable TV, Limited. However, since the company recorded large loss over recent years, compensation is not needed (for the estimation, please see Appendix 1). These two ways should be adopted conditionally. For example, retrieval should be proposed one year in advance when the service has provided for 10 years (8<sup>th</sup> July 2000). Therefore, this approach cannot satisfy such urgent demand. If the exclusive right is terminated due to public interests, the government should identify the public interests. In the past, the master antenna service suppliers tended to take the initiative for their own interests by affecting citizens' access to TV channels. At the same time, citizens could install antenna on the roof of buildings in most areas in order to receive terrestrial or satellite TV signals. In this sense, the basis for seeking public interest will be obscure<sup>72</sup>.

7. The retrieval and repeal due to public interests can be used for negotiation with the Macau Cable TV, Limited. The solution which will be easier accepted by both may be termination of the exclusive operation by agreement. In this case, the calculation of compensation is not applicable, but the amount of compensation is expected to be no more than MOP200 million.

8. As to purchase of networks possessed by the master antenna service suppliers, since the existing networks are of very poor quality, the government's purchase is only for the purpose of controlling their usage. The price has yet to be discussed with the master antenna service suppliers<sup>73</sup>.

9. Apart from price, the government still has to pay attention to the following matters:

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<sup>71</sup> The underline is inserted by the CCAC.

<sup>72</sup> Same as above.

<sup>73</sup> Same as above.

- *The quantity and content of basic TV channels require the government's agreement, while the charges for all TV programmes need the government's approval;*
- *The current cable and master antenna networks keep operating until the new telecommunication network is ready. Since then all antennas across streets will be substituted;*
- *Although neither the customers of the Macau Cable TV, Limited nor the master antenna service suppliers will pay more charges given rise by the proposal, but appropriate rise of the charges for access to basic TV channels should be allowed in the future in order to satisfy the need of signal providers, network operators and installers and maintainers of devices within buildings for profit making demand;*
- *The possibility to recognise the qualification of installers and maintainers of telecommunication circuits within buildings can be taken into account with an aim to solve the problems concerning the identities of the master antenna service suppliers;*
- *Before granting licenses to new telecommunication network operators, the government will pay<sup>74</sup> for the necessary expansion or maintenance of TV networks;*
- *If users have any demands for programmes broadcasted by TV channels other than the basic ones, the Macau Cable TV, Limited and the master antenna service suppliers will charge the users according to the proportion determined by the government<sup>75</sup>.*

The order issued by the Secretary for Transport and Public Works on 3<sup>rd</sup> December 2009 mentioned that:

*“Concerning the case, the DSRT shall follow up on the following aspects:*

<sup>74</sup> The underline is inserted by the CCAC.

<sup>75</sup> Same as above.

*- To continue to evaluate and update the latest information, to provide multiple technical solution, to strive to reach a feasible solution base on the favourable factors such as the expiry date of the concession and court litigations;*

*- To establish a comprehensive urgency solution plan for possible interruption of visual signal;*

*- To seek citizens' support for solution proposal through promotional strategies.*

*(...)"*

In other words, the government's attitude basically did not favour the proposals mentioned above. Therefore, we will not have too much analysis on it. Nevertheless, it is sure that the whole plan lacks detailed technical analysis, reflecting the DSRT's habitual approach to solve problems, which is, "making small steps forward passively without long-term plan". The effectiveness of such method is definitely in question!

\* \* \*

***(2) - The Second Proposal [See Official Letter no. 132/03-811]:***

On 28<sup>th</sup> May 2010, the DSRT brought up another proposal. The details are as follows:

*"(...)*

*3. As the interim review on the Macao's Public Telecommunication Service Concession Contract was completed in November last year, a clear schedule for full liberalization of the telecommunication market has appeared. At the same time, in view of the tendency of convergence of telecommunication, internet and broadcasting services, the current Pay Terrestrial Television Service Concession Contract will become an obstacle of the future development of the telecommunication market of Macao due to its excessive large scope of exclusive service.*

*4. In order to solve the problems between the Macau Cable TV, Limited and the master antenna service suppliers which have lasted for over many years as*

soon as possible, the DSRT provided the government's proposal [Appendix I] to the Macau Cable TV, Limited for consideration via Official Letter no. 801/03-811 on 26<sup>th</sup> February after discussing with your honour, the Secretary for Transport and Public Works, at the moment when the company is taking legal action against six master antenna service suppliers concerning infringement upon copyright of TV programmes. The main bases of the proposal are as below:

- The government will purchase cable network so that it can keep the media of TV programme transmission under control (the government will also take charge of the antenna cables installed across streets by the master antenna service suppliers without any license);
- The aforementioned networks will gradually become parts of the basic telecommunication device to be established in the future;
- To revise the current Pay Terrestrial Television Service Concession Contract; the Macau Cable TV, Limited will be classified as the supplier of signals of basic TV channels (mainly including free channels of which the quantity and contents of the programmes have to be determined according to the discussion between the government and the company), while the signals will be connected with all TV transmission networks in Macao, including those of the master antenna service suppliers;
- The basic TV channels mentioned above are mainly to guarantee that the citizens can have access to basic terrestrial and satellite channels at relatively low price. At the same time, since they are transmitted by means of exclusive operation, the TV channels transmitted by the master antenna service suppliers can be replaced and standardized in order to prevent the problems concerning copyright which occur frequently;
- The way to exclusively transmit basic TV channels is only based on the technology of unidirectional transmission, which is currently adopted by the Macau Cable TV, Limited, while other audio-visual transmission services based on new technologies, especially IP or interactive device, are beyond the scope of the exclusive services;
- The Macau Cable TV, Limited can continue to transmit pay TV programmes

*by means other than exclusive operation;*

- *The master antenna service suppliers have to pay a certain sum to the Macau Cable TV, Limited as the charge for the signals of basic TV channels. The spending related to other pay TV programmes which are transmitted by the Macau Cable TV, Limited and connected and maintained by the master antennas service suppliers, have to be settled based on discussion between both sides;*

- *The master antenna service suppliers will only be responsible for installation and maintenance of TV networks within buildings in the future, instead of supply of public TV service;*

- *The relevant proposal does not mention the matters concerning whether the concession period needs to be extended.*

*5. After the above letter is sent, the DSRT had a meeting with representatives of the Macau Cable TV, Limited to give a detailed explanation of the proposal. Since there was no response from the company, the DSRT sent a letter (Official Letter no. 1208/03-811, Appendix 2) to the company on 9<sup>th</sup> April 2010 to request for concrete opinion.*

*6. The Macau Cable TV, Limited submitted a response letter via its representative, Legal Macau Lawyers, on 23<sup>rd</sup> April (Letter no. LMA062-01/12, Appendix 3). The content is summarized as follows:*

- *The Macau Cable TV, Limited requested the government to pay MOPXXXXX for the purchase of network;*

- *According to the results of the discussion, the company will continue to supply pay terrestrial TV service on an exclusive basis and the concession contract will be renewed for 10 years;*

- *The company claimed that it was not, in fact, benefited from the exclusive operation system under the concession contract, and therefore it requested the government to exempt it from the fees it has to pay for;*

- *During the first five years when the government provides basic TV channel*



*at a lower price, it should pay the difference between this price and the price of the basic plan provided by the Macau Cable TV, Limited at the moment;*

*- The master antenna service suppliers should be responsible only for installation and maintenance of cables within buildings, while the payment should be determined by discussion between them and the Macau Cable TV, Limited based on commercial principles.*

*7. Since the details of calculation method for the purchase of networks were not mentioned in this response, the DSRT subsequently had a meeting with the company during which the DSRT requested for the basis for proposing MOPXXXXX as well as stressed that the suggestion of extending the concession contract for 10 years raised by the company should be in harmony with the government's policy to liberalize the telecommunication market. The related matters would be handled during revision of the concession contract in the future.*

*8. On 13<sup>th</sup> May 2010, the company sent another response to the DSRT (letter no. LMA062-01/13, Appendix 4), indicating that MOPXXXXX was a request made upon its acceptance of the total price proposed by the government and the company would not give any explanation of the price requested. (...)"*

The Chief Executive rejected this proposal through an order (*despacho*) dated 11<sup>th</sup> June 2010.

This attempt ended up in failure again due to the fact that the proposal does not target the core of the problems.

