PART VI

APPENDIX

APPENDIX I

LEGAL COMMENTARY REPORTS SUBMITTED TO CHIEF EXECUTIVE BY CCAC IN 2012

Paragraphs 9 and 10 of Article 4 of the *Organic Law of the Commission Against Corruption of Macao SAR*, approved by Law no. 10/2000 of 14th August (amended by Law no. 4/2012 of 26th March), stipulate that:

"The Commission Against Corruption is entitled to:

(…)

9) With regard to any shortcomings it finds in any legal provisions, namely those involving 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. When, however, the matter falls within the powers of the Legislative Assembly, 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 2012, 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. The following are some of the commentary reports submitted by the CCAC:

1) – Legal opinion on the amendment of grant conditions and transfer regarding a lot in the south of Estrada do Istmo to develop into hotels (including the transfer of equity by the owners) (brief analysis);

2) – Legal opinion on the "Pre-qualification of international tender regarding

the reclamation of land in a particular district and construction of the dike of the new development zone" (Report no. 2);

3) – Opinion concerning the bill of *Legal Regime of Urban Construction*;

4) – Opinion concerning the bill of *Legal Regime of Urban Construction* – Supplementary part;

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Among the aforementioned reports, we chose to publish two of them here for the knowledge of the public due to the fact that the contents of the reports are with greater social impact and will draw great attention among the population.

Legal opinion on the "Pre-qualification of international tender regarding the reclamation of land in a particular district and construction of the dike of the new development zone"

(Report no. 2)

Part I: Preface

1) On 11th January 2012, the Commission Against Corruption (CCAC) received documents (official letter no. 232/GDI/2012) sent by the Infrastructure Development Office, including:

   1. **Notice** — Pre-qualification of international restricted tender regarding the reclamation of land in a particular district and construction of the dike of the new development zone (Chinese and English version);

   2. **Tender** — Pre-qualification of international restricted tender regarding the reclamation of land in a particular district and construction of the dike of the new development zone (Chinese and Portuguese version).

2) Due to the reports and opinions submitted previously by the CCAC, much improvement has been made in the tender documents.

3) As the documents received by the CCAC were incomplete, among which the "bidding rules" were missing, and there was hardly any supplementary information, such as proposal, among others, and therefore the CCAC's scope of analysis was restricted and opinions could only be given on several issues of greater importance.

4) Upon requesting instructions, the CCAC will submit the commentary reports to the Cabinet of the Chief Executive for reference.

* * *

Part II: Analysis

1) Why is the term "international tender" used?

1. In fact, the term "international tender" **is never directly introduced in Decree Law no. 74/99/M of 8th November, and this possibility is only mentioned in its Paragraph 2 of Article 63**.

2. The issue related to the so-called "international tender" is never directly mentioned in Decree Law no. 122/84/M of 15th December and the possibility of acquiring goods outside the Macao SAR, excluding contracting of work (empreitada), is only mentioned in its Article 22.

3. Even though the reclamation of land may need enterprises which are established outside the Macao SAR to participate, the adoption of "international tender" is deemed unnecessary.

4. It is not convincing enough to determine this tender as an "international tender" due to the reason that it is open to Mainland enterprises.

5. It is worth noting that for the tender to open to enterprises outside the Macao SAR, it should be backed by adequate reasons and approval should be gained from the competent authority (Paragraph 2 of Article 63 of Decree Law no. 74/99/M of 8th November[7]). However, in the submitted document, **there is neither related approval mentioned** nor **proposals sent for approval attached**.

* * *

7 The contents of the respective Paragraph: "2. Due to the characteristics of the construction projects, professional enterprises established outside the region can be accepted in the bid. However, this circumstance shall be subject to the order made by the authority competent to accept the enterprises and shall be presented with reasons."

2) Why is pre-qualification of restricted tender adopted?

1. In the documents submitted, **reasons for adopting the aforementioned type of tender are not presented**, i.e. not clearly pointing out the difference between "pre-qualification" and "non pre-qualification".

2. **Pre-qualification, being an exceptional regime, should be adopted with adequate reasons** to show to the public the interests the administrative authority seeks for and for the sake of the transparency and fairness of the bidding process.

3. Pre-qualification should only be adopted when it is unable to acknowledge whether the bidders can meet the technical requirements.

4. **Under normal circumstances,** the nature of the construction work and the need to introduce enterprises outside the Macao SAR including those from the Mainland to participate in the bid are all the more reasons to adopt other types of tender instead of open tender.

5. Considering the scope and professionalism of this reclamation of land project, **there may be justifiable reasons for the Infrastructure Development Office to adopt "Pre-Qualification of Restricted Tender", the CCAC thus does not express its stance regarding this issue**.

* * *

1) Objective of tendering

1. Paragraph 2 of the tender documents states that:

"2. Objective of tendering

2.1 This tendering aims at assessing candidate bidders and eight prospective candidates will be invited to submit bidding proposals for the construction with regards to "Pre-qualification of international restricted tender regarding the reclamation of land in a particular district and construction of the dike of the new development zone". In the event of equal points scored in the eighth place, more prospective candidates, instead of the total mentioned above, shall be selected.

2.2 The principal reserves the rights to cancel this tender and the prospective candidates have no rights to ask for any compensation."

2. This statement is incorrect. The objective **should be contracting construction project** instead of selecting bidders as mentioned;

3. What the above paragraph indicating is the types of tenders instead of the objective of tendering. Amendment should be made accordingly.

* * *

2) Evaluation criteria

1. Qualified bidders should be invited to submit bidding proposals according to the law.

   Paragraph 2 of Article 109 of Decree Law no. 74/99/M stipulates:

   "Article 109
   (Tendering system)

   (...).

   2. Regarding the pre-qualification of restricted tender, entities which fulfil ***professional, technical, economic*** *and* ***financial conditions*** *or other conditions required in the notice as stated in Paragraph 1 of Article 110 can raise the request for candidacy.*

   (...)."

   In addition, Paragraph 3 of the same Article states that:

"Article 109
(Tendering system)

(...).

3. The principal should invite prospective candidates who meet the qualifications in the pre-qualification process based upon the information stated in Sub-paragraph c of Paragraph 1 of Article 110 to submit the bidding proposals."

To sum up the aforementioned two Paragraphs, only the contents of Sub-paragraph c of Paragraph 1 of Article 111 could be the evaluation criteria, which stipulate that:

"Article 110
(Launch of tendering process)

1. The process of pre-qualification of restricted tender starts from publishing notice, in which the content should include:

(...);

c) Information concerning requirement of candidacy includes documents or declarations stating the candidate's status and whether the candidate meets the conditions required in the aforementioned sub-paragraph. Such documents or declarations could be verified afterwards;

(...)."

A number of data which can be quoted are listed throughout; other evaluation criteria cannot or should not be adopted.

2. According to Sub-paragraph c of Paragraph 1 of Article 110 of Decree Law no. 74/99/M, upon setting out the requirements for the bidders, the principal shall invite qualified ones to submit bidding proposals.

3. To adopt the pre-qualification of restricted tender is for the sake of curbing unqualified contractors to submit bidding proposals, but not for the convenience of bid evaluation.

This could be inferred in Sub-paragraph g of Paragraph 1 of Article 110, in which the contents include:

"Article 110
(Launch of tendering process)

1. The process of pre-qualification of restricted tender starts from publishing notice, in which the content should include:

(...);

g) The number of entities invited to submit bidding proposals.

(...)."

4. In addition, Paragraph 2 of Article 112 of the same Decree Law stipulates:

"Article 112
(Criteria for award of contract)

(...).

2. If conditional tenders or drawings made by bidders or revised versions are involved, or the number of entities who have made requirement of candidacy equals to or is below the number of invited entities stated in the tender notice, the acquisition shall follow the stipulation stated in the public tender."

Pre-qualification here refers to assessing the qualification of bidding companies based on the above indicators and all bidders who are evaluated as qualified will then be invited to submit bidding proposals.

In the course of pre-qualification, the principal shall lay down standardised evaluation criteria for all bidders and merely select bidders who are placed in higher positions to participate in the next round of bidding.

Sub-paragraph 10 in the tender documents states that:

"10. Criteria for selection and award of contract

10.1 Selection criteria: When assessing the qualification for candidacy, the first eight candidates whose scores are equivalent to or exceeding 65% of the total score will be selected. In the event of equal points scored in the eighth place, more prospective candidates, instead of the total mentioned above, shall be selected.

10.2 Criteria for award of contract: In the stage of bid evaluation, the bidding company which offers the lowest price quote in its bidding proposal shall be awarded the contract."

Why are eight qualified bidders selected to submit bidding proposals? Under normal circumstances, all qualified bidders are entitled to submit their bidding proposals.

What if all of the eight invited companies do not submit their bidding proposals, what will the next step be? Is it a must to restrict the number of bidders? Why is the number restricted to eight, but not five or three? Will it be better if the number of bidders is not restricted?

* * *

3) Evaluation criteria and selection of bidders (Sub-paragraph 19 of bidding rules)

The Sub-paragraph stipulates:

"19. The evaluation criteria and weighting of the criteria in the application form of qualification for candidacy, selection criteria for the candidates

Evaluation criteria and weighting of the criteria in the application form of qualification for candidacy is as follows:

Evaluation criteria	*Weighting*
Professional and technical conditions	
- *Construction plan*	*25%*
- *Sand provision plan*	*20%*
- *Equipments*	*8%*
- *Similar construction experience*	*25%*
Economic and financial conditions	
- *Price of completed construction project*	*10%*
Integrity and honesty	*12%*

Selection criteria: When assessing the qualification for candidacy, the first eight candidates whose scores are equivalent to or exceeding 65% of the total score will be selected. In the event of equal points scored in the eighth place, more prospective candidates, instead of the total mentioned above, shall be selected."

1. In this type of tender, there are two time slots that require choices and decisions making:

   (1) The first one is to determine whether the bidders meet all requirements of technical, economic and financial conditions;

   (2) The second one is to invite qualified bidders to submit bidding proposals in order to award the contract.

2. In the first time slot, various technical parameters stipulated in law are considered.

3. In the second time slot, the contents of the bidding proposals are considered and the one with the lowest price quote will be awarded the contract. This has to be mentioned in the bidding documents in advance. Compared to the last proposal, the scoring descriptions in this proposal are significantly more balanced and justifiable, despite that we are still reserved regarding some details.

   With regards to whether integrity and honesty should be included in one of the evaluation criteria, as the public works department has long

been quantifying this vector, in order to keep the consistency of the administrative regulations and conventions, we are not going to give any consideration and analysis in this aspect.

* * *

4) Other aspects in the bidding documents

Based on the structure, wordings, expressions and regulatory contents of the whole tender documents, there is still much room for perfection and improvement. Due to time constraint, we will not make analysis here.

* * *

Part III: Conclusion

Upon analysing the bill, the CCAC believes that:

1. **Due to limited information on hand, opinions are only given on several issues of greater importance**.

2. **By analysing the contents and structure of the tender documents, there is still much room for improvement. However, due to time constraint, we are not giving any opinions here**.

3. **The issues raised in this report and the relevant analysis serve as reference for the relevant entity, what options to take depends on the decision of the competent authority**.

* * *

The above opinions serve as reference only.

* * *

Commission Against Corruption, 2nd February 2012.

The Commissioner Against Corruption
Fong Man Chong

Opinion concerning the bill of *Legal Regime of Urban Construction*

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Part I: Preface

1) On 13th January 2012, the Commission Against Corruption (CCAC) received the bill of *Legal Regime of Urban Construction* transferred by the Cabinet of the Chief Executive which is currently under discussion in the Executive Council. The CCAC is requested to give analysis and render opinions on some contents in the bill.

2) Other documents sent to the CCAC included the reasons for legislation and comparison tables between the old and new regimes.

