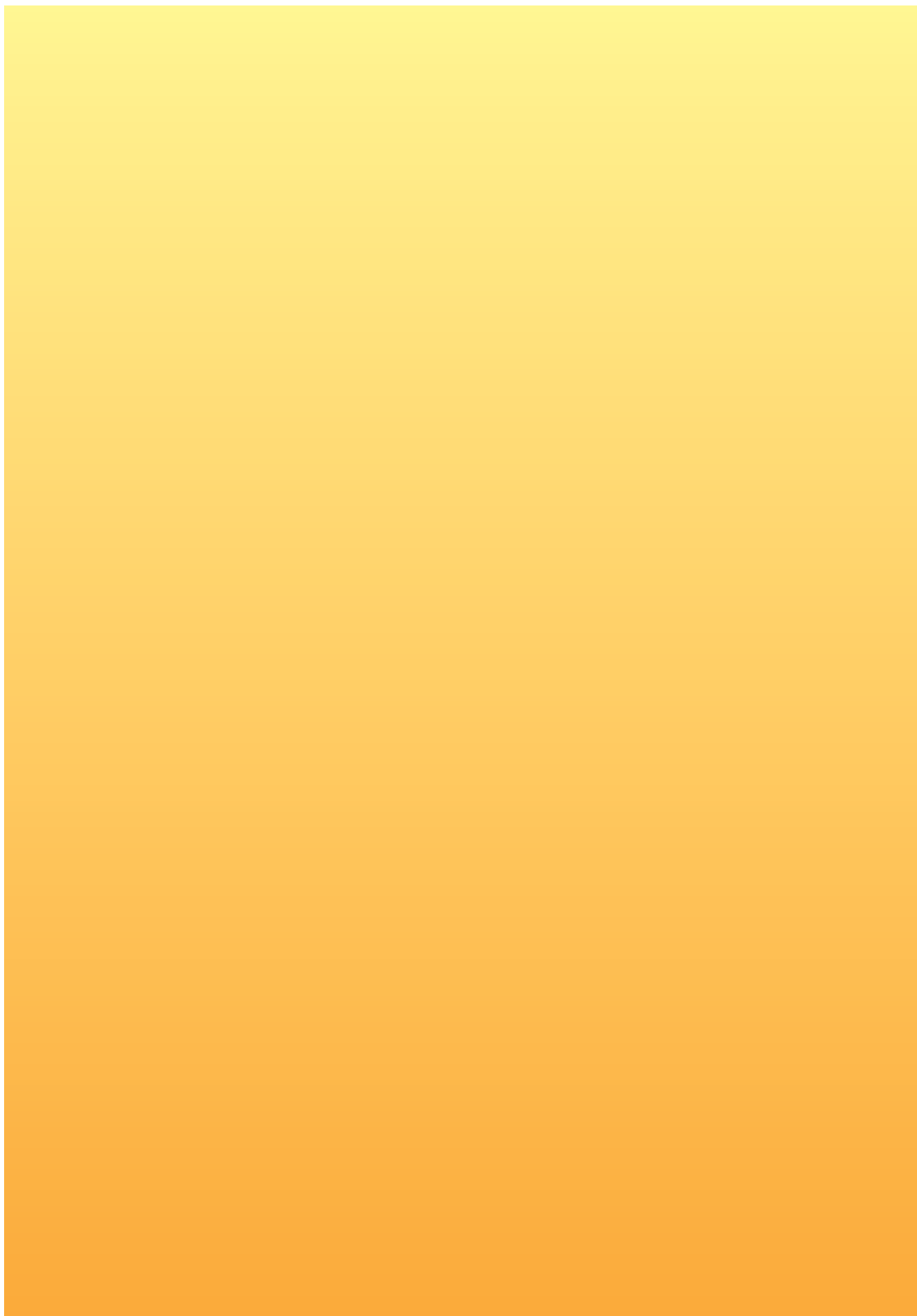


PART II

ANTI-CORRUPTION





PART II

ANTI-CORRUPTION

I. Numbers of Reports and Cases Commenced for Investigation

In 2010, the CCAC received a total of 389 reports of criminal nature, including 133 criminal reports qualified for handling. Together with the 23 cases carried over from the previous year, the CCAC had to process a total of 156 criminal reports in 2010.