\* \* \*

**(3) - The Third Proposal [See Official Letter no. 243/03-811]:**

The DSRT brought out the third proposal on 12<sup>th</sup> August 2010, the content is as follows:

*"6. Facing the dilemma mentioned in point 5 and in view of the possible influence of the exclusive cable TV service on the future development of convergence*

*(of telecommunication, internet and broadcasting services which are called 3-in-1 service in Mainland China) after the telecommunication market is fully liberalized in 2010, and since the citizens' basic need in daily life – watching TV – shall not be infringed upon by the dispute between the Macau Cable TV, Limited and the master antenna service suppliers, we would like to bring up the following proposal to your Excellency, the Secretary for Transport and Public Works:*

*(1) To repeal the concession due to public interests according to Article 13 of the Pay Terrestrial Television Service Concession Contract. The public interests mentioned here include<sup>76</sup>:*

*- The ambiguity of the scope of exclusive service seriously affects the development of convergence after the full liberalization of the telecommunication market;*

*- The Macau Cable TV, Limited has never installed underground networks, disadvantaging the government's preparation for network competition and directly slowing down the launch of new telecommunication service;*

*- The long-term disputes between the Macau Cable TV, Limited and the master antenna service suppliers disable citizens to have access to diversified and high quality TV programmes at reasonable prices.*

*(2) To pay the Macau Cable TV, Limited compensation calculated under Article 16 of the same contract (For the preliminary estimation of compensation, please see Appendix 3);*

*(3) In order to maintain the current services of the Macau Cable TV, Limited, the government will employ a company of a certain scale (such as the CTM) to temporarily take charge of the operation of the Macau Cable TV, Limited on a contractual basis until the government determines the mode of TV transmission in the future;*

*(4) To continue to employ the staff of the Macau Cable TV, Limited who are willing to stay without a change of salary and benefits until the new operator*

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<sup>76</sup> The underline is inserted by the CCAC.

*appropriately approved starts its operation;*

*(5) To gradually suppress the TV signal receiving stations established by the master antenna service suppliers; the company mentioned in (3) will assist in the connection between the basic TV channels determined by the government and the networks of the master antenna service suppliers;*

*(6) The new fixed public telecommunication network will gradually replace the existing cable and antenna networks according to the progress of network construction.”*

Here is a question: Is this the only solution which is effective and pursuant to the principle of moderation, legality and impartiality?

\* \* \*

It is not difficult to find that the DSRT still has not proposed a complete plan. The proposals it has ever raised only stuck to basic direction and preliminary exploration. The aforementioned proposals are only embryonic models which are not backed by detailed technical and legal analysis. It is hard to imagine that the DSRT will have a complete solution plan.

- Are there any scientific demonstration conducted?
- Are the problems which should be solved when each proposal is implemented listed?
- Are there any comprehensive evaluations on the negative effect to be caused by each proposal and compromise?

These are our questions.

Without opinions by experts and in-depth and comprehensive analysis on related problems, it is impossible to make a complete plan!

**In addition, there is no schedule for implementation of the plan or**

**proposal. Do we need to wait for five or ten years?**

A key point has been overlooked in these proposals: the master antenna service suppliers are still in an illegal situation, so why is it still allowed to exist? Regarding this point, no detailed legal opinion and analysis have been seen.

All of the proposals involve the government's expenditure but they cannot immediately solve the problems concerning illegality and no risk evaluation has been conducted. Therefore, their effectiveness is in question.

\* \* \*

**2. The Concrete Measures We Suggest to Solve the Problems:**

After comprehensively analyzing the materials above and obtaining crucial data, we consider that the measures for solving the problems are basically as follows:

- (1) To set up a schedule to completely solve the problems between the master antenna service suppliers and the Macau Cable TV, Limited in six months to one year;
- (2) To complete legislation within six months to regulate the situations of the master antenna service suppliers and stipulate that they shall apply for licenses issued by the Macao SAR Government (detailed requirements to be stipulated by law);
- (3) A “master antenna service supplier” shall be set up as a limited company and minimum authorized capital shall also be set, while the operation shall be under strict supervision;
- (4) To promulgate an Administrative Order (Article 17 of Decree Law no. 18/83/M of 12<sup>th</sup> March): master antenna service suppliers shall remain status quo until the period for application for license ends. Suspension of transmission of signals is subject to punishment;
- (5) The new law shall clearly stipulate that the channels and signals

transmitted by master antenna service suppliers shall be approved by the DSRT;

- (6) To make all-out adjustments of the broadcasting regime apart from law revision;
- (7) To consider promulgating transitional measure: Suspension of transmission of signals is subject to punishment.

**Benefits:**

- (1) Time and administrative cost will be saved;
- (2) To basically ensure that the conditions of future operation of the master antenna service suppliers will not be worse than the current ones;
- (3) The terms of the concession contract and the direction of future development can be reviewed;
- (4) The government can monitor the whole TV signal transmission market efficiently and effectively;
- (5) To ensure that the citizens can continue to have access to TV channels on conditions not worse than the current ones;
- (6) To boost the government's privilege and ability in the administration of the telecommunication market as well as strictly enforce the rules of punishment;
- (7) To completely remove the antenna cables across rooftops and eliminate other old equipment within a designated period.

\* \* \*

## Part V: Conclusion

To conclude, the Commission considers that:

### **I – About Supervision on Legality:**

- 1) As to the problems between the Macau Cable TV, Limited and the master antenna service suppliers, **the DSRT apparently did not observe and strictly enforce the law and the approaches it adopted did not hit the core of the problems, leading to poor administrative efficiency;**
- 2) **The DSRT has never commenced any administrative procedures against the master antenna service suppliers and made related administrative decisions according to the law;**
- 3) **The DSRT has never made a clear definition of the concession (exclusive operation) contract, especially the scope and meaning of its objectives from a professional and legal angle, for adopting an effective law-enforcement procedure;**
- 4) **The DSRT did not promptly commence the procedures of law revision and legislation** to completely solve the problems concerning TV signal transmission by legal means.

### **II – About Supervision on Administration and Effectiveness:**

- 5) The DSRT **was not sensitive enough** when handling the problems. **The approaches it adopted were not prudent and careful. The problems and their severity were not completely reviewed;**
- 6) The DSRT did not jointly handle the technical problems with other relevant law-enforcement agencies (e.g. the Macao Customs Service and the Macao Economic Services), **resulting in increasing severity of the problems and affecting the privilege of the government's administrative management;**
- 7) **The method and procedure of handling complaints do not meet the requirements of modern management** (The handling methods turned out to

be inefficacious and lacked substantial solutions). The core problems were not solved promptly and effectively.

- 8) “Making small steps forward passively without long-term plan” is Achilles’ heel of public management. Nevertheless, the DSRT adopted this method to handle the problems concerning the master antenna service, **just like being in a “maze” and not knowing where the way out is;**
- 9) **The documents and information are chaotic, showing poor management and organization.**

\* \* \*

#### **Part VI: Recommendations**

Under Item 12 of Article 4 of Law no. 10/2000 of 14<sup>th</sup> August (*Organizational Law of the CCAC*), the CCAC rendered the following recommendations to the DSRT:

1. To immediately designate specific staff members (or form a professional task force) to take action and try the best to completely solve the problems of the master antenna service within six months to no longer than one year;
2. The members of the task force mentioned above should carefully study the concrete measures proposed by this report and other effective measures;
3. To commence the preparatory works on the license application procedure according to Article 8 of Decree Law no. 18/83/M of 12<sup>th</sup> March, so as to have in-depth and comprehensive access to all concrete information about the master antenna service suppliers;
4. To immediately commence legislative procedure to try the best to submit a proposal about regulating the master antenna service suppliers to the Legislative Assembly and establish a complete supervisory regime in three months;
5. To study the problems concerning the concession (exclusive operation) contract, especially the arrangements and measures after the contract

expires;

6. Facing the controversial problems, the DSRT should re-identify its position and adopt legal means in order to safeguard the government departments' privilege in the society of rule of law;
7. To improve the document handling methods and its staff's ability and sensitivity.

\* \* \*

Finally, my order is as follows:

1. To submit this report to the Chief Executive for consideration of the relevant proposal.
2. To submit this report to the Director of the DSRT and the representative of the Macau Cable TV, Limited (the complainant).
3. To archive this case upon execution of the measures mentioned above, without hindering assistance to the relevant department in adopting appropriate measures which help solving the problems as soon as possible under legal circumstances.
4. To return the documents submitted by the DSRT.
5. To notify the DSRT of the content of the "record of statement" made by the CCAC for the DSRT's staff's statements.

\* \* \*

The Commission Against Corruption, 12<sup>th</sup> October 2010.