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Part II: Analysis

Paragraph 9 of Article 4 of Law no. 10/2000 of 14th August (*Organic Law of the Commission Against Corruption of the Macao SAR*) stipulates:

"Article 4
Powers

The Commission Against Corruption is entitled to:

(…);

9) With regard to any shortcomings it finds in any legal provisions, namely those involving 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. When, however, the matter falls within the powers of the Legislative Assembly, it shall merely inform the

Chief Executive in writing on its position;

(…).”

Thus we have made a brief analysis on the bill.

1. The bill of *Legal Regime of Urban Construction* (hereafter the bill) is divided into seven chapters, in which Article 1 stipulates:

“Article 1
Objective

It is a legal regime that regulates the activities of civil engineering and safeguards the structural safety of urban construction in the Macao SAR.”

Upon analysing the bill, it is not difficult to find that **the technical contents contained in Chapter two to five** (which are also the key contents) of the *General Regulations on Urban Construction* (approved by Decree Law no. 79/85/M of 21st August) **are not enclosed in the bill, thus we have the following doubts**:

1) **Is the government’s intention to put forward the bill to comprehensively amend the current *General Regulations on Urban Construction*?**

2) **Or does the legislature merely aim at strengthening the supervision on construction and engineering and therefore supervisory measures are introduced in the bill?**

3) The contents (or most of the articles) of the entire bill are **incompatible** with the objectives mentioned in Article 1; or be frank, **the contents are inconsistent with the objectives**, and **incompatible with the name of the bill**. Thus we suggest making the following adjustment:

   a) Alter the name of the bill to ***Supervisory System on Urban Building and Construction*** and meanwhile make amendment on the contents of Article 1 of the bill because most of the contents of the bill are not as the contents described as in Article 1.

b) Keep the current *General Regulations on Urban Construction* effective and do not immediately repeal it. If there is contradiction with this bill (if it will become the future law), regard this bill as the priority.

c) Make adjustment to other contents of this bill based on the above opinions.

d) Start to formulate the new *General Regulations on Urban Construction* – especially the parts involving technical contents.

Otherwise, this bill has become just a name and has not stipulated any technical regulations concerning construction and formulated relevant execution and supervisory system.

2. The *Structural Safety Protection of Urban Construction* mentioned in Article 1 of the bill **seems to be misleading because the bill does not regulate this content. In fact, we can hardly find any related article concerning this content in the bill** – even though Chapter 2 of *General Regulations on Urban Construction* is kept in Article 34 of the bill, the act of just keeping Chapter 2 and repealing the rest of the articles is very risky. **Chapter 3 to 5 of *General Regulations on Urban Construction* involves a lot of technical criteria, once they are repealed without any new rules immediately implemented, chaotic situation will occur and criticism will be faced, surely retarding the development of the construction industry.**

3. In addition, there are some other legislations concerning urban construction and safety, such as:

- Decree Law no. 60/96/M of 7th October;
- Decree Law no. 42/97/M of 13th October.

4. Article 2 of the bill also leads to other problems: **numerous concepts/ definitions are listed throughout, but articles relating to these concepts in the main content could hardly be found**.

5. Paragraph 3 of Article 8, Paragraph 1 of Article 9 and Paragraph 3 of Article 12 of the bill stipulate, "(…) *which also do not affect the sanctions imposed in accordance with the stipulation in this provision or other current legislations*."

However, concrete sanctions have never been mentioned in this bill.

6. Article 24 of the bill stipulates:

"Article 24
Illegal Acts

1. Violation of this law constitutes administrative illegality, in exception of the cases where this law is applicable.

2. The sanction policy and procedure of administrative illegality as stipulated in the previous paragraph are formulated by complementary legislation, without affecting the application of the next article."

Law no. 13/2009 of 27th July stipulates: the amount of administrative fine shall not exceed $500,000;

This bill violates Paragraph 3 of Article 3 of Law no. 13/2009.

It is the law which determines violation, but it would be inappropriate if sanctions are imposed by administrative regulations.

7. Notification is mentioned in Articles 25 and 28 of the bill, but the contents are incomplete. These legislative approaches have to be improved.

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8. Article 32 of the bill stipulates:

"Article 32
Delegation of powers

The powers of the Director of the Land, Public Works and Transport Bureau, as pointed in this law, shall not be delegated to the others, in exception of the powers for determining the order of suspension of construction and that of prohibition of construction."

However, Article 20 of the bill stipulates:

"Article 20
Supervision of powers

1. ***The Land, Public Works and Transport Bureau is entitled to supervise the compliance of this law and relevant complementary legislations.***

2. *In executing the supervisory powers, the Land, Public Works and Transport Bureau shall request other public departments and entities to provide all necessary collaboration or assistance.*

3. *For the effect of Paragraph 1, the staff of the Land, Public Works and Transport Bureau are entitled to the powers of the authority to enter the following places for **supervision**, particularly concerning the work of **inspection**:*

   1) *The common parts of a condominium based upon the condominium regime;*

   2) *Places open to the public, including the ones need to be charged."*

1. Why is the director not entitled to delegate the powers to his/her subordinates?

2. **The scope and content of supervisory powers are very vague; the objectives are not clear as well**.

* * *

Similarly, Article 33 is also vague. The content of the article is:

"Article 33
Succession of supervisory authority

Through administrative regulations, the powers of the supervisory authority stipulated in this law shall be transferred to the current or future entity."

* * *

9. The concept of public authority, which is a term used in Penal Law – see Articles 312, 319, 320 and 321 of the *Penal Code*, is adopted in Paragraph 3 of Article 20.

The purpose for permitting the public authority to enter some places is to inspect some objects and observe some situation in person. The personnel on site have the obligation to collaborate and launch relevant administrative investigation procedure.

It seems inappropriate to permit the staff of the Land, Public Works and Transport Bureau to enter private places without setting some pre-requisites or conditions. This privilege lacks rationality, what if there is abuse of powers? Moreover, considering the current organisation structure and operation of the Bureau, is it able to enforce the law?

Similar problems also appear in Article 21 in which the contents are vague and not clear.

Anyhow, it should be like Paragraph 6 of Article 9 in which on-site record should be made.

* * *

10. Article 23 stipulates that:

"Article 23
Judicial writ

1. If there is an illegal construction undergoing in a condominium or an independent unit which, as shown by strong and apparent signs, severely damages or will severely damage the structure of the condominium whilst the inspection staff of the Land, Public Works and Transport Bureau are unable to enter the condominium or independent unit for investigation, ***the Director of the Bureau shall make a formal request with reasoning to the judge of the Criminal Court to obtain the judicial writ issued by the Court to enter the condominium or the independent unit****. The stipulation of Paragraph 1 of Article 162 of the Code of Penal Litigation shall be applied necessarily to the judicial writ.*

2. *For the effect of the above stipulation, construction which may cause collapse and danger to a condominium is considered construction which will cause severe damage to the structure of the condominium."*

Administrative activities and penal litigation activities are mixed up in the bill.

Please refer to Sub-paragraph f of Paragraph 1 of Article 264, Article 266, Sub-paragraph a of Paragraph 1 of Article 267 of the *Penal Code* for the signs of danger. In short, it is related to behaviour of danger.

The criminal sanctions against dangerous crimes are subject to the control of a set of strict legal principles.

Under normal circumstances, only when the signs of criminal crimes are shown and the case for investigation has been commenced could the judge of the Criminal Court execute his/her power. As the stipulation of Article 23 is too simple, how could the judge of the Criminal Court deal with it? It seems that there is a lack of thorough thinking.

* * *

Part III: Conclusion

Upon analysing the bill, the CCAC believes that:

1. **The purpose of legislation should be re-clarified. Does it merely aim at strengthening the supervision over a condominium or does it involve the technical criteria needed to be followed during construction in a condominium?** Consider formulating two sets of law for regulation.

2. If the purpose of legislation is to strengthen the supervision of the Land, Public Works and Transport Bureau over urban construction, **the name, objective and the content of relevant measures as well as the powers of the Bureau as stated in the bill should be amended** (Please refer to Part II for some of the contents).

3. If the government **could not immediately put forward a new draft of the bill regarding the current *General Regulations on Urban Construction*** (mainly concerning the part of technical criteria), **the CCAC believes that it is deemed unnecessary to repeal it, otherwise chaotic situation will occur and criticism will be faced.**

4. In the bill, **numerous technical amendments have to be made and some fundamental concepts have to be clarified**. In addition, the concepts and systems of administrative law and penal litigation law should not be mixed, otherwise execution could hardly be carried out.

5. **Numerous articles in the bill should also be perfected from the perspective of legislation** (Due to time constraint and limited information on hand, we just render the above opinions).

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The above opinions only serve as reference for the Chief Executive.

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Commission Against Corruption, 2nd February 2012.

The Commissioner Against Corruption
Fong Man Chong

APPENDIX II

SOME OF THE RECOMMENDATIONS AND INVESTIGATION REPORTS BY CCAC

Under Paragraphs 4, 9 and 12 of Article 4 of Law no. 10/2000 of 14th August (Organic Law of the Commission Against Corruption of Macao SAR) amended by Law no. 1/2012 of 26th March, the CCAC is entitled to investigate the legality of administrative activities and proceedings with regard to relations between public entities and individuals and notify the Chief Executive of the results or address recommendations directly to the concerned authorities.

In 2012, the CCAC rendered a number of recommendations to government departments and submitted the investigation reports to the Chief Executive based on the significance of the matters involved in the complaints, including:

1) - Investigation report on a complaint related to a claim against the Macao Customs Service;

2) - Report on several legal issues regarding the Monetary Authority of Macao approving the Bank of China Macau Branch to issue 100th anniversary uncut commemorative notes;

3) - Investigation report on the light rail passing Rua de Londres and Rua de Cidade do Porto in Macao;

4) - Analysis report on a complaint related to an administrative omission;

5) - About the investigation report on the basis for termination of fixed-term appointment of Deputy Director of Fire Services Bureau and relevant complaints;

6) - Investigation and analysis report on complaints regarding the information requested when handling birth registration by Civil Affairs Registry;

7) - A report (excerpt) on handling of complaint that local mobile phone users can only use 3G service from 9th July 2012 and suggested measures.

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The reports that are more influential are published here for the public's reference.

Case I

Investigation report on a complaint related to a claim against the Macao Customs Service[8]

Key points:

- If the testing equipment of the department is not suitable for the detection of certain types of vehicles, the staff of the department, especially the front-line staff, should be well aware and use the device accurately when performing the duty. Otherwise in case of improper use of the devise resulting in the infringement of the rights and interests of the third party, the department should bear the due responsibility.
- In handling complaints from the citizens, the front-line staff should report fully to their superiors as soon as possible so that the latter can seek appropriate solutions timely.

* * *

Part I: Introduction

1. The complainant XXX lodged a complaint to the Commission Against Corruption (hereafter the CCAC) on 11th July 2011 with contents as belows:

   (1) The COTAI Checkpoint did not follow the normal procedures for the processing of the complainant's application for claims. It failed to submit the related documents (including the complainant's declaration for claims) to the Headquarters of the Macao Customs Service timely;

[8] The complainant expressed to the CCAC that he had given up the right to seek compensation upon completion of the case and the Macao Customs Service has taken immediate follow-up measures after receiving the report. However, the case itself still has its alerting effect, the CCAC published it in the annual report.

(2) The complainant phoned the COTAI Checkpoint on 15th April 2011 to inquire about the incident but the male duty officer dealt with the inquiry negligently and irresponsibly;

(3) The Director-General of the Macao Customs Service did not give the complainant any written reply with regard to his request for claim in accordance with the law;

(4) The Macao Customs Service took several months to deal with the incident, causing the complainant to go here and there without getting the intended result.

2. The CCAC has written to the Macao Customs Service to obtain information and requested the complainant to provide further information in order to have a better understanding of the matter.