The CCAC commenced a total of 88 criminal cases for investigation in 2010, an increase compared with the 44 cases in 2009, which is mainly due to the bribery cases in the private sector after the new law was effective, a total of 24 cases were commenced.

Regarding the criminal cases, by December 2010, investigation for a total of 39 cases were completed. Those cases were referred to the Public Prosecutions Office or filed accordingly.

**CASES RECEIVED BY THE ANTI-CORRUPTION
BUREAU FROM 2008 TO 2010**

Statistics	2008	2009	2010
Total number of cases recorded	796	923	681
Criminal reports	553	768	389
Criminal cases qualified for handling	88	107	133
Commenced cases	31	44	88

Since the investigation of bribery in the private sector is a new task for the CCAC, in the first 10 months since the new law has come into effect (from 1st March to 31st December), the CCAC saw the need to re-adjust the investigation methods

and strategies, so as to cope with the nature of such cases as well as the special requirement set for the investigation by law. It is worth emphasizing that in the investigation of such cases, the cooperation of victims is very important, specially in the aspects of confidentiality and providing useful information.

Based on the information obtained and the progress of case investigation, the CCAC believes that there are capacities to solve some of the bribery cases in the private sector to maintain a fair business environment and social order.

II. Summary of Some of the Cases Investigated by CCAC

Case 1:

The CCAC received a report indicating that a Mainland Chinese resident, A, submitted a forged certificate of no criminal record to the Macao Trade and Investment Promotion Institute and successfully became a Macao resident under the scheme of investment residency. The complainant claimed that about 10 years ago, A was sentenced to more than one year imprisonment for wounding others in the Mainland and therefore should have a criminal record.

Under the assistance of the relevant departments in the Mainland, it was confirmed that A had no criminal record in the Mainland. Subsequently, the complainant clarified that there was a mistake in the content of the report, saying that A only underwent re-education through labour by the Public Security Bureau in the Mainland. The case was never tried by the court and therefore there was no criminal record. The CCAC conducted a thorough examination of the investment residency application and the related documents of A and found no suspicious circumstances or other irregularities. As a result the case was archived.

Case 2:

The CCAC received a report indicating that a casino VIP room inside a hotel in Taipa employed illegal workers. It was harboured by some government personnel who had received tip-off prior to inspection.

After investigation, it was discovered that two workers, who were supposed to be under employment of a cleaning company and a garment factory, had worked illegally in the casino VIP room run by “XXX One Person Company Limited”. The worker, who was employed by the garment factory, was at the same time a shareholder of “XXX Entertainment Company Limited”. However, there was no trace of public servant harbouring “XXX One Person Company Limited” with regard to employing illegal workers. Since the handling of illegal workers is beyond the competence of the CCAC, the CCAC archived the criminal part of the case and informed the competent department the information obtained during investigation to

deal with the situation.

Case 3:

The CCAC received a report indicating that B received USD200.00 and assisted a Vietnamese woman in entering Macau without presenting to the police, who processed the visa application, the living resource (MOP15,000.00) needed during the stay in Macau in accordance with the provisions of the Immigration Department. It was suspected that someone had committed an illegal act.

After investigation, it was discovered that B used to work in a certain unit of the Immigration Department and therefore came to know the police who processed visa application. Since they knew one another, when assisting the Vietnamese woman in processing the visa application for entering Macao, B needed not to present to the police officers the living resource needed for her stay in Macao and the application was approved. However, investigation showed that no advantage was given to the police officers. Since the case had not violated the stipulations in the *Penal Code*, the CCAC archived the case and informed the Public Security Police Force the fact that police officers C and D did not check the living resource when performing duties so that it could be followed up and dealt with.

Case 4:

The CCAC received a report indicating that two public servants, E and her husband F, both received monthly salary over MOP10,000, still being allocated an economical housing apartment. Moreover, they leased the apartment concerned as well as used that apartment to apply for housing allowance but in fact both of them did not live there.