The Commissioner Against Corruption  
Fong Man Chong



**Conclusion:**

Inspiration of the case:

- (1) The administrative authority should make a clear definition of the concession (exclusive operation) contract, especially the scope and meaning of its objectives in a professional and legal way in order to adopt effective law-enforcement measures;
- (2) The administrative authority should promptly commence legislative and law revision procedures in order to completely solve the problems concerning transmission of TV signal by legal means;
- (3) If it is discovered that the problems involve cross-departmental competences, the administrative authority should jointly adopt measures and promptly seek the solution;
- (4) The strategy of “making small steps forward passively without long-term plan” shall not be adopted in public management, otherwise the problems will become more complicated;
- (5) The administrative authority should clarify the rights and obligations originate from the concession (exclusive operation) contract as well as commence legislation and law revision as soon as possible in order to completely solve the problems concerning the master antenna service.

## Appendix

### Documentation about the Macau Cable TV, Limited and the Master Antenna Service Suppliers

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#### Files and documents in Box 1

#### (1) P. 01-379 PROC. N° 03-811 (A)

- The Macao CATV research report of 7<sup>th</sup> October 1998 provided by the Pan Asian Systems Limited (Incl. A.S Watson and Hutchison Whampoa Limited) [P. 5-165]
- The Macao CATV research report of 7<sup>th</sup> October 1998 (Appendix) provided by the Pan Asian Systems Limited (Incl. A.S Watson and Hutchison Whampoa Limited) [P. 166-379]

#### (2) P. 380-784 PROC. N° 03-811 (B)

- The letter dated 18<sup>th</sup> March 1999 about “allocation of radio frequency” sent to the Director of the Telegraph and Post Service from the Director of the Macau Cable TV, Limited [P. 584-585]

#### (3) P. 785-1265 PROC. N° 03-811 (C)

- The letter concerning “explanation of refusal to install public cable device” on 18<sup>th</sup> September 2001 sent from Macao Yue Xiu Property Company Limited to the Coordinator of the Office of Telecommunication and Information Technology Development with c.c. to the Cabinet of the Chief Executive of Macao SAR and the Economic Affairs Department of the Liaison Office of the Central People’s Government in Macao SAR [P. 787]
- The letter about “receiving and transmitting satellite TV programmes” on 5<sup>th</sup> September 2001 sent by the Coordinator of the Office of Telecommunication and Information Technology Development to *Proprietário da Agência Comercial Electrónico Kam Wing, Gerente da Megamedia, Rede de*

*Comunicação (Hong Kong/Macau) Lda, Gerente de C. de Fomento e Inv. Predial Hopson Lda., Proprietário dos Artigos Eléctricos Chi Fu, Proprietário dos Artigos Eléctricos Tico, Gerente de Hi-Tech Com. C. Lda, ao Gerente de Macsat-Ser. Saté. Lda., Proprietário de Material Technology Jin Hung, Sai Kai Electrical Engineering Company, Tak Va Electronic System Engineering Company, Fai Chit Electronic Company, Hoi Ying Ocean Electronic System, Tak Chou Electronic System Eng., Sing Fei Technological Engineering Company, Kong Seng Paging Ltd. and Son Vo Electronic Security Engineering Company [P. 807-831]*

- The letter about “receiving and transmitting satellite TV programmes” on 5<sup>th</sup> September 2001 sent by the Coordinator of the Office of Telecommunication and Information Technology Development to Chi Fu and other electrical engineering companies [P. 813]
- The letter about “problems concerning the copyright of channels of STAR” on 31<sup>st</sup> July 2001 sent by the Manager of the Department of Development of STAR to Mega Media Broadcast Network with c.c. to the DSRT [P. 854-855]
- The letter about “China Central Television’s Statement about the Copyright of its TV Programmes in Macao” on 10<sup>th</sup> July 2001 sent by the China International Television Corporation (CITVC) to the Director of the DSRT with c.c. to the Director of the Macau Cable TV, Limited [P. 871-874]
- The letter about “The Orientation Proposals of the Macau Cable TV, Limited 2001-2003” on 14<sup>th</sup> May 2001 sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Executive Directors of the Macau Cable TV, Limited [P. 979]
- Consultation documents on implementation of license of transmitter according to telecommunication regulations on 8<sup>th</sup> September 2000 [P. 994-1023]
- A news article entitled “Macau Cable expects to increase clients to 10,000 and has cooperated with five master antenna service suppliers” published in *Macao Daily News* dated 8<sup>th</sup> August 2000. [P. 1185]

**(4) P. 1266-1696 PROC. N° 03-811 (D)**

- The proposal about “purchase of shares of the Macau Cable TV, Limited by the China Cable Network Co. Ltd.” sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Secretary of Transport and Public Works on 23<sup>rd</sup> January 2002 [P. 1271-1273]
- The protocol of equal share in the Macau Cable TV, Limited signed between the China Cable Network Co. Ltd. (CNN) and the Portugal Telecom International (PTI), on 14<sup>th</sup> November 2001 [P. 1317-1324]
- The letter about “difficulties of the Macau Cable TV, Limited in providing service to the residents” on 25<sup>th</sup> January 2002 sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Committee of Proprietors of Hoi Nam Garden [P. 1340]
- The letter “Fw: Letter from Wa Bao Garden Administration Company (case that was eventually intervened by the police)” on 4<sup>th</sup> January 2002 sent by the Chief of the Cabinet of the Chief Executive of Macao SAR to the Chief of Office of the Secretary for Transport and Public Works [P. 1364]
- The letter about “Wa Bao Garden Administration Company disallowed the Macau Cable TV, Limited to install cable TV network” on 7<sup>th</sup> January 2002 sent by the former to the Chief Executive of Macau SAR, XXX (consumer protection service), XXX (RAEM), XXX (Office of Telecommunication and Information Technology Development), the Judiciary Police and *Hoje Macau* [P. 1365]
- “Property management companies which have disallowed to install the public cables of the Macau Cable TV, Limited” listed by the Macau Cable TV, Limited on 13<sup>th</sup> December 2001 [P. 1434-1435]
- The comments about “analysis on letters from the Macau Cable TV, Limited” on 1<sup>st</sup> November 2001 sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Secretary for Transport and Public Works [P. 1482-1485]

- The letter about “receiving and transmitting ESS TV programmes” on 10<sup>th</sup> October 2001 sent by the Acting Coordinator of the Office of Telecommunication and Information Technology Development to *Proprietário de Material Technology Jin Hung, Gerente de Macsat-Ser. Saté., Lda., Gerente de Hi-Tech Com. C. Lda, Gerente da C. de Fomento e Inv. Predial Hopson Lda., Proprietário dos Artigos Eléctricos Tico, Proprietário dos Artigos Eléctricos Chi Fu, Proprietário da Agência Comercial Electrónico Kam Wing, Gerente da Megamedia, Rede de Comunicação (Hong Kong / Macau) Lda, Sai Kai Electrical Engineering Company, Tak Va Electronic System Engineering Company, Fai Chit Electronic Company, Hoi Ying Ocean Electronic System, Tak Chou Electronic System Eng., Sing Fei Technological Engineering Company, Kong Seng Paging Ltd. and Son Vo Electronic Security Engineering Company* [P. 1552-1582]
- The letter about “plans of the Macau Cable TV, Limited” on 11<sup>th</sup> September 2001 sent by the Chairman of Board of Directors of the Macau Cable TV, Limited to the Secretary for Transport and Public Works [P. 1583-1588]
- The letter about “unauthorized Broadcasting of ESPN STAR Sports” on 20<sup>th</sup> September 2001 sent by the Deputy Chief Consultant of ESPN STAR Sports to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 1675]

**(5) P. 1696~1-2181 PROC. N° 03-811 (E)**

- The proposal about “*Citação do Tribunal Administrativo*” on 2<sup>nd</sup> May 2002 sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Secretary for Transport and Public Works [P. 1721-1722-11]
- On 17<sup>th</sup> April 2002, the Administrative Court transferred the judicial appeal (dated 2<sup>nd</sup> April) to the Coordinator of the Office of Telecommunication and Information Technology Development for summoning [P. 1727-1735]

**(6) P. 2182-2679 PROC. N° 03-811 (F)**

- The letter concerning “general plan for 2002-2004” on 18<sup>th</sup> March

2002 sent by the Managing Director of the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2109]