3. The Macao Customs Service stated in the official letter no. 2300/SA/2011.DG[9] dated 25th July that:

" - *With regard to the alleged damage of the sound insulation cotton at the bottom of the vehicle of Mr. XXX (the complainant) due to customs control when he drove the vehicle through the COTAI Checkpoint departing Macao on 25th December last year (2010), the duty officer of the COTAI Checkpoint had already submitted a report and informed Mr. XXX that he could file a claim for compensation directly to the Headquarters of the Macao Customs Service (Annex 1).*

- *Upon receipt of the claim/complaint letter from Mr. XXX for the first time on 20/04/2011, the Macao Customs Service immediately initiated the relevant procedures. The Deputy Director-General made an order on 16/05/2011 to begin the administrative procedures for compensation (Annex 2).*

- *Superintendent A of the Material Resources Division of the Macao Customs Service started to contact Mr. XXX on 07/06/2011, requesting the latter to submit the invoice for repairing the vehicle so that the Macao Customs*

[9] See page 11 of the case.

Service could proceed with the claim for compensation (Annex 3).

- *In the morning of 07/07/2011, Mr. XXX went to the guardhouse at the entrance of the Headquarters of the Macao Customs Service to look for superintendent A but the latter was on annual leave (Annex 4). Then, Mr. XXX telephoned senior officer B of the Internal Affairs Office of the Macao Customs Service, whom invited him to go inside the headquarters to assist him in submitting the invoice for repairing the vehicle. However, Mr. XXX refused, hanged up and left (Annex 5).*

  Please inform Mr. XXX to contact superintendent A (contact number: xxxxxxxx) or senior officer B (contact number: xxxxxxxx) in order for him to submit the relavant documents to the Macao Customs Service so that the necessary administrative procedures regarding the compensation could be completed as soon as possible." (Bold and underlined texts are inserted by the CCAC)

4. Moreover, the duty officer of the COTAI Checkpoint, principal customs officer C, who handled the case regarding the sound insulation cotton at the bottom of the complainant's vehicle had been damaged during customs control, has made the report no. 348/PACT/2010[10] on 25th December 2010 with the below contents:

   "Today at around 15:00, a lightweight vehicle, plate number MX-xx-xx, Mainland plate number (Guangdong) xxxxx (Macao), name of driver XXX, male, xx years old, Macao permanent identity card holder with number: xxxxxxx(x), number of Macao driving license: xxxxx, valid until xx/xx/20xx, currently residing in xxxxxxxxxxxxxx, contact number: xxxxxxxx. The driver drove a lightweight vehicle, MERCEDES BENZ model E300A/T, to cross the border via the COTAI Checkpoint. However, when entering Lane 1 ,the vehicle was randomly selected by the Automated Vehicle Clearance System for inspection. The customs officer at the lane instructed the driver XXX to drive the vehicle to the operation area of the X-ray car for scanning. Under the instruction of the X-ray car operator, customs officer D, number xxxxx, the driver drove the vehicle onto the ramp. When the vehicle was going up the ramp, it was suspected that the sound insulation cotton at the bottom of the vehicle rubbed against the edge of the

[10] See page 12-13 of the case.

ramp and as a result, part of the sound insulation cotton fell off (indicated by an arrow in the picture). The customs officer D immediately instructed the driver XXX to stop and drive away from the ramp.

With regard to the falling of the sound insulation cotton at the bottom of the vehicle, customs officer D restored the cotton at once to its original position. However, customs officer D found that other than the scratches at the part where the sound insulation cotton fell off, there were also scuff marks at the bottom of the vehicle. Mr. XXX explained that he had previously scratched the bottom of his car in another car park, but he was not sure whether this was the cause of the falling of the cotton in this occasion.

Customs officer D then conducted a manual inspection of the vehicle and no irregular situation was found. The customs officer explained to the driver the content of the inspection record. The latter declared that he understood it and signed for confirmation. Afterwards, he drove away.

Soon after the driver XXX had left, he returned and claimed that the sound insulation cotton at the bottom of the vehicle fell off again. After a careful inspection of customs officer D and another customs officer E, number: xxxxx, it was found that the screws at the bottom of the vehicle for holding the sound insulation cotton were also loosened.

Being notified about the situation, I went to the site immediately for more information. The driver XXX told me that he believed the falling of the sound insulation cotton at the bottom of the vehicle was caused by the ramp of the X-ray car during inspection and thus ***handed me a handwritten declaration****, hoping that he could be compensated for the repairing expenses. Given the situation, I told the driver XXX verbally that* ***the claim for compensation could be made to the Macao Customs Service in accordance with the normal procedures****. The driver XXX left after acknowledged the relevant circumstance.*

Attached to this report *are the relevant information, the vehicle inspection record, photographs as well as* ***the declaration made by the owner of the vehicle*****.**

The superior was informed of this issue." (Bold and the dotted-lined texts are inserted by the CCAC)

5. The complainant submitted a handwritten declaration to the customs officer on 25th December 2010[11] :

"Declaration

I, XXX, hereby declare that I drove my vehicle with plate number MX-xx-xx to cross the COTAI Checkpoint on 25th December 2010 at around 3:00 pm. When I drove up the ramp of the X-ray car for vehicle inspection, the sound insulation cotton at the bottom of my car was damaged. Therefore ***I request for the compensation of the repairing cost.***

Address: Unit xx, Floor xxxxx, Block xxxxxx, xxxxxx Street, Macao

Tel: xxxxxxxx

ID card: xxxxxxx(x)

(XXX Signature)
25.12.2010"
(Bold and underlined texts are inserted by the CCAC)

6. On 27th December 2010, the Head of the Island Enforcement Division (and concurrently the commander of the COTAI Checkpoint), who was a Senior Superintendent, made an order on the above-mentioned report with the following content[12] :

"1. The operator of the X-ray car has already handled the problem of the complainant's vehicle with appropriate measures;

2. The duty officer has already informed the complainant the relevant way for settlement:

3. The case is provisionally ***put on record*** *for follow-up."* (Bold and underlined texts are inserted by the CCAC)

[11] See the back of page 13 of the case.
[12] See page 12 of the case.

7. On 18th April 2011, the complainant sent a letter[13] to the Director-General of the Macao Customs Service (the date of entry in the Macao Customs Service was 20th April 2011), below is the content of the letter:

"To: Macao Customs Service of MSAR

Attn: The Director-General, Choi Lai Hang

On 25th December 2010, I was driving a lightweight vehicle with plate no. MX-xx-xx to cross the Lotus border to Hengqin. I was requested by a customs officer to take an X-ray inspection of my vehicle. When I drove up the ramp to the X-ray inspection platform, the sound insulation cotton at the bottom of the vehicle was damaged by the sharp edge of the ramp and the staff of Macao Customs Service immediately carried out an emergency repair of the vehicle. Although the sound insulation cotton was restored to its original position, it was already damaged and thus lost its function of sound insulation. Afterwards, a customs officer let me write a declaration on a sheet of paper. I clearly declared in the declaration the request of being compensated for the repair costs of my vehicle. However, ***when I submitted the invoice of the repair costs to the COTAI Checkpoint*** *after my vehicle was repaired, the customs officer there told me that they did not handle matters of compensation and asked me to submit it to the Headquarters of the Macao Customs Service. Therefore, I submitted the invoice of the repair costs to the Headquarters of the Macao Customs Service. After waiting for one month, I called xxxxxxxx for inquiry, Miss F, the one who answered the phone, told me that* ***the COTAI Checkpoint had never submitted any document about the case, and hence the Headquarters of the Macao Customs Service could not make any compensation****. Thus, on 15th April 2011 at 15:33, I phoned xxxxxxxx for inquiry, but the answer given was I need to appoint a lawyer to sue the Macao Customs Service of the Government for civil claims. I think the reply is unacceptable. How is it possible for me, as an ordinary citizen, to take legal action against the Macao Customs Service for the repair costs of MOP2,490.10? The staff, who answered the call on that day, used a threatening tone and told me to better have a clear understanding of my position. I was not sure whether he/she was trying to tell me that the Macao Customs Service was a government department while I was just an ordinary citizen and it could*

[13] See page 20 of the case

always find a way to get revenge on me. I think the customs officer was very irresponsible in giving me this reply and what he/she said had greatly damaged the image of the public servants of the Macao SAR. Given the above, I made another phone call to the Public Information Centre at 88668866 for inquiry. I was requested by the personnel of the Public Information Centre that I needed to obtain the official reply document from the Macao Customs Service first. Otherwise, they could not handle the case. I hereby request the Macao Customs Service to give me an official reply document, informing me whether I could be compensated for the damage in this incident or not.

Complainant: XXX

Address: Unit xx, Floor xxxxx, Block xxxxxx, xxxxxx Street, Macao

Contact number: xxxxxxxx

Complainant: (Signature)
18th April 2011."
(Bold and dotted-lined texts are inserted by the CCAC)

8. On 20th April 2011, the Deputy Director-General made an order[14] in the letter of the complainant:

"Refer to DFAPF[15] first p/inform. (asap)"

9. On the next day, the Director-General made the following order[16] :

"Copy to GAI[17] for record."

* * *

[14] See page 20 of the case.
[15] Checkpoint Enforcement Department.
[16] See page 20 of the case.
[17] Internal Affairs Office.

10. **After a comprehensive analysis of all the information, we were able to master what actually happened with regard to the incident:**

(1) On 25th December 2010 at around 15:00, the complainant drove a vehicle with plate number MX-xx-xx to cross the border at the Lotus Port. The vehicle was randomly selected by the Automated Vehicle Clearance System for inspection, thus the customs officer made arrangements for the vehicle to be scanned and inspected according to the established procedures. When the vehicle was going up the ramp for lightweight vehicle inspection, the bottom of the vehicle came into contact with the junction between the ramp and the left side of the platform for the inspection of lightweight vehicles;

(2) According to the digital photos taken at the Checkpoint, there were damages on the sound insulation cotton at the bottom of the vehicle;

(3) When the two X-ray car operators tried to restore the sound insulation cotton to its original position of the above mentioned vehicle, they found other scuff marks at the bottom of the vehicle. The position of those marks was not at the part of the vehicle that rubbed against the platform for the inspection of vehicles, thus the marks were not related to the alleged damages in this incident. At that time, Mr. XXX stated that he had previously scratched the bottom of his car in another car park, but he was not sure whether this was the cause of the falling of the cotton in this occasion. Therefore, it could not prove whether the damage of the sound insulation cotton at the bottom of the above mentioned vehicle was due to the rubbing against the inspection platform;

(4) Since it was not possible to use the X-ray scanning device to conduct inspection on the vehicle, the two operation staff performed a manual inspection of the vehicle. Afterwards, they explained to the driver XXX the content of the inspection record. The latter declared that he understood it and signed for confirmation;

(5) **Afterwards, the driver XXX drove away and when he reached a place not far away from the entrance of the Lotus Bridge, at a distance of about 400 metres from where the X-ray car was parked, he took a turn and came back. He told the two above mentioned X-ray car operators that the sound insulation cotton at the bottom of the vehicle**

fell off again. After an inspection, it was found that the screws at the bottom of the vehicle for holding the sound insulation cotton were also loosened. At that time, the driver XXX wrote a declaration at the site, expressing his intention to seek compensation from the Macao Customs Service for the damage while D, the person-in-charge that day, informed him clearly at once that claims for compensation should be made in accordance with the normal procedures. When the driver XXX acknowledged the relevant circumstances, he did not insist on pursuing the claim for compensation and left;

(6) The above mentioned declaration was included in report no. 348/PACT/2010 and the commander of the COTAI Checkpoint had made an order to put the case on record;

(7) **Test results showed that vehicles of the same model as the complainant's did not have the conditions to be driven up the ramp of X-ray car for lightweight vehicle inspection;**

(8) The dirver XXX had phoned the number xxxxxxxx to inquire about the incident of compensation and the phone call was answered by superintendent A. According to the document of the Macao Customs Service, it was recorded, "*Since superintendent A works in the Material Resources Division, the content of conversation between superintendent A and the complainant is not known in details at this stage*";

(9) The driver XXX expressed in his letter that he phoned the Macao Customs Service on 15th April 2011 at 15:30 and he was not satisfied with the unfriendly and threatening manner of the customs officer who answered the phone call;

(10) Subsequently, the COTAI Checkpoint submitted a report to the Headquarters, attached with a CD-ROM (CAM-S206) containing the video-recording of the whole process of inspection of the vehicle MX-xx-xx taken by the customs officer on 24th April 2011. Other information included the vehicle inspection record of MX-xx-xx on that day, number: 56/PACT/2010, the registration information of the vehicle MX-xx-xx, the travel records (entry and exit) of vehicle MX-xx-xx on 25th December 2010, digital photographs, copies of the report no. 348/PACT/2010 and the letter of complaint dated 18th April 2011;

(11) On 9th May 2011, the Head of the Island Enforcement Division, who was a senior superintendent and concurrently the commander of the COTAI Checkpoint, gave the below opinion concerning the report made by the operation supervisor of the COTAI Checkpoint dated 6th May 2011:

"Submit to the Head of Checkpoint Enforcement Department for review."