After investigation, it was found that both of them were qualified to apply for economical housing and government housing allowance. Between 2006 and 2008, although the couple had used non-residential location to apply for government

housing allowance, the address declared was not rented out and was subject to bank mortgage, so it met with the conditions for applying housing allowance.

Since an obvious fraudulent intention was not proven, the couples' act had not violated the stipulation of the *Penal Code*. Nevertheless, the CCAC also found no suspicious or irregular circumstances in the procedures of application, order on the waiting list and allocation of economical housing apartment.

As no information showed that the persons involved had violated the *Penal Code*, the CCAC filed the case. Meanwhile, the CCAC informed the Housing Bureau that E and F did not live in the economical housing apartment for a long period of time after it had been allocated to them. Besides, the CCAC also notified the related departments that both public servants used the economical housing apartment that they did not live in to apply for housing subsidy, so that the departments could take appropriate actions.

Case 5:

The CCAC received an anonymous report indicating that a man X and a woman Y, who were from Hong Kong, were in collusion with customs officers to smuggle cigarettes from Hong Kong to Macao via the New Macau Maritime Ferry Terminal.

Through investigation, the said situation that certain people used the luggage department on the second floor of the New Macau Maritime Ferry Terminal to smuggle tax-free cigarettes into Macao was not found. The accused X neither committed any criminal act nor contacted any public servant or customs officer. Although X carries cigarettes with him every time when entering or leaving Macao, the quantity is petty and he carries them by himself. Besides, he did not give or sell the cigarettes to others during the period.

Since the content of report did not conform to the findings of investigation and lacked accuracy, and no public servants were found to participate in smuggling tax-free cigarettes, there were no subject of crime and criminal fact identified. Therefore the CCAC archived the case.

Case 6:

The CCAC received a tip-off against a public servant G, indicating that there were irregularities in the process of handling fees related to the cancellation of notary registration.

It was found after investigation that on three occasions, G had collected fees from citizens without making any record or issuing any receipt. In one case, G had caused a citizen H to make a duplicate payment of MOP474 notary fees. Investigation showed that the cases were due to the negligence of G or computer error. Besides, there was no sufficient evidence to prove that G had intentionally made use of his/her function to unlawfully appropriate the money of individuals, so the behaviour did not constitute any criminal offence. However, the CCAC informed the respective department for appropriate action concerning the financial loss and inconvenience caused by G to the citizens, as well as the consequent disciplinary and administrative responsibilities. The CCAC archived the case based on the fact that it did not involve any criminal offences.

The department concerned has already initiated disciplinary proceedings against G and a fine was made. Besides, G has also compensated citizen H for the loss of MOP474.

Case 7:

The CCAC received a complaint from a citizen indicating that the complainant's son J, who was serving a sentence in prison in Coloane, had recently asked on several occasions, in person or through phone calls, the complainant or the family members for money. The complainant suspected that J was the victim of abuse and being extorted by other inmates. Later on, J expressed to the complainant that the "superior" would increase his imprisonment for another eight years for making phone calls privately. Therefore the complainant turned to the CCAC for assistance.

After investigation, it was found that the complainant's suspicion of J being assaulted and extorted as well as J's claiming that his imprisonment would be further extended for another 8 years were not true. However, J indeed asked for money from

his family quite frequently, and the reason was because he made football bets with others in the prison and lost. As a result he made up facts to get money from his family to pay the debts and J eventually admitted the abovementioned facts.

The Macao Prison has made an investigation and taken effective measures to rectify the situation and successfully seized two mobile phones and some phone cards. It reflected that mobile phones have been illegally smuggled into the Prison. However, due to the fact that Macao Prison has already taken actions, such as searches and seizures of mobile phones and phone cards, proceeding of the interrogation, and other appropriate measures, and there were no other clues for further follow-up and identifying the person responsible, the CCAC archived the case.

In addition, the CCAC found during the investigation that there have been various types of irregularities and illegalities in the prison, and requested the prison authority to adopt proper measures against those illegal and irregular situations.