- The written report about “commercial registration of the Macau Cable TV, Limited” on 14<sup>th</sup> August 2003 sent by the Commerce and Movable Property Registry of to the Macau Cable TV, Limited [P. 2255]
- The letter about “supervision and piracy” on 18<sup>th</sup> June 2003 sent by the Managing Director of the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2312]
- The letter “Fw: Complaint over antenna signal” on 20<sup>th</sup> May 2003 sent by Deputy Commissioner Against Corruption to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2334]
- The letter about “charge on wireless communication service” on 20<sup>th</sup> May 2003 sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Managing Director of the Macau Cable TV, Limited [P. 2344-2370]
- The letter about “the Macau Cable TV, Limited: Charge of new mini TV service package” on 2<sup>nd</sup> April 2003 sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Secretary for Transport and Public Works [P. 2440-2442]
- The letter about “contract renewal failure between the Macau Cable TV, Limited and the *Radiotelevisione Italiana* (RAI) and to confirm of whether the Macau Cable TV, Limited has already terminated the transmission of RAI” on 19<sup>th</sup> February 2003 sent by the Consul General of Italy to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2496]
- The letter about “complaints (*Queixa-Crime*)” on 29<sup>th</sup> January 2003 sent by the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2527]

- The letter about “transmission of RAI” on 13<sup>th</sup> February 2003 sent by the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2504-2505]
- The letter about “infringement upon copyright of ESPN STAR Sports” on 7<sup>th</sup> January 2003 sent by the ESPN STAR Sports to Casino Lisboa Macau. [P. 2542-2543]
- The letter about “infringement upon copyright of ESPN STAR Sports” on 3<sup>rd</sup> October 2003 sent by the ESPN STAR Sports to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2620]
- The letter about “illegal activities of transmitting TV signals” on 26<sup>th</sup> September 2002 sent by the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2626]
- The statement “*Verificámos ao ver os canais disponíveis na rede de sinal TV do prédio, no televisor da sala de estar, que os canais UBC, CCTV4, CCTV5, FTVESPN ASIA Mandarin, entre outros, estavam a ser transmitidos*” signed by the Macau Cable TV, Limited on 25<sup>th</sup> September 2002 [P. 2627]

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#### Files and documents in Box 2

##### (7) P. 2680-3142 PROC. N° 03-811 (G)

- The proposal/report about “direct transmission of satellite TV (BBS) by the Macau Cable TV, Limited” on 11<sup>th</sup> January 2005 sent by the Acting Coordinator of the Office of Telecommunication and Information Technology Development to the Secretary for Transport and Public Works [P. 2681-2698]

- The letter about “illegal transmission of CCTV and ETTV” on 10<sup>th</sup> January 2005 sent by the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2717]
- The statement sent by the Eastern Broadcasting Co., Ltd (EBC) to the Macau Cable TV, Limited on 31<sup>st</sup> December 2004, in which the former declared that the latter was the only authorized receiver and transmitter of the its TV channels [P. 2718]
- A joint copyright statement of the EBC and the Macau Cable TV, Limited in 2004 [P. 2719]
- The statement of the China International Television Corporation, declaring that it was the only authorized overseas distributor of the CCTV’s programmes and channels on 16<sup>th</sup> December 2004 [P. 2720]
- The letter about “illegal transmission” on 30<sup>th</sup> August 2004 sent by the Executive Managing Director of the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2820-2821]
- The letter about “broadcasting of TV advertisement about health care” on 3<sup>rd</sup> May 2003 sent by the Director of the Government Information Bureau to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 2905-2909]
- The letter “Fw: Complaint over interruption by irrelevant advertisement” on 23<sup>rd</sup> April 2004 sent by the Office of Telecommunication and Information Technology Development to the Macau Cable TV, Limited [P.2914]
- The letter about “legal comments on advertisement broadcasting” on 21<sup>st</sup> April 2004 sent by the C & C Lawyers to the Macau Cable TV, Limited [P. 2940-2941]
- The letter “Fw: Complaint over interruption by irrelevant advertisement” on 19<sup>th</sup> April 2004 sent by the Office of Telecommunication and Information Technology Development to the Macau Cable TV, Limited [P. 2942]



- The complaint letters and e-mails about “the Macau Cable TV, Limited transmitted the advertisement of Hui Ai Hospital of Zhuhai on TVB during advertising time” between 30<sup>th</sup> March and 11<sup>th</sup> April 2004 sent by a few citizens to the Office of Telecommunication and Information Technology Development [P. 2963-2968]
- The proposal about “Article 27 of the Pay Terrestrial Television Service Concession Contract of Macao” on 30<sup>th</sup> March 2004 sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Secretary for Transport and Public Works [P. 2988-3005]
- The letter about “the Macau Cable TV, Limited installed wide-band wave-trap with the master antenna device within Flower City Garden without approval, hindering our clients’ normal access to TV programmes” on 9<sup>th</sup> February 2004 sent by the Hi-Tech Company Limited to the Macau Cable TV, Limited [P.3039-3040]
- The letter about “response of the transmission of TV signals of the Macau Cable TV, Limited being interrupted on 13<sup>th</sup> November” on 17<sup>th</sup> November 2003 sent by the Hi-Tech Company Limited to the Coordinator of the Office of Telecommunication and Information Technology Development [P. 3129]

**(8) P. 3143-3531 PROC. N° 03-811 (H)**

- The letter about “enquiry on the distribution right of satellite TV programmes” on 20<sup>th</sup> September 2005 sent by the Office of Telecommunication and Information Technology Development to the Discovery Asia Inc. [P. 3152-3154]
- The letter for proving that the Macau Cable TV, Limited has the right to transmit the channels of STAR Group Limited, Discovery and Hallmark sent by the Macau Cable TV, Limited to the persons-in-charge of these channels in Singapore and Hong Kong on 20<sup>th</sup> September 2005 [P. 3184-3185; P. 3194-3218]

- The letter for proving that the Macau Cable TV, Limited has the right to transmit the channels of ESPN STAR Sports, sent by the ESPN STAR Sports to the Coordinator of the Office of Telecommunication and Information Technology Development on 28<sup>th</sup> September 2005 [P. 3186]
- The statement “Suspension of transmission of some channels under the instruction of the Office of Telecommunication and Information Technology Development” by the master antenna service suppliers (Kong Seng Paging Ltd., Tak Chou Electronic System Eng., Sai Kai Electrical Engineering Company, Fai Chit Electronic Company, Tak Va Electronic System Engineering Company and Hoi Ying Ocean Electronic System) to all Macao citizens on 2<sup>nd</sup> September 2005 [P. 3235]
- The letter about “Piracy of TV signals in Macao SAR” sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Foreign Commercial Service U.S. Consulate General and the Trade and Economic Affairs Office of the European Commission on 30<sup>th</sup> August 2005 [P. 3254-3255]
- The letter about “unauthorized transmission of signal of ‘TVB’ by the Macau Cable TV, Limited” sent by the TVB to the Office of Telecommunication and Information Technology Development on 12<sup>th</sup> August 2005 [P. 3292-3293]
- “Joint statement by the Macau Cable TV, Limited, MTV and Bloomberg on copyright” published by the *Macao Daily News* on 30<sup>th</sup> July 2005 [P. 3294]
- The letter “about the problems concerning the right to transmit TV programmes by some new operators” sent by the master antenna service suppliers (Kong Seng Paging Ltd., Tak Chou Electronic System Eng., Sai Kai Electrical Engineering Company, Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Hoi Ying Ocean Electronic System and Hi-Tech Communication Company) to the Office of Telecommunication and Information Technology Development on 12<sup>th</sup> July 2005 [P. 3320]

- The proposal about “satellite TV transmission service provided by the Macau Cable TV, Limited” sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Secretary for Transport and Public Works on 25<sup>th</sup> May 2005 [P. 3356-3388]

**(9) P. 3532-3973 PROC. N° 03-811 (I)**

- The letter about “removal of illegal fibre optical networks” sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 22<sup>nd</sup> January 2008, in order that when the next phase of the removal started, the company would transmit its signal to cover related areas. [P. 3534]
- The e-mail about “infringement upon copyright” sent by XXX to the Director of the DSRT and others on 3<sup>rd</sup> December 2007 [P. 3535]
- The letter about “TV signals transmitted without authorization” sent by the legal advisor of the TVB to the master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai Electrical Engineering Company, Tak Chou Electronic System Eng. and Hi-Tech Communication Company) on 16<sup>th</sup> November 2007 [P. 3536-3541]
- The complaint letter about “safeguard of the rights to broadcast English Premier League possessed by the Macau Cable TV, Limited” sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 9<sup>th</sup> June 2007 [P. 3547]
- The letter about “master antenna service suppliers were suspected to illegally transmit TV signals” sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 9<sup>th</sup> May 2007 [P. 3548-3549]
- The letter sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 26<sup>th</sup> April 2007, about “declaration that the Macau Cable TV, Limited is the only authorized transmitter of TV programmes for Ocean Garden” attached with a number of photos, which also indicated that the master antenna service suppliers were going to transmit more than a few tens of channels of which the copyrights did not cover Macao for the

building [P. 3553-3582]