(12) On 11th May 2011, the Head of the Checkpoint Enforcement Department issued the following opinion and instruction with regard to the report dated 6th May 2011:

"Based on the content of the report, the following opinions are made:

1. *The results of investigation showed that the bottom of the vehicle driven by the complainant did rub against the ramp for the inspection of lightweight vehicles, thus the part to hold the sound insulation cotton was loosened. It is proposed to DAF[18] to follow up the issue of reparation.*

2. *According to the results of investigation, there was no indication that the staff of PACT[19] had showed any act of disrespect or threat to the complainant.*

3. *If necessary, it is proposed that the conversation between the complainant and the superintendent A to be followed up by DAF or other departments assigned by the superior.*

4. *Instructions were given to PACT that before the implementation of improvement measures, vehicles of the same model as described in the report are prohibited to be driven up the ramp for lightweight vehicle X-ray inspection.*" (The underline is inserted by the CCAC)

(13) On 12th May 2011, the Assistant Director-General issued the following order on the report dated 6th May 2011:

[18] It refers to the Finance and Administration Department.

[19] It refers to the COTAI Checkpoint.

"1. Agree with point 1 of the proposal raised by the Head of DFAPF;

2. Immediately execute the content mentioned in point 4;

3. Submit to the Deputy Director-General for review."

(14) On 16th May 2011, the Deputy Director-General made the following order: "*I acknowledge. Agree*."

(15) On the same day, the Head of Operation Management Department gave the following instructions[20] :

"1. Send copy of the report to DAF[21] for follow up;

2. Archive the original"

(16) On 3rd June 2011, the Head of Finance and Administration Department gave the following instructions:

"Send to chiefs of DAF

1. Send a photocopy to the Head of DRM[22] for the convenience of contacting the person involved and requesting him to provide invoice for the expenses of repairing the vehicle so as to commence the procedures for compensation.

2. Send the original to the head of DF.[23]"

(17) On 7th July 2011, senior officer B, who answered the phone call from the complainant, made a "record of incoming call through the hotline", the respective content and status of following up are as below:

"------ An enquirer called and said that he was at the guardhouse which was at the entrance of the Macao Customs Service. He expressed that someone

[20] See page 14 of the case.
[21] Finance and Administration Department.
[22] Material Resources Division.
[23] Finance Division.

from the Macao Customs Service phoned and asked him to submit the invoice for compensation. The staff who answered the call asked him about the name of the subunit or that of the staff who gave such notice. However, the enquirer failed to provide more specific information. All he could recall was that a staff from the Macao Customs Service called and informed him to submit the invoice to the Headquarters of the Macao Customs Service for compensation around one to two months ago. Therefore, the officer asked the enquirer to do the registration for entering the Headquarters and waited inside while he/she tried to find out where the invoice should be submitted to so that his case could be referred to the person-in-charge of the respective unit for follow up. However, the enquirer refused to go in, saying that it was too troublesome. Then he hung up and went away.

------The senior officer who answered the phone call asked the customs officer who was on duty at the guardhouse about the situation. He/She was told that the enquirer was holding a piece of paper containing the hotline number for inquiry and the phone no. of Ms. F: xxxxxxxx (should be under the Material Resources Division). The customs officer asked the enquirer which subunit he wanted to contact, but the enquirer could not give specific answer.

------ Upon receiving the case of objection from the complainant in April, the staff of the Macao Customs Service called the complainant and informed him that the authority was following up the case and gave him the hotline number for inquiry. As the case was still processing and conclusion had not been made, the officer who answered the call reported the case again to the Director-General. Instructions were given to notify the Material Resources Division to contact the complainant and follow up the issue.";

" Status of follow up

Based on the order of the Director-General, the Internal Affairs Office (GAI) informed the Material Resources Division to contact the enquirer and immediately replied him that the invoice could be directly submitted to the relevant unit for processing. However, the enquirer expressed that he would not visit the Macao Customs Service again and he would reflect the relevant issues to the Director-General of the Macao Customs Service

directly. Then he hung up." (The underline is inserted by the CCAC)

(18) On 11th July 2011, the Director-General issued the following order[24]:

"- *Seen.*

- *Send to GAI for record.*"

(19) On 22th July 2011, the Head of the Material Resources Division who was a senior superintendent, prepared a report no. 48/DRM/2011 with the below content:

"*(1) According to the contents described in reference document b), on 25th December 2010, the driver of vehicle no. MX-xx-xx, was randomly selected by the AVC (Automated Vehicle Clearance System) for inspection at the COTAI Checkpoint. During the process of inspection, it was suspected that the sound insulation cotton at the bottom of the vehicle rubbed against the ramp, resulting in the damage of the sound insulation cotton. The driver XXX thought that it was the ramp of the X-ray car for lightweight vehicle inspection that caused the damage of his vehicle, so he requested the Macao Customs Service for compensation and the approval of the related claim was approved by the superior.*

(2) Given the relevant administrative procedure, since we lack the original or certified copy of the invoice regarding the vehicle's repair cost for proceeding with the compensation, superintendent A of our division called the phone number xxxxxxxx provided by the complainant on 7th June. A lady answered the phone, stating that XXX was not in Macao at that moment and would return to Macao on 10th June. Superintendent A tried to call again on 10th June through phone no. xxxxxxxx and got into contact with Mr. XXX. The complainant was notified that his request for compensation was approved by the Deputy Director-General of the Macao Customs Service. However, given the relevant administrative procedure, the complainant was requested to submit the original or certified copy of the invoice for the vehicle's repair cost in order to proceed with the compensation. The complainant indicated that he would submit the relevant document when he was free.

[24] See page 14 of the case.

(3) *In the morning of 7th July, the complainant arrived at the Headquarters of the Macao Customs Service and asked to see superintendent A to submit the relevant documents but the said staff was on annual leave (see the annual leave application form for reference). Therefore, Mr. XXX called the extension no. xxx (the hotline of Macao Customs Service) in the guardhouse at the entrance of the Headquarters, requesting his case of claims for his vehicle to be handled. Senior officer B was in contact with him and inquired about his situation. The complainant told him/her that he was notified by personnel of the Macao Customs Service about one to two months ago that he could submit the invoice for repairing his vehicle to the Headquarters, but he did not know which subunit. On the phone, senior officer B asked Mr. XXX to go into his/her office to better ascertain the situation and provide the necessary assistance. However, the complainant refused and said, "It's too troublesome! I will write a letter to the Director-General." After saying that, he hung up and left the Headquarters. According to the staff who was on duty at the gate of the Macao Customs Service at that time, the complainant stayed for 5 to 10 minutes there. Thereafter, the staff of our division called the person concerned twice to find out about the situation and informed him to submit the relevant documents so that the procedures of compensation would not be hindered. However, the complainant stated that he was not going to submit the documents to the Macao Customs Service and he would not pursue the claim for compensation at this stage. He also expressed his dissatisfaction towards the attitude of certain staff of the Macao Customs Service (but our division did not know who he was referring to) and he would lodge a complaint to the CCAC to confirm whether there was any administrative malpractice involved in the case.*

(4) *Given the above, upon receipt of the related documents, the staff of our division had already **phoned** Mr. XXX **as rapidly as he/she could** and informed him that his request for compensation was approved. He/She asked him to submit the original or certified copy of the invoices at his earliest convenience so that the procedures of compenstion could be continued. However, the complainant always said that the case was not urgent and he would come and submit the relevant documents when he had time. Considering that the complainant was probably very busy with his work, the staff of this division tried not to bother him with frequent phone calls, which was the reason why the follow-up work was only resumed after waited for a certain period of time in order for the relevant unit of this division to start the rest of the procedures. During the above-mentioned period, it was not found that the staff of*

this division had violated the administrative procedures in any form in the process of handling this case. However, the person concerned was uncooperative and expressed his dissatisfaction during the conversation which caused unnecessary pressure and burden on the work of the staff of this division." (The underline is inserted by the CCAC)

(20) On 25th July 2011, the Head of Finance and Administration Department gave the following order on the report date 22nd July 2011:

"To Head of DAF:

1. *Seen.*

2. *Based on the contents described in this report, no circumstance of administrative irregularity was found in the preparatory work of the respective compensation carried out by the Material Resources Division.*

3. *Submit to the superior for review and consideration."*

(21) On 25th July 2011, the Director-General of the Macao Customs Service issued the following order:

"T.C.[25]" (Acknowledged).

* * *

[25] Should be the abbreviation of "Tenho Conhecimento".

Part II: Analysis – Irregularities committed by the Macao Customs Service in this case

It is stipulated in Paragraphs 4 and 12 of Article 4 of Law no. 10/2000 of 14th August (*Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*):

*"**Article 4***
Powers

The Commission Against Corruption is entitled to:

(...);

4) 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;

(...);

12) Address recommendations directly to the concerned authorities for the purpose of rectifying illegal or unfair administrative acts or procedures or of performing due acts;

(...)."

Thus, we conduct a detailed analysis in relation to this complainant.

I. Vehicles of the same model do not have the conditions to be driven up the ramp for inspection safely

1. According to the information provided by the Macao Customs Service to the CCAC, the operational head of the COTAI Checkpoint came to the following conclusion after the investigation instructed by the Deputy Director-General: "*Test results showed that vehicles of the same model as the complainant's did not have the conditions to be driven up the ramp of X-ray for lightweight vehicle*

inspection." (The underline is inserted by the CCAC). Thus, the Head of the Checkpoint Enforcement Department pointed out in the opinion issued on 11th May 2011: "*Instructions were given to PACT that before the implementation of improvement measures, vehicles of the same model as described in the report are prohibited to be driven up the ramp of X-ray car for lightweight vehicle inspection.*"[26] .

2. It is worth noting that: starting from the day the complainant's vehicle was damaged and the written declaration was submitted (25th December 2010), till the day (20th April 2011) when the Deputy Director-General of the Macao Customs Service gave an order to carry out an investigation as soon as possible (not counting the duration of time when the Head of the Checkpoint Enforcement Department gave an instruction that vehicles of the same model could not be driven up the ramp for lightweight vehicle X-ray inspection on 11th May 2011, upon receiving the investigation report from the operational head of the COTAI Checkpoint), **there was a four-month period of time that the Macao Customs Service was not aware that vehicles of the same model as the complainant's could not be driven up the ramp for X-ray inspection. If it happened that vehicles of the same model were requested to undergo X-ray inspection, it was likely that damages similar to the complainant's vehicle may occur. Thus, the Macao Customs Service would be subject to the risk of claims for compensation.**

3. Throughout this period, the following deficiencies were identified in the administrative procedures:

   (1) The front-line staff failed to timely report the situation to the leadership, causing the latter not able to grasp the information in this area for a period of time;

   (2) The front-line staff lacked the vision and sensitivity in overseeing the overall situation and failed to propose to the superior to adopt any provisional preventive measures in a timely manner (regardless of the outcome of the specific case of complaint);

   (3) If there was a good flow of information and the incident was timely reported to the superior, the Director-General of the Macao Customs Service could

[26] See paragraph 10 of part II of the report of the Macao Customs Service.

have adopted certain provisional measures in accordance with Article 83 of the *Code of Administrative Procedure*, so as to enhance administrative efficiency and improve the workflow of the department itself. However, the front-line staff failed to do so.