Case 8:

In February 2010, an examinee of light vehicle driving test offered a bribe of HKD1,000.00 to the examiner of the Transport Bureau during the test as a reward of passing the test. The examiner refused to take the bribe at the scene and reported the case to the CCAC. The case was referred to the Public Prosecutions Office upon completion of investigation.

Case 9:

The CCAC received a report that K, a staff of an autonomous entity, often obtained sick leaves claiming injury. However, K taught other people swimming during the period of sick leave and was suspected to obtain sick leave certificates through fraudulent means. After investigation, it was confirmed that K indeed taught swimming to others for free, but no evidence showed that K obtained the sick leave by fraudulent means.

During investigation, it was discovered that on the receipt of rental payment submitted by K for the application of housing subsidy, the signature of the landlord did not match with the signature on the respective identity card. Through investigation, it was proven that for many years, K had used false residential address and alleged forged receipts of rental payment to apply for housing subsidy, with a total fraud amount of MOP210,600. The case was referred to the Public Prosecutions Office.

Another similar case was also referred to the Public Prosecutions Office.

Case 10:

The government launched the “Provisional Subsidy Scheme for Common Parts Maintenance of Low-Rise Building”, to encourage and subsidize residents of low-rise buildings to proceed with maintenance of the building.

During the execution of the scheme, some people suspected that certain contractors had forged maintenance projects. Therefore, the CCAC followed up the implementation of the abovementioned scheme by means of information collection, which was also one of the measures to better understand the situation of bribery in the private sector.

During the collection of information, it was suspected that in the maintenance project of a private building funded by the government, someone has jerry-built and loopholes were identified in the supervision. Therefore, the case was commenced for preliminary investigation.

After analyzing the approval information of the Housing Bureau of the case involved, as well as conducting field investigation of the related maintenance project, it was found that the contractor was suspected of jerry-building in that funded maintenance project. However, there was no trace of public servant involving in any illegal acts. Moreover, the entire funded maintenance project was completed before the entry into force of Law No. 19/2009, *Prevention and Suppression of Bribery in the Private Sector*. As a result, the case was archived but a written report was made by the CCAC to the Housing Bureau, identifying the existing loopholes in approving and supervising the maintenance projects and the possibility of irregularities made by the contractors in result.

Case 11:

The CCAC received a complaint indicating that L, an auxiliary staff working at a certain bureau, did not possess the required academic qualification but was promoted to the position of skilled worker in 2009. Since L might have submitted a forged academic certificate for his promotion, the CCAC commenced an investigation.

It was found out that L had been promoted in 2009. In the procedure for his promotion, L claimed he had lost his graduation certificate and therefore submitted to his department a document certifying that he had studied in “The Fifth Secondary School of XXX City”. The CCAC then requested assistance from the Guangdong Provincial People’s Procuratorate (GDPP) through the mutual case assistance mechanism to inquire over the fact if L had studied in the “The Fifth Secondary School of XXX City” and obtained a graduation certificate. The reply of the GDPP confirmed that L had finished the junior secondary course in the school. Since the document submitted was genuine and illegality was unfound, the CCAC archived the case.

III. Mutual Case Assistance in Cross-Border Investigations and Judiciary Assistance

In 2010, the CCAC was requested assistance in nine cases from Mainland China, Hong Kong and overseas. Together with the eight cases carried over from the previous year, a total of 17 cases needed to be handled and of which, 14 cases have been concluded.

Among the above nine cases commenced in 2010 requesting assistance, six were requested by the Hong Kong ICAC, while three were requested by procuratorates in Mainland China.

Moreover, the CCAC obtained assistance from law enforcement agencies outside the territory, crucial information was obtained so that case investigation could proceed smoothly.

The anti-corruption and law enforcement agencies in Guangdong, Hong Kong and Macao take turns in hosting practical symposia on joint investigation annually in order to review the case assistance over the previous year as well as to discuss direction of cooperation in the future. The 6th Symposium on Mutual Case Assistance of Guangdong, Hong Kong and Macao was held in November 2010 at the Hong Kong ICAC. Representatives from the CCAC participated in the meeting.