- The letter about “extension of time for allocation of radio electric frequency until 31<sup>st</sup> December 2006 without compensation after expiry” sent by the Deputy Coordinator of the Office of Telecommunication and Information Technology Development to the Chairman of Executive Committee of the Macau Cable TV, Limited on 13<sup>th</sup> December 2005 [P. 3799]
- The minutes of the first meeting between the Office of Telecommunication and Information Technology Development, the Macau Cable TV, Limited and the master antenna service suppliers on 11<sup>th</sup> November 2005, during which some complicated issues, including the master antenna licensing under the current legal framework, property management and the suspension of antenna channels by the government in August, were discussed, but the copies of the relevant documents were only distributed to the departments of telecommunication, information and administration and finance for follow-up or acknowledgement [P. 3801-3806]
- The letter sent by a citizen who applied for cable TV service license with his/her partner in 1992 to the former Chief Executive of Macao SAR on 16<sup>th</sup> November 2005 to request for “repeal of the exclusive operation contract of the Macau Cable TV, Limited” [P. 3857]
- The letter about “intention to join the discussion on the proposal ‘unified antenna network’ brought out by your Office” sent by master antenna service suppliers (Sing Fei Technological Engineering Company, Jin Hung Material Technology, Hap Heng Hong Property Agency and Electronic Engineering, Son Ton Electronic System Eng., Fat Kei Engineering Company, Kam Weng Electronic Engineering, Kou Fong Elect. System Eng. Co. and Kou Tat Hong Elect. System Eng. Co.) to the Coordinator of the Office of Telecommunication and Information Technology Development on 10<sup>th</sup> November 2005 [P. 3858]
- The letter about “*Pedido de consulta de processo-Esclarecimento*” sent by the Coordinator of the Office of Telecommunication and Information Technology Development to a lawyer on 15<sup>th</sup> November 2005 [P. 3860-3861]

- The proof of authorization “Grant of Exclusive Rights” issued by the President of Fashion TV to the Macau Cable TV, Limited on 7<sup>th</sup> November 2005 [P. 3869]
- The press release about “seeking the solution to problems concerning copyright of satellite TV and operation of the master antenna service is sought” by the DSRT on 7<sup>th</sup> November 2005 [P. 3871]

**(10) P. 3974-4211 PROC. N° 03-811 (J)**

- The “Proposal of 3-in-one solution of dispute over operation between the master antenna service suppliers and the Macau Cable TV, Limited (Combination of the two kinds of cables across streets and the government would purchase and operate the existing networks) sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 26<sup>th</sup> February 2010 [P. 3976-3980]
- The letter about “follow-up on the issues about the master antenna service raised during the meeting between the government and the Macau Cable TV, Limited on 6<sup>th</sup> January” sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 21<sup>st</sup> January 2010 [P. 3982]
- The letter about “complaint over unauthorized transmission of English Premier League”/ Installation of mmcs to be carried out underground/ reporting to the police, sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 26<sup>th</sup> August 2009 [P. 3996]
- The letter about “report on illegal satellite stations on the rooftop of Kam Fu Building, San Ip Building and Mayfair Court” (attached with some photos) sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 19<sup>th</sup> August 2009 [P. 3997-3999]
- The letter about “statement of the retrieval and allocation of radio frequency band 2.5-2.7GHz to the Macau Cable TV, Limited” sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 3<sup>rd</sup> August 2009 [P.4001]

- The letter about “termination of usage of frequency band 2.5-2.7GHz” sent by the Macau Cable TV, Limited to the Director of the DSRT on 31<sup>st</sup> July 2009 [P. 4002]
- The letter about “extension of time for usage of radio frequency band 2.5-2.7GHz” sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 27<sup>th</sup> July 2009 [P. 4003]
- The letter about “installation of fibre optical cable in the building” sent by the Macau Cable TV, Limited to the Hoi Van Garden Property Management Company on 9<sup>th</sup> June 2009 [P. 4009]
- The letter about “*faixa de frequências 2.5-2.7GHz consignada à concessionária TV Cabo*” sent by the Director of the DSRT to XXX and XXX on 7<sup>th</sup> April 2009 [P. 4011-4014]
- The letter about “radio electric frequency” sent by the Chairman of Board of Director of the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development on 25<sup>th</sup> September 2002 [P. 4019]
- The letter about “unidentified reasons for retrieval of radio frequency 2.5-2.7Ghz and problems concerning the master antenna service” sent by the lawyer representing the Macau Cable TV, Limited (by hand) to the Secretary for Transport and Public Works and the DSRT on 19<sup>th</sup> February 2009 [P. 4036-4059]
- The letter about “unidentified reasons for recovery of radio frequency 2.5-2.7Ghz and problems concerning the master antenna service” sent by the lawyer representing the Macau Cable TV, Limited (with letter of attorney) to the DSRT on 16<sup>th</sup> February 2009 [P. 4060-4083]
- The letter about “response about installation of cable TV device on public lampposts” sent by the manager of telecommunication network division to the CEO of the Macau Cable TV, Limited on 4<sup>th</sup> September 2008 and forwarded to the Director of the DSRT, who only issued an order of “attention” [P. 4090-4091]

- The letter about retrieval of frequency band 2.5-2.7GHz sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 8<sup>th</sup> August 2008 [P. 4108]
- The letter about “unauthorized retransmission of TV signals” sent by the manager of the TVB to the Director of the DSRT on 15<sup>th</sup> May 2008 [P. 4143-4144]
- The letter “Enquiry regarding the Fashion TV channel in Macao SAR” sent by the Director of the DSRT to the Fashion TV Asia Pacific on 14<sup>th</sup> April 2008 [P. 4147-4179]
- The report about “collection of radio electric license fees for 2007 and 2008 from the Macau Cable TV, Limited” sent by the Director of the DSRT to the Secretary for Transport and Public Works on 14<sup>th</sup> April 2008 [P. 4151-4153]
- The letter about “unauthorized retransmission of TV signals” sent by the Vice President of Fashion TV Asia Pacific to the master antenna service suppliers (Hi-Tech Communication Company, Tak Chou Electronic System Eng., Sai Kai Electrical Engineering Company, Tak Va Electronic System Engineering Company and Fai Chit Electronic Company) on 17<sup>th</sup> January 2008 [P. 4198-4203]

**(11) P. 4211-1-4211-15 PROC. N° 03-811 (K)**

- The letters “about suspension of temporary repayment by the Macau Cable TV, Limited for 2009” sent from the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 26<sup>th</sup> July 2010 [P. 8266]
- The proposal about “the request for suspension of temporary repayment by the Macau Cable TV, Limited” sent by the Director of the DSRT to the Secretary for Transport and Public Works on 14<sup>th</sup> July 2010 [P. 8267-8269]
- The letter about “request for suspension of temporary repayment” sent by the CEO of the Macau Cable TV, Limited to the Secretary for Transport and Public Works on 14<sup>th</sup> June 2010 [P. 8283]

- The proposal about “the temporary repayment of the Macau Cable TV, Limited for 2009” sent by the Regulation Affairs Division of the DSRT to the Director of the DSRT on 3<sup>rd</sup> June 2010 [P. 8298-8322]
- The minutes of the meeting about “knowing the details of the suspension of broadcasting of English Premier League from the master antenna service suppliers” held between the representatives of the DSRT (the Director, the Deputy Director, the Head of the Regulation Affairs Division, the Head and a staff of the Administrative and Financial Division and a minutes-taker), legislators and representatives of master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai Electrical Engineering Company, Tak Chou Electronic System Eng., Hi-Tech Communication Company, Hoi Ying Ocean Electronic System and Kou Fong Elect. System Eng. Co.) on 16<sup>th</sup> August 2010 [P. 8324-8327]
- The letter about “application for establishment of a limited company by the Macau Cable TV, Limited” sent from the Cabinet of the Chief Executive to the Secretary for Transport and Public Works on 23<sup>rd</sup> July 2010 [P. 8365-8383]
- The letter about “application for grant of an integrated property represented by the C & C Lawyers” sent by the Chief of the Cabinet of the Chief Executive to the Chief of Office of the Secretary for Transport and Public Works on 29<sup>th</sup> July 2010 [P. 8391-8394]

**(12) P. 4212-4306 PROC. N° 03-00.01-811~03-01.00-811**

- The minutes of seventeen meetings about “follow-up on the removal of fibre optical network of Tak Va Enterprise Co.” between the DSRT and the Macau Cable TV, Limited between 18<sup>th</sup> June 2007 and 22<sup>nd</sup> January 2008 [P. 4235-4260]