* * *

II. The handwritten declaration submitted by the complainant to the COTAI Checkpoint on the day of incident was not handled in accordance with the law

1. The complainant claimed that he had submitted the declaration for compensation to the COTAI Checkpoint on the day of the incident (25th December 2010).

2. However, the Macao Customs Service pointed out in its reply letter to the CCAC dated 25th July 2011 that: "*Regarding the incident of the sound insulation cotton at the bottom of Mr. XXX's vehicle being damaged due to customs control during the time he drove his vehicle to cross the border via the Lotus Port on 25th December last year, the duty officer of that Checkpoint has already submitted a report on the case and informed Mr. XXX that he could file his claim for compensation directly to the headquarters of the Macao Customs Service (...). The Macao Customs Service received the letter of claim/complaint from Mr. XXX* ***for the first time on*** *20th April 2011 (...)*" (Bold and underlined texts are inserted by the CCAC).

3. According to the report no. 348/PACT/2010 prepared by the duty officer of the COTAI Checkpoint who handled the incident of the complainant's vehicle being damaged during inspection on that day (25th December 2010): "*The driver XXX told me that he believed that the falling of the sound insulation cotton at the bottom of the vehicle was caused by the ramp of the X-ray car, therefore, he* ***handed me*** *a handwritten declaration and hoped that he could be compensated for the repairing expenses as a result of that. Given the situation, I told the driver XXX verbally that the claim for compensation could be made to the Macao Customs Service in accordance with the normal procedures. The driver XXX left after acknowledged the relevant circumstances". "Attached to this report are the relevant information, the vehicle inspection record, photographs as well as the declaration made by the owner of the vehicle*." (Bold and underlined

texts are inserted by the CCAC)

4. **In the handwritten declaration that was attached to the report, the complainant has expressed explicitly "the will of receiving the compensation for the expenses of repairing the vehicle". The complainant's address and phone number were also contained in the declaration.**

5. It was contained in the data that: the duty officer who prepared the above mentioned report pointed out that when accepting the handwritten declaration of the complainant, he/she had also "*told the driver XXX verbally that the claim for compensation could be made to the Macao Customs Service in accordance with the normal procedures*". In this regard, a question could be raised: What is the actual meaning of "**the claim for compensation could be made to the Macao Customs Service in accordance with the normal procedures**" (The underline is inserted by the CCAC)?

6. The understanding of the Head of the Island Enforcement Division seems to be – according to the normal procedure, claims should be presented to the headquarters of the Macao Customs Service. For this reason, even though the handwritten declaration of the complainant was received by the COTAI Checkpoint, it would not process the request. The complainant should make another request for compensation to the headquarters of the Macao Customs Service in order to start the process of compensation. Thus, the Head of the Island Enforcement Division considered that besides "putting the case on record", no other arrangements should be made by the COTAI Checkpoint with regard to the claim for compensation of the complainant's vehicle being damaged because of taking the inspection.

7. However, from the fact that the complainant submitted the invoice for the repair cost to the COTAI Checkpoint subsequently (a fact that was confirmed by the Macao Customs Service afterwards) and reiterated to the Director-General of the Macao Customs Service and the CCAC that he had already submitted the declaration for claims to the Macao Customs Service on that day, it is obvious that there is a divergent understanding between the complainant and the Macao Customs Service on the expression "claims of compensation should be raised to the Macao Customs Service in accordance with the normal procedures". Since the complainant's vehicle was damaged during the X-ray inspection at the customs, and he has already made his request for compensation "at the scene" in written form [the provisions of Paragraph 1 of Article 76 of the

Code of Administrative Procedure approved by Decree Law no. 57/99/M of 11th October], therefore, the normal procedures for his claim of compensation has already begun.

8. In fact, afterwards the Macao Customs Service merely expressed its understanding of the relevant expression in this way, "*The duty officer of the checkpoint has already (...) informed Mr. XXX that he could raise the request of compensation to the headquarters of the Macao Customs Service directly*" (The underline is inserted by the CCAC).

9. Furthermore, if the duty officer has clearly expressed on that day verbally that: the complainant must request the claim for compensation to the headquarters of the Macao Customs Service by himself, then why did the duty officer accept the wirtten declaration of the complainant?

10. It is worth noting that: with regard to the actual content of the verbal explanations of the duty officer when accepting the written declaration for claims of compensation by the complainant on the day of the incident, since there were discrepancies between the circumstances claimed by the Macao Customs Service and the complainant, it is difficult to determine it now. However, **objectively speaking, it is certain that on the day of the incident, the duty officer has indeed received the declaration of claims written by the complainant, and the declaration was further served as an attachment in the report of the duty officer on the day of the incident for the consideration of the superior**.

11. In accordance with Articles 57 and 60 of the *Code of Administrative Procedure*, the document of the complainant is sufficient to start the corresponding administrative procedure, but the competent decision-making officials had never made any explicit decision (approval or disapproval and lack of subsequent follow-up procedures).

12. **In fact, the duty officer does not have the competence to make such decision. Therefore, the document should have to be submitted to the Director-General of the Macao Customs Service for decision in accordance with Article 36 of the *Code of Administrative Procedure*.** However, it was not the case!

* * *

III. Irregularities of the procedures adoped in handling request by individuals

1. Non-contractual civil liability refers to the civil liability that the administration authority should bear towards the victims injured due to the unlawful acts committed by its organs or its personnel during the exercise of their functions or the wrongdoing because of the exercise of their duties〔Articles 2 and 8 of Decree Law no. 28/91/M of 22nd April, as amended by Decree Law no. 110/99/M of 13th December〕.

2. The Macao Customs Service is led by the Director-General who is assisted by one Deputy Director-General and two Assistant Director-Generals. The Director-General is responsible for carrying out the duties of the Macao Customs Service, his powers mainly includes leading, co-ordinating and supervising the activities of the Macao Customs Service, as well as representing the Macao Customs Service externally. The Management Committee, chaired by the Director-General, makes resolution in matters of financial management of the Macao Customs Service, and absolutely has the power to resolve fiscal expenditures〔Articles 6 and 7 of Law no. 11/2001 of 8th of June *Macao Customs Service of the Macao Special Administrative Region*; Article 1, Paragraph 1 of Article 2, Paragraph 1 and Clauses 1) and 2) of Paragraph 2 of Article 3 and Article 6 of Administrative Regulation no. 21/2001, amended and republished by Administrative Regulation no. 25/2008 of 1st of December *Organisation and Operation of the Macao Customs Service*〕.

3. Thus, the Management Committee of the Macao Customs Service, the Director-General or the substitute has the competence to deal with the case for compensation in accordance with the legal procedures.

4. Besides, Article 36 of the *Code of Administrative Procedure* stipulates:

> *"**Article 36***
> ***(Submission of application to incompetent entity)***
>
> *1. When a private individual, for excusable error and within the set period of time, submits an application, petition, declaration of objection or appeal to the incompetent entity, the entity shall forward the relevant document to the competent entity in accordance with its jurisdiction, and notify the private individual.*

2. *In case of inexcusable error, relevant application, petition, declaration of objection or appeal shall not be handled, and the private individual shall be notified within 48 hours.*

3. *For the definitions of error, declaration of objection and appeals may be made in accordance with the general provisions."* (The underline is inserted by the CCAC)

5. In this case, the vehicle of the complainant has been damaged by the ramp when going through the X-ray inspection at the COTAI Checkpoint. The complainant has written a declaration immediately at the scene to the relevant department (i.e., the Macao Customs Service) asking for compensation for the damage. **Objectively speaking, the complainant did not address the request to the wrong entity or committed any inexcusable error, just because the recipient was not the subunit or personnel with the competence/power to handle the respective affairs inside the entity**. Nevertheless, as a law enforcement officer, the staff should have sufficient knowledge to decide and give proper instructions on the procedures to follow.

6. Since it is stipulated in Article 36 of the *Code of Administrative Procedure* that when a private individual, for excusable error, makes his/her request to incompetent entity, the entity shall forward the relevant document to the competent entity in accordance with its jurisdiction; when the receiving entity is correct but only the recipient is not the subunit/personnel with the power/function to handle the related affairs within the entity, according to the principle of good faith, principle of non-bureaucracy and principle of efficiency, as well as the fundamental principle of interpretation of law, the recipient should forward the relevant document to the subunit/personnel with the power/function to handle the related affairs in accordance with the law. (Articles 8 and 12 of the *Code of Administrative Procedure* and Article 8 of the *Civil Code*). The simplest and the most direct way is – to submit the document to the superior – so that the said incident/request could be delivered to the subunit/personnel with the power/function to handle the related matters.

7. In fact, the duty officer who received the handwritten declaration of the complainant has already attached it in the report of the case prepared on that day to be submitted to the superior.

8. However, with regard to the report of the duty officer that was submitted to the superior on the day of the incident (attached with the handwritten declaration of the complainant), the Head of the Island Enforcement Division (concurrently the commander of the COTAI Checkpoint) gave the following instructions on 27th December 2010: "*1. The operator of the X-ray car has already handled the problem of the complainant's vehicle with appropriate measures; 2. The duty officer has already informed the complainant the relevant way for settlement; 3.* ***The case is provisionally put on record for follow-up***." (Bold and underlined texts are inserted by the CCAC).

9. **Later on until 20th April 2011, the day that the Macao Customs Service received the letter sent by the complainant to the Director-General of the Macao Customs Service, it did not appear that the case/the handwritten declaration had been forwarded to the superior or being handled by any other measures.**

10. In other words, **the "path" for the handwritten declaration of the complainant to get to the subunit/personnel with the competence/power to handle the relevant affairs "ceased" when it reached the Head of the Island Enforcement Division.**

11. This clearly proves that the administrative procedures taken by the law enforcement personnel was improper, thus prolonging the time in solving the matter.

* * *

IV. The rights and duties of the Macao Customs Service in this case

1. At present, the disciplinary regime under the *Statute of Militarised Personnel of the Security Forces of Macao* (EMFSM), approved by Decree Law no. 66/94/M of 30th December, as amended by Administrative Regulation no. 9/2004 of 29th March, is still applicable to customs officers, particularly with regard to the stipulations of duties and grading of performance.

2. Under Article 3, Clause c) of Paragraph 4 of Article 5 and Paragraph 1 and Clause a)-b) of Paragraph 2 of Article 8 of the *EMFSM*, militarised personnel are under

the principle of command and shall fulfil the obligation of zeal, especially, "*to handle any facts occurred within their competence; if necessary, report the facts in an objective manner"; "provide correct information immediately to the superior with regard to matters concerning the duty, justice and discipline*" (The underline is inserted by the CCAC).

3. **As the commander of the COTAI Checkpoint,** his/her "*function of command is manifest in the exercise of authority that is conferred upon a militarized personnel for directing, coordinating and controlling forces or subunits with assignments of an operational nature"; "the exercise of the authority conferred by laws and regulations, shall be accompanied by the corresponding responsibility that is not delegated, the captain or the department head shall be solely responsible for the missions assigned to the team or the subordinate subunits in all circumstances*." (See Article 45 of the *EMFSM*) (The underline is inserted by the CCAC).

4. **As the Head of the Island Enforcement Division,** his/her "*management or leadership functions are reflected in the exercise of the authorities conferred upon militarized personnel to direct, supervise and monitor bodies or subunits with administrative, logistic, technical nature or with the duty of training"; "the exercise of authority conferred by the laws and regulations, is accompanied by the corresponding responsibility that is not delegated, and the Director or leadership shall be solely responsible in all circumstances for the fulfilment of tasks assigned to the subordinate organs or subunits*." (The underline is inserted by the CCAC) [Article 46 of the *EMFSM*].