During the meeting, the three parties reviewed and shared the experiences gained in mutual case assistance in the past year. Consensus was reached on strengthening and regulating the mechanisms of mutual case assistance, including the establishment of mechanisms of meetings between the leaderships of the three institutions, exchange of information as well as procedures of interviewing witnesses, so as to enhance the efficiency of case assistance.

At the symposium, various issues were discussed and introduced by the three parties, making the anti-corruption personnel of the three parties better understand of the differences between the legal frameworks of the three places, the methods used in gathering evidence and the procedures of mutual case assistance, which helps to establish a better mechanism for mutual case assistance and to enhance work efficiency.

IV. Summary of Implementation of the Law *Prevention and Suppression of Bribery in the Private Sector*

1. Foreword

Upon Notice of the Chief Executive no. 5/2006 published on 21st February, the application of the *United Nations Convention Against Corruption (UNCAC)* was extended to the Macao SAR from 12th February, 2006. From then on the Macao SAR government started to undertake the international obligations to implement the various provisions of *UNCAC*.

According to Article 12 of the *United Nations Convention Against Corruption*:

“Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

a) **Promoting cooperation between law enforcement agencies and relevant private entities;**

b) **Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;**

c) **Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;**

d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities;

e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

(...)"

Being approved by Law No. 19/2009 of 17th August, the Law *Prevention and Suppression of Bribery in the Private Sector* has entered into force since 1st March 2010 and the implementation has been the focus of concern of various sectors of society. In fact, since the law has only entered into force for one year, it is still early to draw a comprehensive, accurate and realistic conclusion of it. Nevertheless, it could be a positive and forward-looking law enforcement attitude to conduct a preliminary study and analysis based on the data and information on hand. It would also be beneficial for the deploying of future work as success depends largely in good preparation.

2. Introduction

In 2010, the CCAC received a total of 93 complaints/reports involving bribery in the private sector. The issues and areas concerned are fairly extensive, including:

- Procedures related to tenders of construction work, procurement and acquisition of services in the private sector;
- Problems caused by financial disputes between management companies of

- private buildings and administrative body of condominiums;
- Personal interests between the management body and its employees;
- The managerial personnel concealing the existence of personal interests between themselves and the suppliers;
- The issue of commission in certain business sectors.

Over the past year, 24 cases of bribery in the private sector were commenced. Some reports cannot undergo investigations based on the reasons below:

- (1) The reported acts have been completed before the entry into force of the legislation;
- (2) The reported acts did not take place in Macao and there were not any connection with the Macao's system;
- (3) The reports were based only on rumors and lacked concrete information. Even after conducting preliminary investigations the CCAC was not able to obtain the fundamental information;
- (4) The complainants had no legitimate right to file the report since they did not meet the legal requirements for being a complainant;
- (5) The reported acts did not constitute criminal offences, and they were merely contractual disputes between the parties.

3. Difficulties in Law Enforcement

In fact, the difficulties faced in the investigation of bribery cases in the private sector are mainly seen in two levels:

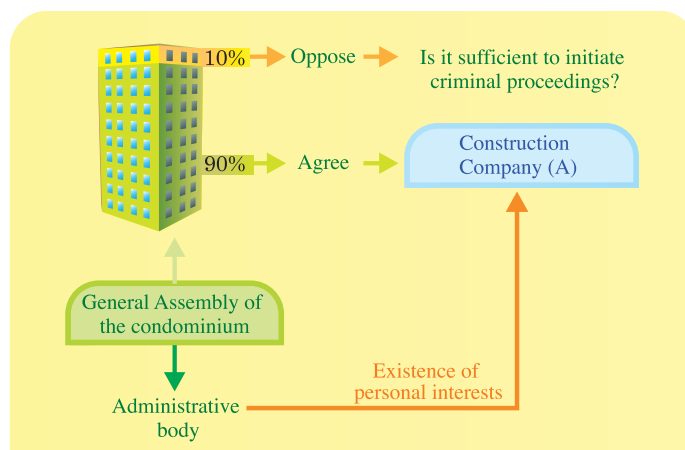
- Difficulties in measures and techniques of investigation;
- Legal impediments.