**(13) P. 4307-4574 PROC. N° 03-02.00-811**

- The letter about “the proposal of solution to the problems concerning the master antenna service provided by the DSRT to the Macau Cable TV, Limited” sent by the lawyer representing the Macau Cable TV, Limited to the DSRT on 27<sup>th</sup> January 2010 [P. 4312-4316]



- The letter about the resolution proposal for the master antenna service suppliers and the Macau Cable TV, Limited sent by six master antenna service suppliers to the DSRT on 21<sup>st</sup> January 2010 [P. 4317]
- The letter about “response to unauthorized retransmission of TV signals” sent by the STAR Group Limited to the DSRT on 9<sup>th</sup> July 2008 [P. 4342-4347]
- The letter about “illegal retransmission of TVB’s TV signal” sent by the legal adviser of the TVB to the DSRT on 6<sup>th</sup> June 2008, requesting an explanation of how they define illegality. The response on 16<sup>th</sup> June: in case where the terrestrial signals from outside the territory covering Macao are received without using special decoder sole and used in the place such signals are from, in Macao, there is no law that prohibits the behaviour of receiving such signals. In this sense, if the respective foreign broadcasting entities do not wish this case to occur, they have to take measures regarding covering areas [P. 4357-4358]
- During this period, it is believed that some government entities of Secretary and Bureau levels held many meetings (according to information from the Macau Cable TV, Limited, its representatives attended the meeting chaired by the Chief Executive on 12<sup>th</sup> June 2008, during which the members of the Executive Committee, the Secretary for Transport and Public Works and the Director of the DSRT also attended. The Director of the DSRT did not raise any queries or objections after hearing the plan and the proposal of solution for problems concerning the master antenna service introduced by the Macau Cable TV, Limited) [P. 3977-3980]
- The information about “description of the emission points submitted by the Macau Cable TV, Limited” (enclosed with photos) on 26<sup>th</sup> May 2008 [P. 4360-4373]
- The letter “about deliberate damage of antenna equipment of the Macau Cable TV, Limited (in Taipa) AL2008-0526” sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 26<sup>th</sup> May 2008 [P. 4374, same as P.6428]

- The letter “about deliberate damage of antenna equipment of the Macau Cable TV, Limited (in Hoi Van Garden, Taipa) AL2008-0516-01” sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 26<sup>th</sup> May 2008 [P. 4377, same as P. 6429]
- The letter “about deliberate damage of antenna equipment of the Macau Cable TV, Limited (at Rua do Canal Novo) AL2008-0516-02” sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 26<sup>th</sup> May 2008 [P.4378, same as P. 6430]
- The letter about “solution to problems concerning fibre optical network” and the complaint that the illegal behaviours of the master antenna service suppliers had not been suppressed sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 7<sup>th</sup> May 2008 [P. 4395]
- The letter “about opening fibre optical network to the master antenna service suppliers” sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited for enquiry on 10<sup>th</sup> April 2008 [P. 4396]
- The letter “to complain and request for immediate suppression of illegal high definition TV signal transmission networks to the DSRT” sent by the lawyer of the Macau Cable TV, Limited to the Director of the DSRT on 11<sup>th</sup> March 2008 [P. 4399-4401]
- The e-mail “disappointed with no TV signal last night” sent by a citizen, Mr. Jeong, to the DSRT on 30<sup>th</sup> January 2008 and the latter’s response by e-mail [P. 4405-4420]
- The proposal about regulating private individual’s establishment, management and operation of telecommunication network and providing rules of telecommunication service from eight master antenna service suppliers including Fai Chit Electronic Company and Tak Va Electronic System Engineering Company, etc, on 5<sup>th</sup> January 2008 [P. 4426]
- The letter about “follow-up on the letter dated 4<sup>th</sup> June 2007: Due to unsuccessful negotiation, the fibre optical telecommunication network constructed without the government’s approval shall be removed” sent by the Director of the DSRT to Tak Va Electronic System Engineering

Company on 14<sup>th</sup> January 2008 [P. 4427]

- The letter sent by the Director of the DSRT to master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai Electrical Engineering Company, Tak Chou Electronic System Eng., Hi-Tech Communication Company, Hoi Ying Ocean Electronic System, Kou Fong Elect. System Eng. Co. and Son Ton Electronic System Eng.) to invite them to the meeting about “Follow-up on the suspension of transmission of TV signals in some areas in Macao” on 30<sup>th</sup> January 2008 [P. 4431-4438]
- The letter about “removal of the illegal coaxial cable newly installed by Tak Va Electronic System Engineering Company” sent by the Director of the DSRT to the Director of the Judiciary Police on 29<sup>th</sup> January 2008 [P. 4442]
- “Content of proposal between the master antenna service suppliers and the Macau Cable TV, Limited” publicized on 27<sup>th</sup> December 2007 [P. 4457-4458]
- The letter about “application for permission of construction, management and operation of telecommunication network and service providing” sent by the Macau Antenna Network Co. Ltd. to the Director of the DSRT on 15<sup>th</sup> August 2007 [P. 4488]
- The response about “9 principles of negotiation” from eight master antenna service suppliers (Sing Fei Technological Engineering Company, Hap Heng Hong Property Agency and Electronic Engineering, Kou Fong Elect. System Eng. Co., Kou Tat Hong Elect. System Eng. Co., Fat Kei Engineering Company, Kam Weng Electronic Engineering, Jin Hung Material Technology and Son Ton Electronic System Eng.) to the Macau Cable TV, Limited on 5<sup>th</sup> April 2006 [P. 4560]
- The minutes of the first meeting between the Office of Telecommunication and Information Technology Development, the Macau Cable TV, Limited and the master antenna service suppliers on 11<sup>th</sup> November 2005 [P. 4564-4572]

- The letter “request for suspension of removal of any antenna network” sent by the master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai Electrical Engineering Company, Tak Chou Electronic System Eng., Hi-Tech Communication Company, Hoi Ying Ocean Electronic System, Kou Fong Elect. System Eng. Co. and Son Ton Electronic System Eng.) to the Director of the DSRT on 20<sup>th</sup> August 2007 [P. 4485]
- The letter “about the problems concerning construction of fibre optical telecommunication network” sent by the Director of the DSRT to Sing Fei Technological Engineering Company, Fat Kei Engineering Company and Jin Hung Material Technology on 8<sup>th</sup> March 2007 [P. 4527-4530]
- The letter “opinions on solution to problems concerning operation of the master antenna service in Macau” sent by Sing Fei Technological Engineering Company, Fat Kei Engineering Company and Jin Hung Material Technology to the Director of the DSRT on 15<sup>th</sup> February 2007 [P. 4538-4543]
- The letter about the statement of Fai Chit Electronic Company sent by the person-in-charge of Fai Chit to the Coordinator of the Office of Telecommunication and Information Technology Development on 6<sup>th</sup> March 2006 [P. 4573]

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#### **Files and documents in Box 3**

##### **(14) P. 4575-4815 MCTV General 2000/2001 MCTV-G01**

- The letter “Macau Cable TV, Limited: Exclusive Operation Contract” sent by the Chairman of Board of Directors of the company to the Coordinator of the Office of Telecommunication and Information Technology Development to complain about unauthorized transmission by “cable companies of low quality” and interruption of its development by property management companies and request for approval of the amount of capital lower than 25% stipulated by Article 27 of the contract on 18<sup>th</sup> December

2001 [The original text is in Portuguese, see P. 4640-4641]

**(15) P. 4816-4992 MCTV General 2001/2002 MCTV-G02**

**(16) P. 4993-5227 MCTV General 2003 MCTV-G03**

- The e-mail about “solution to problems concerning copyright of pay television” sent by the manager of the CCSBAA to the members of the CCSBAA on 28<sup>th</sup> April 2003 [P. 5071]

**(17) P. 5228-5559 MCTV General 2004 MCTV-G04**

- The letter about “system of accountability (*Prestação de contas*)” sent by the President of Finance to the Coordinator of the Office of Telecommunication and Information Technology Development and c.c. to the Secretary for Transport and Public Works on 11<sup>th</sup> January 2006 [P. 5275]
- The letter “antenna companies-negotiation” sent by the CEO of the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development on 17<sup>th</sup> March 2006 [P. 5280-5281]
- “The Annual Report of the Macau Cable TV, Limited 2004” sent by the Executive Managing Director of the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development on 20<sup>th</sup> April 2005 [P. 5283]
- The letter “DTH Satellite TV transmission service by the Macau Cable TV, Limited” sent by the Coordinator of the Office of Telecommunication and Information Technology Development to the Chairman of the Macau Cable TV, Limited on 31<sup>st</sup> January 2005 [P. 5358-5359]
- The letter about “illegal transmission of CCTV, ETTV and UBC” sent by the Managing Director of the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development on 25<sup>th</sup> April 2005 [P. 5378]