5. The duties of the Island Enforcement Division includes: "*To monitor the observance of the legislation on the import, export and transit of goods, means of transport, passengers and their luggage at the check-points of the Macao SAR to other places"; "To notify the Operation Management Department with all important intelligence within the scope of the customs and police force*" (Paragraphs 1 and 6 of Article 16 of Administrative Regulation no. 21/2001 of 22nd October *Organisation and Operation of the Macao Customs Service*, amended and republished by Administrative Regulation no. 25/2008 of 1st December).

6. On the other hand, the Macao Customs Service is also a direct public administration department; hence, the Head of the Island Enforcement Division is also subject to the *General Regulations Governing Directors and Chiefs* (Paragraph 1 of Article 1 of Law no. 15/2009 of 3rd August *Fundamental Provisions of the General Regulations Governing Directors and Chiefs*).

7. Other than the general obligations of staff of public administration, the leadership and chiefs are also subject to specific duties, including "*exercise their respective powers to ensure the conformity of their own acts and press on with the compliance of the acts committed by their subordinates with the conditions laid by applicable legislation,* ***as well as to respect the legally protected rights and interests of individuals****"; "****Report to the government on all important issues pertaining to the department loyally and in appropriate way***" (The underline is inserted by the CCAC) . [Clauses 2) and 3) of Article 16 of Administrative Regulation no. 26/2009 of 10th August, *Supplementary Provisions of the General Regulations Governing Directors and Chiefs*].

8. *"When in compliance with the applicable laws, the chiefs, who are responsible for the management of subunits of the competent organisation, have the following powers in general, but do not affect the other powers vested", including "formulating or proposing measures for the coordination of activities carried out by the subunits of the respective organisation and ensuring the technical quality of the service provided by their subunits"; "formulating or proposing measures aimed at ensuring the technical quality of the work carried out by the subunits of the organisation and the compliance with an appropriate period of time to provide services more efficiently;"* (The underline is inserted by the CCAC) [Clauses 3) and 4) of Paragraph 1 of Article 21 of Administrative Regulation no. 26/2009 of 10th August *Supplementary Provisions of the General Regulations Governing Directors and Chiefs*].

9. Base on the above provisions, **the law has emphasised several times that leadership and chiefs shall exercise the powers legally attributed to the pursuit of public interest. Thus, when the vehicle of the complainant was damaged during the process of customs control of X-ray inspection at a location that is under the management and execution of power of the Head of the Island Enforcement Division, coupled with the complainant's clear indication of his attempt to seek compensation in written form, as the Head of this Division and commander of the COTAI Checkpoint, he/she should**

investigate the cause of the case and adopt necessary protective and follow-up measures in accordance with the powers vested.

10. Or in other words, even if the underlying condition is beyond the scope of what he/she could foresee, **the Head of the Island Enforcement Division should report to the superior the important information obtained in the exercise of his/her powers (i.e. a vehicle of a private individual has been damaged by the ramp of the X-ray car when undergoing customs inspection and the party concerned wrote at the spot a declaration for compensation), so that the superior could fully grasp the work situations of the front-line staff and adopt or order to take necessary measures. However, it is disclosed in this case that the front-line staff failed to do so.**

* * *

V. Failure in adopting appropriate preservative measures

1. Although the duty officer concerned has already submitted to the superior the photos showing the damages at the bottom of the complainant's vehicle, objectively speaking, since the Macao Customs Service has always had video recordings of the inspection process of vehicles, and the damages of the said vehicle was related to the process of inspection, in order to clarify the attribution of liability for the damage, it is necessary to acquire the relevant video recordings.

2. **It is indeed due to the fact that the Head of Island Enforcement Division has not referred the case of damage alleged resulted from the X-ray inspection and the request of compensation to the superior**, when the Deputy Director-General of the Macao Customs Service issued the instruction to investigate the case, the operational head of the COTAI Checkpoint, who was responsible for the investigation, made the following report: "*In order to obtain more information for investigation purpose, I would like to acquire the video recordings (CAM-S206)(…). However, after enquiring Mr. G of the Information and Communication Technology Department about the retention period of the data taken by the recording equipment of the CCTV system at the customs checkpoints, I was answered by Mr. G that* ***the data retention period of the recording equipment was about 60 to 70 days. Whereas the video recordings***

of the day 25/12/2010 were already out of the retention period, therefore, the relevant data was not stored anymore *(…)*".

3. **The above point proves again the repeated errors in the process, thus leading to the loss of evidence and the hindrance of the investigation. The law enforcement agency has committed an inexcusable error**.

* * *

VI. Stance of the Macao Customs Service with regard to the handling method of "putting on record" by the Head of the Island Enforcement Division

1. **The fact that the Head of the Island Enforcement Division only treated the report prepared by the duty officer who was on duty that day with the decision to "put on record" (no investigation, no preservation and no submission to the superior), has resulted in the leadership of the Macao Customs Service only became aware of the case about the damage of a vehicle during customs inspection and the claim for compensation after nearly four months later. It seems that the Macao Customs Service thought that there was nothing wrong**.

2. **The CCAC does not agree with the aforementioned stance of the Macao Customs Service. In fact, a number of errors were already pointed out in the above contents and we do not want to repeat them again here.** However, it is worth noting that, as the law enforcement agency responsible for the monitoring of the border, its staff must know clearly and master the operating scheme and the principles of administrative procedure, especially when involving the rights and interests of a third party. If this basic knowledge is not properly mastered, it will certainly bring a great impact to the operation and efficiency of the department.

* * *

VII. The Macao Customs Service did not respond to the complainant in written form

1. The complainant stated in his letter sent to the Director-General of the Macao Customs Service dated 18th April 2011 (date of issue): "*I hereby request the Macao Customs Service to give an official reply about this incident whether it can be compensated or not*." (The underline is inserted by the CCAC)

2. In accordance with the provisions of Clause a) of Article 68, Article 71, Paragraphs 1 and 3 of Article 72 of the *Code of Administrative Procedure*, approved by Decree Law no. 57/99/M of 11th October, the administrative authority shall inform the interested party within eight days "the administrative acts on the decision with regards to any request asked for by an interested party". Depending on the possibilities and appropriateness, the notifications should be directed to the interested party, or by letter, telegram, telex, facsimile or telephone. If the notification is made by telephone, it needs to be confirmed by any of the other methods mentioned above (they all belong to methods with carrier) in the following working day.

3. Concerning the request for claims by the complainant, according to the results of investigation, it was verified that the bottom of the vehicle did rub against the ramp for lightweight vehicle inspection, which caused the loosening of the parts for fixing the sound insulation cotton. Thus, the Deputy Director-General of the Macao Customs Service made a dispatch on 16th May 2011, agreeing to designate the Finance and Administration Department to follow up the issue of repairing the vehicle of the complainant.

4. In fact, with regard to the dispatch of the Deputy Director-General, the staff of the Macao Customs Service successfully got in contact with the complainant on 10th June. "*The complainant was notified that his request for compensation was approved by the Deputy Director-General and in accordance with the relevant administrative procedures, he was requested to submit the original or certified copy of the invoice regarding the cost of repairing the vehicle, so that the issue of compensation could be settled* (…)".

5. It is shown from the above that it was indicated in the dispatch issued by the Deputy Director-General of the Macao Customs Service her consent to repair/ compensate the damage of the complainant's vehicle, and the designation of a

subunit for the implementation of the relevant repair/compensation. Therefore, according to the provisions of Clause a) of Article 68, Article 71, Paragraphs 1 and 3 of Article 72 of the *Code of Administrative Procedure*, the relevant dispatch of the Deputy Director-General of the Macao Customs Service is classified as an administrative act with notifications to be made.

6. The complainant admitted that the Macao Customs Service had contacted him a number of times by telephone with regard to the issue of compensation, but he also pointed out that the Macao Customs Service had never responded in writing.

7. Besides, according to the information provided by the Macao Customs Service, it did not appear that after making the notification by telephone, the Macao Customs Service had tried to have it confirmed by any of the statuary methods with a carrier. This may also be suspected of violating the methods of notification as stipulated in Clause a) of Article 68, Article 71, Paragraphs 1 and 3 of Article 72 of the *Code of Administrative Procedure*.

* * *

VIII. Attitude of the customs officer who answered the phone call of the complainant on 15th April 2011

1. The complainant stated that he called the telephone number xxxxxxxx of the COTAI Checkpoint at 15:33 on 15th April 2011 to inquire. The male duty officer, who answered the phone call, in the absence of grasping and following-up the case, replied to the complainant hastily that he had to hire a lawyer himself to seek compensation through lawsuits. With this regard, the complainant questioned that the duty officer's way of handling the case was too hasty and irresponsible.

2. Regarding the above situation, it was stated in the report prepared by the chief operation officer of the COTAI Checkpoint dated 6th May 2011, "*the driver XXX claimed in his letter that he had called this checkpoint at 15:30 on 15/04/2011 to pursue the compensation for his vehicle. With regard to this incident, after being informed, I spoke to the driver on the phone on that day. At that time, I felt the driver XXX was impolite and he used certain foul words in the conversation.*

I told him immediately to calm himself down, and keep his emotion under control and respect his attitude, which was different from the expression that the driver XXX stated in his letter 'the staff of the Macao Customs Service who answered the phone used a threatening tone and asked the complainant to have a clear understanding of his position'. It is likely that the driver XXX was filled with vexation to complain and was under the condition of emotionally instability, as well as wrongly understood my attitude and the dialogue between us, thus causing this misunderstanding."[27] (The underline is inserted by the CCAC).

3. With regard to the report made by the chief operation officer of the COTAI Checkpoint, the Head of Checkpoint Enforcement Department believed that: "*According to the results of investigation, there was no clear indication of any act of disrespect or threat committed by the staff of PACT towards the complainant*."; the Deputy Director-General of the Macao Customs Service agreed with such conclusion and issued an order accordingly.

4. Given the fact that the Macao Customs Service and the complainant gave different accounts of the situation, the CCAC has resorted to every means available to the investigation and collection of evidence. In the end, since we could not confirm that the allegation of the complainant is actually the fact; the CCAC could only make the decision of archiving.

5. It is note worthy that the complainee of ill telephone manner was actually the chief operation officer of the COTAI Checkpoint, the same person who drew up the report of investigation on the incident and the claim for compensation of the complainant (report no. 022/PACT/2011 of 6th May 2011), and also the customs officer of the COTAI Checkpoint who refused to accept the invoice for the cost of repairing handed in by the complainant[28] .

6. According to the provisions of Paragraphs 1 and 2 of Article 50, Paragraph 2 of Article 51 and Paragraph 1 of Article 53 of the *Code of Administrative Procedure,* "*in circumstances which give rise to reasonable doubt about the impartiality and the integrity of holders of public office or staff of the public administration, (…) the relevant holder of public position or the staff should*

[27] See point 12 of (3) Investigation results of report no. 022/PACT/2011 of the Macao Customs Services dated 6th May 2011.

[28] See point 10 of (2) Information obtained in investigation of report no. 022/PACT/2011 of the Macao Customs Services dated 6th May 2011.

ask for recusal from participating the relevant procedure", "the request of the holder of public position or staff of public administration will only be made in writing when it is determined by the entity to whom the request is directed"; "with similar foundation and before the making of final decision, any interested party may raise a requested recusal against the holder of public position or the staff who participates in such procedure, act or contract"; "the act or contract that the holder of public position or the staff of public administration who is subject to recusal has participated, can be cancelled in accordance with general terms, unless another penalty is specifically provided".

7. Regarding the handling of the incident of claim/complaint, the chief operation officer of the COTAI Checkpoint was in circumstances of self recusal. Hence, upon receiving the instruction to conduct investigation of the complainant and the relevant circumstances came to his/her knowledge, he/she had the obligation to take the initiative to ask for self recusal. Besides, the Head of the Checkpoint Enforcement Department should bring the relevant circumstances into consideration when making such instruction.