The first level of difficulties basically could be overcome with the support of investigation techniques, equipment and approaches. However, with regards to the difficulties encountered in the legal level, they could not be solved by general measures.

For a better explanation, we quote an example as follows:

There was a building with 100 independent units. A resolution was made at the General Assembly of the condominiums to repair the building and a tender was called. During the voting at the General Assemble, 90% of unit owners voted in favor while the remaining 10% voted against it, suspecting that there was “transfer of benefits” between the construction company awarded the construction and the administrators of the condominiums, resulting in that the company awarded the tender.

It is indeed difficult to require the entire 10% of owners who cast dissenting votes to file a criminal complaint collectively. If only five of them file a lawsuit, under this circumstance, the first question will be: are they qualified to initiate the criminal proceedings?



The main reason leading to the above question is due to the stipulation in Article 5 of Law no. 19/2009 of 17th August (*Prevention and Suppression of Bribery in the Private Sector*), the principle of “no trial without complaint”.

“Article 5
Complaint

1. In the case prescribed by Paragraph 1² of Article 3 and Paragraph 1³ of Article 4, penal procedures shall only be instituted when there is a complaint.

2. In the cases prescribed by Paragraph 2 of Article 3 and Paragraph 2 of Article 4, penal procedures shall only be instituted when there is a complaint; however, if the case involves acquisition of assets and services with funding coming totally or partly from public money, penal procedures shall be instituted even without a complaint.

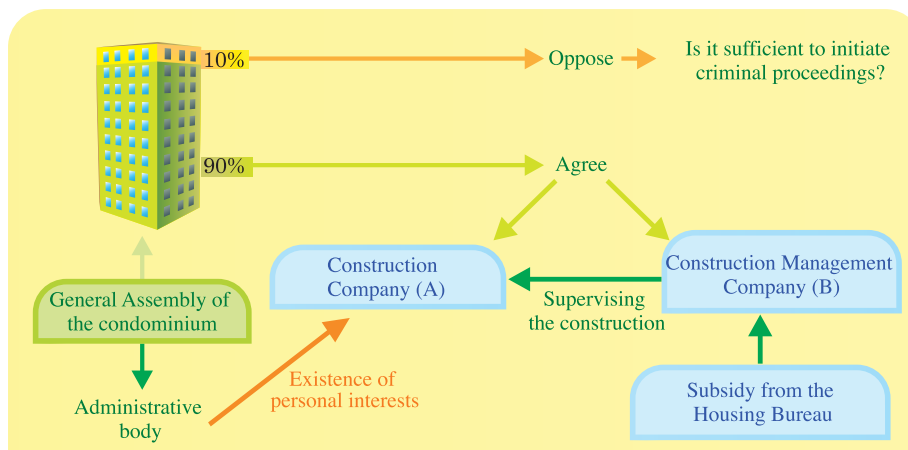
3. Not exercising the right of complaint or withdrawing from a complaint against the actor referred to in Paragraph 1 of Article 3 or Paragraph 1 of Article 4 will also benefit the corresponding actors of active and passive bribery.

4. The preceding paragraph shall apply correspondingly to the cases mentioned in Paragraph 2 of Article 3 and Paragraph 2 of Article 4, in which penal procedures shall only be instituted when there is a complaint.”

² “1. Any person who, performing his professional duties, including the personnel of management or administration of any entity in the private sector, even such entities are irregularly established, solicits or accepts, personally or through an intermediary with his consent or ratification, an undue pecuniary or non-pecuniary advantage, or the promise of such advantage, for himself or a third party, as a reward for acting or refraining from acting, in violation of his functional duties, shall be liable to imprisonment for a maximum term of one year or fine.”

³ “1. Any person who, personally or through an intermediary with his consent or ratification, gives or promises to give the person mentioned in the preceding article, or a third party with the knowledge of that person, an undue pecuniary or non-pecuniary advantage, for the purpose indicated in Paragraph 1 of the preceding article, shall be liable to imprisonment for a maximum term of six months or a fine.”