- The letter about “illegal transmission of Dragon TV (URGENT)” sent by the Managing Director of the Macau Cable TV, Limited to the Coordinator of the Office of Telecommunication and Information Technology Development on 30<sup>th</sup> August 2004 [P. 5387]

**(18) P. 5560-5884 MCTV General 2006 MCTV-G05**

- The letter about “seeking complete suppression of unauthorized transmission of English Premier League by the master antenna service suppliers” sent by the CEO of the Macau Cable TV, Limited to the Director of DSRT on 9<sup>th</sup> June 2007 [P. 5569]
- The report about “the TV signals covered by the 3G service prescribed by the exclusive operation contract of the Macau Cable TV, Limited” submitted by the Director of the DSRT to the Secretary for Transport and Public Works on 4<sup>th</sup> August 2006 [P. 5723-5728]
- The letter “antenna companies” sent by the CEO of the Macau Cable TV, Limited to the Director of DSRT on 17<sup>th</sup> May 2006 [P. 5878]
- The letter “antenna companies-negotiation” sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 17<sup>th</sup> May 2006 [P. 5880]
- The report about the complaint over subtitles appearing on channels transmitted by the Macau Cable TV, Limited on 28<sup>th</sup> June 2007 [P. 5565]

**(19) P. 5885-6203 MCTV General 2007 MCTV-G06**

- The letter about “unauthorized transmission of TV signals” sent by the Vice President of FTV to the master antenna service suppliers (Fai Chit, Tak Va, Hi-Tech, Sai Kai, Hoi Ying Ocean and Tak Chou) on 17<sup>th</sup> January 2008 [P. 5959-5964]
- The letter about “unauthorized transmission of English Premier League” sent by the ESPN Director to the master antenna service suppliers (Fai Chit, Tak Va, Hi-Tech, Sai Kai, Hoi Ying Ocean and Kou Fong) on 15<sup>th</sup> January 2008 [P. 5966]

- The letter about “unauthorized transmission of TV signals” sent by advisor XXX to the Fai Chit Electronic Company on 16<sup>th</sup> November 2007 [P. 5971]

**(20) P. 6204-6442 MCTV General 2008 MCTV-G07**

- The letter “about complaints over illegal transmission of TV signals and infringement upon copyright/ matters concerning failure of fulfilment of paragraphs 6°/1, 34°/1, 38°/2, and 42°/2 by the Macau Cable TV, Limited” sent by the Director of the DSRT to the lawyer representing the Macau Cable TV, Limited on 31<sup>st</sup> July 2008 [P. 6217]
- The letter “reponse to the letter no. 2729/03-811 from the DSRT (about illegal transmission of TV signals and infringement upon copyright)” sent by the lawyer representing the Macau Cable TV, Limited to the Director of the DSRT for criminal report and complaint on 3<sup>rd</sup> July 2008 [P. 6219-6223] with attachment: The statement about copyright issued by the Assistant General Advisor of ESPN, “The TV service of ESPN STAR Sports allocated to the Macau Cable TV, Limited” on 9<sup>th</sup> July 2008 [P. 6223]
- The letter “response to complaints over illegal transmission of TV signals and infringement upon copyright” sent by the Director of the DSRT to the lawyer representing the Macau Cable TV, Limited on 3<sup>rd</sup> June 2008, which indicated that a request for the TVB’s clarification of the problems concerning high digital signal has been sent [P. 6224]
- The letter “request for relevant proofs for authorization of TV signals transmission possessed by the Macau Cable TV, Limited” sent by the Director of the DSRT to the lawyer representing the Macau Cable TV, Limited on 19<sup>th</sup> May 2008 [P. 6225]
- The letter “complaint over illegal transmission of TV signals and infringement upon copyright” sent by the lawyer representing the Macau Cable TV, Limited to the Director of the DSRT on 9<sup>th</sup> May 2008 [P. 6226-6231]
- The letter “complaint and request for immediate suppression of illegal TV

signal transmission networks to the DSRT” sent by the lawyer representing the Macau Cable TV, Limited to the Director of the DSRT on 11<sup>th</sup> March 2008 [P. 6232-6239]

- The letter “complaint over illegal transmission of TV signals and infringement upon copyright by Fai Chit Electronic Company” sent by the lawyer representing the Macau Cable TV, Limited to the Director of the DSRT on 23<sup>rd</sup> May 2008 [P. 6240-6241]
- The proposal about “Article 27 of the Pay Terrestrial TV Service Concession Contract” sent by the Director of the DSRT to the Secretary for Transport and Public Works on 24<sup>th</sup> June 2009 [P. 6367-6382]
- The proposal about “the problems between the Macau Cable TV, Limited and the master antenna service suppliers” sent by the Director of the DSRT to the Secretary for Transport and Public Works on 26<sup>th</sup> November 2009 [P. 6393-6398]
- The proposal “*Providencia cautellar interposta pela TV Cabo*” sent by the Director of the DSRT to the Secretary for Transport and Public Works on 19<sup>th</sup> November 2009 [P. 6399-6401]
- The report about “response to the requests of the Macau Cable TV, Limited” sent by the Director of the DSRT to the Secretary for Transport and Public Works on 9<sup>th</sup> February 2009 [P. 6407-6411]
- The letter “transference of the letter from the Macau Cable TV, Limited dated 18<sup>th</sup> December” sent by the Cabinet of the Chief Executive to the Office of the Secretary for Transport and Public Works on 26<sup>th</sup> December 2008 [P. 6410]
- The letter “invitation to the Launching Ceremony of Metro Finance Channel of the Metro Broadcast Corporation Limited” sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 27<sup>th</sup> August 2008 [P. 6435]



- The letter about “radio frequency” sent by the CEO of the Macau Cable TV, Limited on 30<sup>th</sup> July 2008 to the Director of the DSRT, whose order indicated that “mmds does not depend on remodelling projects” [P. 6440]

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#### **Files and documents in Box 4**

##### **(21) P. 6443-6755 MCTV Permanent File MCTV-P01**

- The letter about “meeting with the consultative committee of the Macau Cable TV, Limited” sent by the Executive Managing Director of the Macau Cable TV, Limited to the Secretary for Transport and Public Works (c.c. to the Coordinator of the Office of Telecommunication and Information Technology Development) on 30<sup>th</sup> April 2003 [P. 6476-6479]
- The letter about “the Macau Cable TV, Limited/Antenna Companies” sent by the Executive Managing Director of the Macau Cable TV, Limited to the Secretary for Transport and Public Works (c.c. to the Coordinator of the Office of Telecommunication and Information Technology Development) on 30<sup>th</sup> April 2003 [P. 6478]
- The letter about “shareholding structure (*Estrutura Accionista*)” sent by the Managing Director of the Macau Cable TV, Limited to the Director of the DSRT on 27<sup>th</sup> April 2007 [P. 6591]

##### **(22) P. 6756-7349 Statistics Macau Cable TV Monthly + Quarterly Report ST-TV01**

##### **(23) P. 7350-7674 Cable TV & Antenna Company CTV & AC-G01**

- The letter “Request for meeting with the Secretary for Transport and Public Works about the problems concerning networks across streets and enforcement of the law to suppress illegal satellite stations” sent by the Macau Cable TV, Limited to the Secretary for Transport and Public Works on 6<sup>th</sup> January 2010 [P. 7532]

- The letter about “the solution to dispute with the Macau Cable TV, Limited jointly proposed by six master antenna service suppliers” sent by the master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai Electrical Engineering Company, Tak Chou Electronic System Eng., Hoi Ying Ocean Electronic System and Kou Fong Elect. System Eng. Co.) to the Director of the DSRT on 21<sup>st</sup> January 2010 [P. 7477]
- The letter about “the proposal of solution to the problems concerning master antenna and cable TV services operation” sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 9<sup>th</sup> April 2010 [P. 7575]
- The proposal of “solution to the problems concerning master antenna and cable TV services operation” sent by the Director of the DSRT to the CEO of the Macau Cable TV, Limited on 26<sup>th</sup> February 2010 [P. 7577-7580]
- The letter about “response to solution to problems concerning master antenna and cable TV services operation” sent by the lawyer representing the Macau Cable TV, Limited to the Director of the DSRT on 15<sup>th</sup> March 2010 [P. 7581-7585]
- “The master antenna service suppliers’ joint agreement on suspension of transmission of signals of Celestial Movies and the channels with the trademark of True Vision” sent by the master antenna service suppliers (Fai Chit Electronic Company, Tak Va Electronic System Engineering Company, Sai Kai Electrical Engineering Company, Tak Chou Electronic System Eng., Hoi Ying Ocean Electronic System, Kou Fong Elect. System Eng. Co. and Kong Seng Paging) to the Deputy Director of the DSRT on 15<sup>th</sup> April 2010 [P. 7589-7588]
- The letter about “proposal of solution to problems concerning the operation of the master antenna service suppliers and the Macau Cable TV, Limited” sent by the lawyer representing the Macau Cable TV, Limited to the Director of the DSRT on 23<sup>rd</sup> April 2010 [P. 7595-7596]
- The letter about “the DSRT’s commentary published on *Macao Daily*