8. However, no record was found to indicate that the chief operation officer of the COTAI Checkpoint had raised the request of self recusal, or the relevant circumstances were brought into the consideration of the Head of Department for decision making. Given the above, the Macao Customs Service should make improvement on its ways of handling matters.

9. In addition, if the complainant's case was being followed-up by another subunit in April 2011, and the Director-General had also given instructions for follow up, why did the front-line staff tell the complainant on the phone to claim for compensation by legal means? This proves once again that there are problems in the operating procedures of the Macao Customs Service, causing confusion among citizens!

* * *

IX. The complainant was dissatisfied with the Macao Customs Service that he had to go here and there without getting any desired response

1. The information showed that the complainant made the following "attempts" concerning the claim of compensation for the damage at the bottom of his vehicle, including:

    1) The "submission" of the handwritten declaration for claims on the day of the incident (25th December 2010);

    2) With specific date unknown, the complainant had gone in person to the COTAI Checkpoint to submit the invoices for the repair cost of the vehicle. However, the chief operation officer expressed to him that "*this Checkpoint will not accept the invoices for the cost of repairing the vehicle since it does not comply with the relevant procedures of claim for compensation*". Therefore, the complainant was not able to submit the invoices[29];

    3) Between March and April 2011, the complainant phoned the Macao Customs Service at no. xxxxxxxx (later on it was verified that it was the phone number of superintendent A of the Material Resources Division) for inquiry. He was told that the COTAI Checkpoint had never submitted any document about the case; hence, the Headquarters of the Macao Customs Service could not make any compensation. Concerning this fact, the Macao Customs Service did not make any response;

    4) On 15th April 2011, the complainant phoned the no. xxxxxxxx and the chief operation officer of the COTAI Checkpoint, who answered the phone, told the complainant that he should resolve the case through civil proceedings. The complainant was dissatisfied with the answer and claimed that he was threatened;

    5) On 18th April 2011, the complainant sent a letter to the Director-General of the Macao Customs Service to seek compensation and make a complaint against the improper handling of the case by the customs personnel. Superintendent A of the Material Resources Division tried to contact the

[29] See point 10 of (2) Information obtained in investigation of report no. 022/PACT/2011 of the Macao Customs Services dated 6th May 2011.

complainant on 7th June but did not succeed. Subsequently, the complainant was successfully contacted on 10th June. The complainant was notified that "*his request for compensation was approved by the Deputy Director-General of the Macao Customs Service. However, given the relevant administrative procedure, the complainant was requested to submit the original or certified copy of the invoice for the vehicle's repair cost in order to proceed with the compensation. The complainant indicated that he would submit the relevant document when he was free.*[30] ";

6) On 7th July 2011, the complainant went in person to the Macao Customs Service to try to settle the issue of claims. However, the person who was responsible for the handling of the relevant case of claims for compensation was on annual leave and the complainant was not willing to accept the suggestion (invited the complainant to go to the office to better ascertain the situation and assist with follow up) proposed by the staff of the inquiry hotline of the customs, therefore, the case had not been solved. Later on, the staff of the Material Resources Division had phoned the complainant twice to inquire about the situation and informed him to submit the documents. However, the complainant stated both times that he would no longer seek any compensation.

2. Given the above, it could be seen that the complainant indeed had made several attempts to seek compensation from the Macao Customs Service, but the recipient of such request was not correct. The Head of the Island Enforcement Division did not further submit to the superior the handwritten declaration (25th December 2010) of the complainant. And then the customs personnel, who had contacted the complainant, had never tried to find out the reason for the complainant to raise such request. Before 20th April 2011 (the date entered and signed by the complainant was 18th April 2011), the date that the Macao Customs Service received the letter sent by the complainant to the Director-General, the Macao Customs Service was never aware of the incident happened on 25th December 2010, when the vehicle of the complainant was suspected being damaged in the process of X-ray inspection at the COTAI Checkpoint. By the time the complainant wrote a letter to the Director-General of the Macao Customs Service on 18th April 2011, he was filled with dissatisfaction against the Macao Customs Service, coupled with the misunderstanding between the

[30] See page 2 of report no. 48/DRM/2011 of the Macao Customs Services dated 22nd July 2011, which is contained in page 21 of the case.

complainant and the customs personnel during their communication, caused the relevant case of claims could not be resolved in a timely manner.

3. Let us take another part of this case as example to examine the handling methods of the case:

On 7th July 2011, the complainant arrived at the Headquarters of the Macao Customs Service to submit the invoices for the cost of repairing his vehicle. However, the report prepared by the Head of the Material Resources Division recorded the following:

"(3) In the morning of 7th July, the complainant arrived at the Headquarters of the Macao Customs Service and asked to see superintendent A to submit the relevant documents but the said staff was on annual leave (see the annual leave application form for reference). Therefore, Mr. XXX called the extension no. xxx (the hotline of Macao Customs Service) in the guardhouse at the entrance of the Headquarters, requesting his case of claims for his vehicle to be handled. Senior officer B was in contact with him and inquired about his situation. The complainant told him/her that he was notified by personnel of the Macao Customs Service about one to two months ago that he could submit the invoice for repairing his vehicle to the Headquarters, but he did not know which subunit. On the phone, senior officer B asked Mr. XXX to go to his/her office to better ascertain the situation and provide the necessary assistance. However, the complainant refused and said: "It's too troublesome! I will write a letter to the Director-General." After saying that, he hung up and left the Headquarters. According to the staff who was on duty at the gate of the Macao Customs Service at that time, the complainant stayed for five to ten minutes there. Thereafter, the staff of this division called the person concerned twice to find out about the situation and inform him to submit the relevant documents so that the normal process of the procedures of compensation would not be hindered. However, the complainant stated that he was not going to submit the documents to the Macao Customs Service and he was not pursuing the claim for compensation of the relevant amount at this stage. He also expressed his dissatisfaction towards the attitude of certain staff of the Macao Customs Service (but our division did not know who he was referring to) and he would lodge a complaint to the CCAC to confirm whether there was any administrative malpractices

involved in the case.

(4) Given the above, upon receipt of the related documents, the staff of this division had already ***phoned*** *Mr. XXX* ***as soon as he/she could*** *and informed him the approval of the relevant request for compensation and asked him to submit the original or certified copy of the invoices at his earliest convenience so that the procedures of compensation could be continued. However, the complainant always said that the case was not urgent and he would come and submit the relevant documents when he had time. Considering that the complainant was probably very busy with his work, therefore, the staff of this division tried not to bother him with frequent phone calls, which was the reason why the follow-up work was only resumed after waiting for a certain period of time, in order for the relevant subunit of this division to start the rest of the procedures. During the above-mentioned period, it was not found that the staff of this division had violated the administrative procedures in any form in the process of handling this case. However, the person concerned was uncooperative and expressed his dissatisfaction during the conversation which caused unnecessary pressure and burden on the work of the staff of this division."* (The underline is inserted by the CCAC).

The staff who answered the phone call at that time had also submitted a handwritten report with the following contents:

"------ An enquirer called and said that he was at the guardhouse which was at the entrance of the Macao Customs Service. He expressed that someone from the Macao Customs Service phoned and asked him to submit the invoice for compensation. The staff who answered the call asked him about the name of the subunit or that of the staff who gave such notice. However, the enquirer failed to provide more specific information. All he could recall was that a staff from the Macao Customs Service called and informed him to submit the invoice to the Headquarters of the Macao Customs Service for compensation around one to two months ago. Therefore, the officer asked the enquirer to do the registration for entering the Headquarters and waited inside while he/she tried to find out where the invoice should be submitted to so that his case could be referred to the person-in-charge of the respective unit for follow up. However, the enquirer refused to go in, saying that it was too troublesome. Then he hung up and went away.

------The senior officer who answered the phone call asked the customs officer who was on duty at the guardhouse about the situation. He/She was told that the enquirer

was holding a piece of paper containing the hotline number for inquiry and the phone no. of Ms. F: xxxxxxxx (should be under the Material Resources Division). The customs officer asked the enquirer which subunit he wanted to contact, but the enquirer could not give specific answer.

------ Upon receiving the case of objection from the complainant in April, the staff of the Macao Customs Service called the complainant and informed him that the authority was following up the case and gave him the hotline number for inquiry. As the case was still processing and conclusion had not been made, the officer who answered the call reported the case again to the Director-General. Instructions were given to notify the Material Resources Division to contact the complainant and follow up the issue.

(…)."

A number of doubts and loopholes were shown in this part:

(1) Why the contact person of the Macao Customs Service was not clearly indicated when they contacted the complainant for the first time?

(2) Why was the case unattended during the annual leave of the customs officer who was in charge of the case? However, the case was being followed up again after grasping the whole matter?

(3) Why didn't the staff accept the relevant invoice and issued the proof confirming the receipt of such document at that time so that the complainant could leave first, then the Macao Customs Service could handle the invoice properly through their internal procedure afterwards? But why did he/she insist on knowing the event, finding out the subunit responsible for handling the case before accepting the relevant invoice?

(4) As mentioned before, the method of submitting this kind of document could be done in a simple way. In fact, it is not necessary for the person involved to delivery it in person. For example, the Macao Customs Service could inform the complainant to send the invoice to the Macao Customs Service in form of correspondence (including postal) with sufficient information to identify the case. Upon receipt of the invoice, if there is any question, the Macao Customs Service could contact and explain to the complainant (e.g., the amount claimed is too high, etc.). It is indeed unnecessary to make such simple procedure so complicated, causing the complainant failed to solve the problem in a direct

way even after contacted the Macao Customs Service several times. For these reasons, we consider that the key issue lies in the malfunction of the department and the weak awareness to abide by law, which eventually influenced the work efficiency and undermined the legitimate rights and interests of citizens.

4. Although the complainant told the CCAC that he would not insist on pursuing the compensation since the procedure was too complicated and time wasting, as a supervisory body, the CCAC has the obligation to point out the many faults committed in various stages to prevent the same mistakes from happening again. It is proved in this case that: the authority has missed the opportunity to resolve the problem in time, which infringes upon the complainant's tangible and procedural rights and interests. It has also exposed the issue of the law enforcement level of the front-line personnel of the Macao Customs Service, resulting in the "restart" of the handling of the case in a passive condition, which means more human and material resources to be spent on the case. Thus, it is necessary for the relevant department to review and improve its work procedures.

* * *

Part III: Conclusion

Given the above, the CCAC considers that:

1. The complainant's vehicle was damaged at the site (the COTAI Checkpoint) of the Island Enforcement Division under the Macao Customs Service, allegedly being damaged by the facility (the ramp of the X-ray car for lightweight vehicle inspection) of the Macao Customs Service due to cooperation with the Macao Customs Service which carried out its duty of checking the passengers and goods in transit.

2. Objectively speaking, the staff of the Macao Customs Service had indeed accepted the handwritten declaration of the complainant on the day of incident (25th December 2010) which in fact contained the complainant's will of requesting a compensation from the Macao Customs Service. Based on the principle of good faith, the principle of non-bureaucracy and the principle of efficiency, **when the object entity that a private individual asks for the claim against is correct, but the recipient is not the subunit/personnel that**

has the function/power to deal with the matter, the recipient should follow the same rule of claims raised by the individual to incompetent body and refer the case to the unit or personnel with the function/power for follow up. In this circumstance, the simplest way is to submit the document to the superior.