We continue to use the above example to look at problems in other areas:



The General Assembly of the condominium agreed on hiring Company A to repair the building, meanwhile they applied to the Housing Bureau for maintenance subsidy and was approved (for example a subsidy of MOP50,000 was obtained). After approval of the General Assembly of the condominium (or administrative body), the amount was paid directly to Company B – a construction management company supervising the work of Company A. However, some unit owners were dissatisfied with the tender and funding raising for the repair project, suspecting that there was improper exchange of benefits between Company A and the members of the administrative body of the building. Therefore, they filed a complaint to the CCAC. Under this circumstance, should the CCAC carry out the investigation only after the complaint is filed? If so, what percentage of owners would justify the commencement of investigation?

In short, should Paragraph 1 of Article 5 be quoted in the abovementioned situation? Or Paragraph 2? That is because if the situation is classified and fell within the legal regulations provided in the last part of Paragraph 2, then complaint will not be necessary.

From another point of view, should the investigation target at Company A only? Or could it target at Company B as well? In other words, if the government only subsidized part of the construction or a particular section, could it be deemed as that entire construction project is being funded?

Another problem involved systemic logic: fraud is another criminal behaviour and phenomenon that is similar to bribery (of course the required elements for the two crimes are not the same). According to Article 211 of the current *Penal Code*:

“1. Any person who, in an attempt to seek illegitimate benefit for himself or for a third party, deceives another person or tricks him into making a mistake so that the latter performs acts which cause pecuniary damage to himself or another person, shall be liable to an imprisonment up to three years or fines.

2. Attempted crime will also be punishable.

3. If the pecuniary loss resulting from the fraud is of an enormous value, the offender shall be liable to a maximum of five years in prison or a 600-day fine.

4. The penalty is imprisonment from 2 to 10 years if:

- a) The pecuniary loss is of considerably high value;*
- b) The offender lives a way of life by fraudulent means; or*
- c) The victim of pecuniary loss is in an economic difficulty.”*

Article 220 of the same *Code* stipulates:

“1. For the crimes referred to in Paragraphs 1 and 2 of Article 211, Paragraphs 1, 2 and 4 of Article 212, Paragraphs 1 and 2 of Article 213, Article 214, Article 217, Paragraphs 1 and 2 of Article 218, and Paragraphs 1 and 2 of the previous article, penal procedures shall not be instituted without complaint.

2. The provisions in Article 203 shall also be applicable to the crimes described in the preceding paragraph.”

In other words, if the amount of fraud exceeds MOP30,000, it is classified as a public crime and does not depend on whether a complaint is lodged by the victim. In spite of the absence of a complainant, the criminal investigation authorities can commence the case and proceed with investigation.

While such rigorous punishing regime is established for general criminal acts,

how can the regime for bribery acts be so mild? Experience tells us: the amount of money involved in bribery acts in the private sector is generally higher and not only the economic interests of the victims are damaged, but also the entire system, the investment environment as well as business integrity. For this reason, even if the punishing system concerning the bribery in the private sector is not severer than other general crimes, it should at least be in line with them.

Another foreseeable result that can be expected is:

After trying all means to solve the case and the charge has been filed by the prosecution institution, during the trial in the court, the one who possesses the right to complaint withdraws the complaint (that means renouncing prosecution). Thus, under the current system, the effectiveness of combating bribery in the private sector will be greatly undermined.

4. Conclusion

Although the Law *Prevention and Suppression of Bribery in the Private Sector* has entered into force for only a year, certain problems have begun to emerge. It is necessary to conduct a more in-depth and comprehensive reflection on whether it is capable to achieve the desired results and fulfil the obligations under the international convention. Especially when Macao has become an international city, legislations that aim to ensure a fair investment environment should evolve with the times, or else, any further devotion of resources will be pointless. It is because the crux of the problem lies in the system construction, and this is not the problem that can be solved just by one or two public departments. Perhaps a timely perfection of the legislation is the only way out. In fact, when to start the process of revision of the legislation still depends on social consensus.