*News* on 3<sup>rd</sup> September 2009: Accountability of Supervision on Satellite Stations” sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 7<sup>th</sup> September 2009 [P. 7600]

- The letter about “multi-functional interactive TV service” sent by the lawyer representing the Macau Cable TV, Limited to the Director of the DSRT on 25<sup>th</sup> February 2009 [P. 7625-7630]
- The minutes of the meeting about “the solution to problems between the Macau Cable TV, Limited and the master antenna service suppliers proposed by the DSRT to the Macau Cable TV, Limited” between the DSRT and the Macau Cable TV, Limited on 24<sup>th</sup> February 2010 [P. 7667-7670]
- The minutes of the meeting about “the initial response of the Macau Cable TV, Limited to the cooperation plan proposed by six master antenna service suppliers on 21<sup>st</sup> January 2010” between the DSRT and the Macau Cable TV, Limited on 3<sup>rd</sup> February 2010 [P. 7671-7672]
- The minutes of the meeting about “the initial response of the Macau Cable TV, Limited to the cooperation plan proposed by six master antenna service suppliers on 21<sup>st</sup> January 2010” between the DSRT and the Macau Cable TV, Limited on 27<sup>th</sup> January 2010 [P. 7673-7674]

**(24) P. 7675-7902 AC General AC-G01**

- The verdict received by the Macau Cable TV, Limited from the Court of First Instance on 7<sup>th</sup> December 2009 [P. 7676-7765]
- The letter about “response to the proposal of cooperation between the master antenna service suppliers and the Macau Cable TV, Limited” sent by the CEO of the Macau Cable TV, Limited to the Director of the DSRT on 4<sup>th</sup> January 2008 [P. 7767]
- The letter about “establishment and removal of fibre optical network” sent by the Director of the DSRT to the Master Antenna Network Co. Ltd. of Macao on 14<sup>th</sup> March 2008 [P. 7816-7820]
- The letter about “response to application for license to operate TV signal

transmission service” sent by the Director of the DSRT to the Secretary for Transport and Public Works on 31<sup>st</sup> December 2007 [P. 7848]

- Contact information of the master antenna service suppliers in Macao [P. 7879-7880]
- The letter about “the legal basis for handling the problems concerning the master antenna service and response to citizens’ complaints” sent by the Director of the DSRT to its supervisory staff for reference on 21<sup>st</sup> February 2008 [P. 7881-7882]
- The letter “Fw: Letter about the clarification of the misunderstanding of ‘receiving’ and ‘transmission’ and misinterpretation of the court verdict from the master antenna service suppliers from the Association of Master Antenna Engineering of Macao” sent by the Chief of Cabinet of the Chief Executive of Macao SAR to the Chief of Office of the Secretary for Transport and Public Works on 27<sup>th</sup> November 2009 [P. 7891-7899]

**(25) P. 7903-8050 Cosmo/MCTV DTH-01**

**(26) P. 8051-8213 MCTV New Program MCTV-PG01**

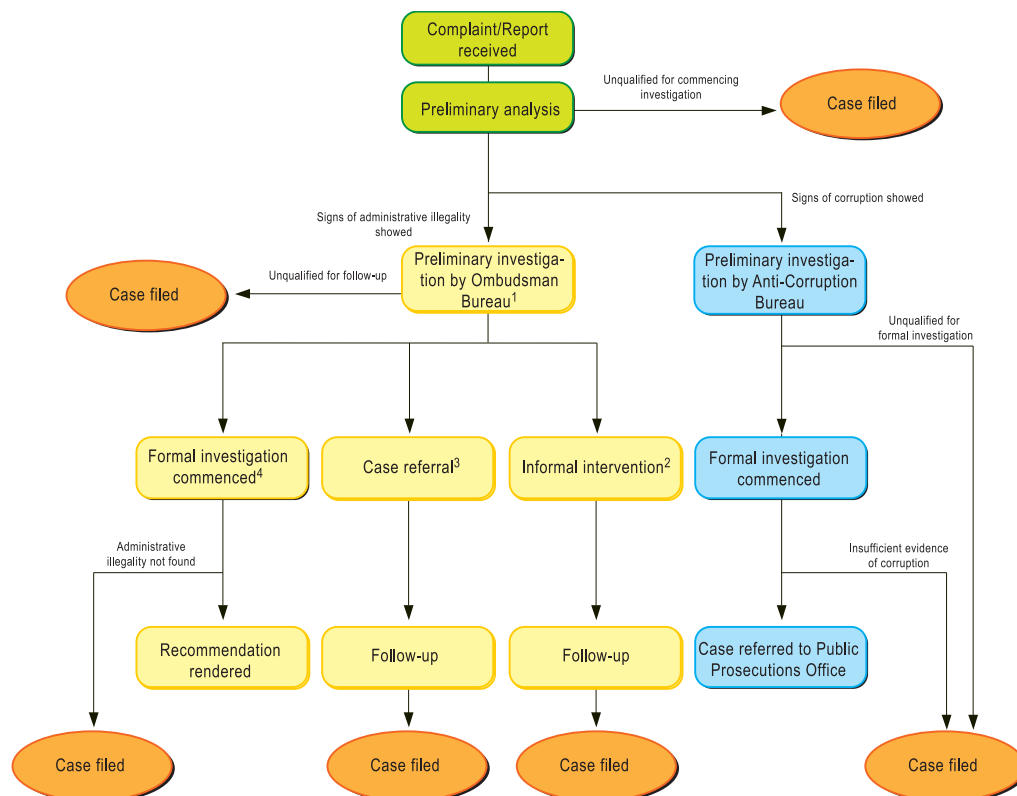
**(27) P. 8214-8399 MCTV General MCTV-G08**

- The letter about “the property management company of Hoi Van Garden in Taipa refused the maintenance and network improvement service provided by the Macau Cable TV, Limited” sent by the Director of the DSRT to the Hoi Van Garden’s Property Management Company on 25<sup>th</sup> August 2010 [P. 4211-2]
- The letter about “the property management company of Hoi Van Garden in Taipa refused the access of the Macau Cable TV, Limited to the building to provide maintenance service and carry out fibre optical network construction” sent by the Chief Operation Officer of the Macau Cable TV, Limited to the Director of the DSRT on 28<sup>th</sup> July 2010 [P. 4211-3 - P. 4211-4] [P. 8384]

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## Appendix III

### THE CCAC'S COMPLAINT HANDLING PROCEDURE



Notes:

1	Preliminary investigation by Ombudsman Bureau:	It is conducted under the stipulation of the <i>Organizational Law of the CCAC</i> and the <i>Code of Administrative Procedure</i> . In particular, the Principle of Defense shall be observed. That is, both the complainant and the complained side have the chance of pleading.
2	Informal intervention:	If the procedure has not been completed or the relevant act has not yet entered into effect, the CCAC will guide the relevant departments or entities in this way so that they will make prompt correction.
3	Case referral:	In some cases, since the relevant administrative departments are the competent departments that possess related information (the CCAC only has the information provided by the complainants, which may not be sufficient or detailed), it is appropriate for the relevant departments to handle the cases according to statutory procedures. With the complainant's consent, the CCAC will refer these cases to the competent departments or entities and will follow up their progress.
4	Formal investigation:	Due to the severity of the case and the scope involved, the CCAC will commence a formal investigation. Under Clause 12 of Article 4 of the <i>Organizational Law of the CCAC</i> , the CCAC directly renders recommendation to the competent administrative department for the purpose of rectifying illegal or unfair administrative acts or procedures. Under Article 12 of the <i>Organizational Law of the CCAC</i> , in case of non-acceptance of any recommendation, the competent department or entity shall give its reasoned reply within 90 days. Meanwhile, the CCAC may report the case to the Chief Executive or reveal it to the public after reporting the case to the hierarchical superior or supervisory entity of the competent department or entity.