3. In fact, the duty officer, who had accepted the handwritten declaration of the complainant, made a report and submitted it to the superior, together with the handwritten declaration of the complainant on the day of the incident. **However, when the report reached the Head of the Island Enforcement Division (also the commander of the COTAI Checkpoint), a decision was made to "put the case on record". That was why the Director-General of the Macao Customs Service only came to the knowledge of the case when he received a letter from the complainant on 20th April 2011.**

4. With regard to the incident of the complainant's vehicle allegedly damaged due to undertaking the X-ray inspection and that he had shown his willingness to seek compensation in writing, as the Head of the Island Enforcement Division and the commander of the COTAI Checkpoint, **he/she had the power and the obligations by law to investigate the cause of the incident and take the necessary protective and response measures, or submit the case to the superior, so that the competent body could be able to adopt timely and appropriate measures to settle the case.**

5. Due to the "omission of act" of the Head of the Island Enforcement Division, the complainant was dissatisfied with the Macao Customs Service for not properly handling his claim for compensation which was "already submitted" for a long time. Besides, it was only discovered that the video recording of the day of incident had been erased when the Deputy Director-General made the order to investigate into the case (nearly four months from the day on which the complainant handed in the written declaration); while vehicles of the same model as the complainant's did not have the essential conditions to be driven up the ramp intact for inspection, thus the public administration authority was exposed to the risk of claims of compensation for any damage caused to vehicles during that period.

6. However, the decision of "put on record" made by the Head of the Island Enforcement Division was in fact inappropriate and improvement should be made.

7. On the other hand, since the Deputy Director-General of the Macao Customs Service had already made the decision to compensate the complainant on 16th May 2011, after notifying the complainant by phone, the Macao Customs Service should make confirmation through official letter, telegram, telex or facsimile. However, it was not seen that the Macao Customs Service has ever made the confirmation/notification in the form of carrier, which was suspected of violating the stipulation of format of notification in the *Code of Administrative Procedure*.

8. Concerning the problem with the attitude of the staff of the Macao Customs Service who answered the phone call of the complainant on 15th April 2011, since both sides clung to their own version, it was impossible to determine who was right, even after investigation, it was decided to archive this part of the case.

9. However, since the complainee of alleged ill telephone manner was exactly the same operational head of the COTAI Checkpoint who drew up the report on the claim of the complainant and the investigation of the incident, by law he should be under the condition of self-recusal, but there was not any record to indicate that the relevant operational head had raised the request of self-recusal, or the Head of the Checkpoint Enforcement Department had taken into account the circumstances in the assignments.

10. The case itself is not complicated and it is considered quite easy to solve. However, the reality is the improper handling method at the beginning causes the case to become complicated which is contrary to the principle of eliminating bureaucracy and affects work performance. With regard to the measures taken in relation to the requested compensation amount of the complainant, obviously it does not comply with the principles of economy and efficiency. It is indeed unnecessary to require the complainant to ask for compensation through litigation.

* * *

Part IV: Recommendations

According to paragraph 12 of Article 4 of Law no. 10/2000 of 14th August (*Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*), the CCAC issues the following recommendations to the Macao Customs Service:

1. **To supervise and urge the front-line staff to strictly comply with the provisions of the *Code of Administrative Procedure* when handling complaints, appeals or any application, especially the principle of economy and the principle of decision regarding procedures.**

2. **To improve the internal and external work flow of the department, particularly areas involving the rights and interests of a third party, so that staff at all levels are well aware of their rights and obligations and in strict compliance with the work rules, as well as timely and accurately report to their superiors the progress of their work and incidents happened.**

3. **To intensify monitoring on the front-line staff and adopt effective and timely measures designed to enhance work performance (including temporary measures), so as to increase the efficiency of the department and protect the legitimate rights and interests of administrative counterpart.**

4. **With regard to external relations, the department shall establish work rules that conform to economic efficiency, facilitate the lives of citizens, eliminate bureaucracy, act in good faith and safeguard the legitimate rights and interests of the residents so that front-line staff shall have rules and guidelines to follow and the leadership shall be accountable.**

5. **In procedures involving a third person, as a law enforcement department, the Macao Customs Service should take preserving the evidence as the first priority. In the absence of final decision, the consequences of the loss of evidence due to negligence should be avoided from happening, which is very unfavourable to the administrative entity.**

* * *

Finally, I hereby make the following orders:

1. **Notify the Macao Customs Service and the complainant of the content of this report and recommendation.**

2. **Archive this case after execution.**

* * *

The Commission Against Corruption, 28th February 2012.

The Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of the case:

(1) If the front-line staff fail to report the cases in a timely manner after receiving complaints from the citizens, it will greatly delay the progress of solving the problems of the department;

(2) In handling civil compensation cases raised by citizens, departments should seriously consider their responsibilities and the required amount of compensation. If it is identified that the department has the responsibility and the amount claimed is not a large amount, the department should handle the case in a way that is efficient and convenient for the citizens as soon as possible to avoid unfairness to the claimant;

(3) In the administrative procedure, with the prerequisite of not deviating from the statutory framework, the principle of efficiency and convenience should be applied and unnecessary procedures should be eliminated.

Case II

Report on several legal issues regarding the Monetary Authority of Macao approving the Bank of China Macau Branch to issue 100th anniversary uncut commemorative notes (excerpt)

Key points:

- Being an authority supervising financial institutions, the Monetary Authority of Macao should be clear of its scope of competence when performing its duties;
- Regarding the issuance of banknotes, the supervisory authority should clearly distinguish among coins in circulation, commemorative coins and uncut notes, as well as follow the approval and assessment procedures in compliance with the law.
- Concerning the issue of the supervisory authority exceeding its competence, it should seek approval from the competent body timely.

〔Note: This report merely covers the scope of assessment procedures and competence of approval the Monetary Authority of Macao has on the note-issuing bank concerning its application of issuance of banknotes in circulation whilst the operation of the bank is not involved. Following investigation and issue of relevant report, the Macao SAR government has completely solved the concerning legal issues regarding the issuance of banknotes and rectified relevant defects through Administrative Regulation no. 20/2012 of 8th August.〕

* * *

Part I – Introduction

I) Since the Bank of China Macau Branch (hereafter "BOC") has gained the approval for issuing banknotes for the year of dragon and 100th anniversary commemorative banknotes, the Commission Against Corruption (hereafter "CCAC") has received quite a number of complaints, pointing at insufficient supervision (administrative illegality) of the Monetary Authority of Macao (hereafter "AMCM") and malpractices of the BOC, thus requesting the CCAC for intervention and investigation.

II) This report (excerpt) merely regards the 100th anniversary commemorative banknotes as the targets of analysis; other issues will be handled in a separate case.

* * *

III) Following comprehensive analysis of the notice "Sales update and further sales arrangement of BOC 100th anniversary commemorative notes" published by the BOC on 5th April 2012 and the AMCM's official letter no. 2525/12-AMCM-DFR(STE) dated 2nd May 2012 submitted to the CCAC concerning the information of the authority approving the BOC to issue uncut notes, the CCAC found that:

1. The authority did not state which law or regulation it had followed to assess and approve both the proposal and resolution of "The sales of new notes and issuance of uncut notes with sizes different from those approved by the Administrative Regulation";

2. The procedure adopted by the authority to approve the selling price of "single note" was different from that of "uncut notes". For the selling price of the former note, the resolution was agreed by the Board of Directors and then sent to the Secretary for Economy and Finance for approval whilst that of the latter note was just approved by the member of the Board of Directors surnamed Poon.

Thus, the CCAC sent a letter to the authority requesting for detailed information regarding the issue on 29th May 2012.

IV) The details of the reply from the AMCM on 4th June 2012 are as follows (Bold and underlined texts are inserted by the CCAC):

"1. *"According to Administrative Regulation no. 31/2011 of 8th August, the Bank of China Limited is authorised to issue its 100th anniversary commemorative notes in the denomination of MOP100. The uncut notes referred in the official letter sent by your office include 10,000 sets of 3-in-1 uncut notes and 2,800 sets of 30-in-1 uncut notes.* ***The specification of the notes is in compliance with the stipulation in Paragraph 2 of Article 2 of the regulation (general feature). Thus, enclosed with the letter is a sample of the aforementioned notes for your office for verification****….. could be returned as soon as possible.*

2. *As mentioned above, the feature of the aforementioned uncut notes conforms to the stipulation of the regulation approving the issuance of the notes while in particular circumstances in the past (such as the BOC issuing the face value of MOP20 to commemorate the 2008 Beijing Olympic Games in accordance with Administrative Regulation no. 5/2008 of 22nd February), we also allowed the bank to sell similar kinds of notes without setting any special regulation. However, considering that the two note-issuing banks may have a request to sell uncut notes combination in the future, it is necessary for us to formulate relevant guidelines and we are re-studying relevant issues.*

3. *We should also point out that many regions such as the People's Republic of China, Singapore and the Hong Kong SAR have long been selling uncut notes.*

4. *The member of Board of Directors of our authority executes his power according to Paragraph 5 of Article 17 of Statute of the Monetary Authority of Macao approved by Decree Law no. 7/95/M of 30th January (amended by Decree Law no. 14/96/M of 11th March).* ***However, we admit that we should ratify the decision (a brief order) stated on the Report no. 06/D/DFR of 29th March 2012 within the statutory period, but we have not completed it on time****. Even so, we have provided the Bank of China Limited with an extra authorisation according to the Resolution no. 356/CA dated 30th of last month which is now waiting for the decision of the superior. We will send the CCAC with the relevant photocopy of the resolution afterwards."*

* * *

Part II: Analysis

I - In relation to "Issuance of uncut notes"

1. The currency system of Macao is regulated by Decree Law no. 7/95/M of 30th January. Its Article 2 stipulates:

   *"1. The legal tender currency in circulation of Macao comprises **notes and coins**.*

   *2. **Coins include coins frequently in use, commemorative coins and coins specially used in Numismatics**.*

   *3. Coins which are sufficient for circulation and for change conveniently are regarded as **coins frequently in use**.*

   *4. **Commemorative coins** are stamped with images of figures, facts, themes or designs related to memorial days.*

   *5. **Coins specially used in Numismatics** have significant features and thus possess the value of specimen coins."*

2. In view of the currency system regulated by Article 2 of the above Decree Law, the currency of Macao is divided into two categories – notes and coins while coins are further divided into three types, including:

   "3.1 Coins frequently in use – coins which are sufficient for circulation and for change conveniently;

   *3.2 **Commemorative money (coins)** – stamped with images of figures, facts, themes or designs related to memorial days;*

   3.3 Coins specially used in Numismatics – the features possessed can become the value of specimen coins."

3. In the definitive regulation of "commemorative money" in the Chinese version

of Paragraph 4 of Article 2 of the above Decree Law, the term "coins" are not adopted as in Article 3 and Article 5. Based on the legislative techniques and the overall analysis of the legal regime, the legislature has stated in Paragraph 2 that coins are divided into three categories and definitive regulations are given to each category in the following Paragraph 3 to Paragraph 5.

4. Therefore, it could be understood that the "commemorative money" as stipulated in Paragraph 4 is restricted only to one of the coins' categories mentioned in Paragraph 2 – commemorative money (coins), and is impossible to or should not include "commemorative notes".

5. In addition, **commemorative coin possesses the characteristics of** "merchandising with a price higher than its face value" **and** "always bearing the legal tender power according to its face value" **(see Paragraph 4 of Article 3 and Paragraph 4 of Article 11 of the same Decree Law.) Banknotes and coins frequently in use could be withdrawn from circulation through Decree Law/ Administrative Regulation (Article 9, Article 10 and Paragraph 1-3 of Article 11)**.

6. With regard to the power to issue **currency**, Article 5 of the same Decree Law stipulates:

"1. The local region enjoys the right to issue currency of Macao.

2. The local region enjoys the exclusive right of issuing legal tender notes and coins in circulation while the stipulation in the following Paragraph is still applicable.

3. Banks which are authorised to undertake business in Macao could be vested with the right to issue notes by the local region on its behalf.

4. ***Commemorative money and coins specially used in Numismatics are issued by the Monetary and Foreign Exchange Authority of Macao***[31]**,**

[31] Article 1 of Administrative Regulation no. 18/2000 stipulates, "*The Monetary and Foreign Exchange Authority of Macao was renamed 'The Monetary Authority of Macao', with its Portuguese name as 'Autoridade Monetária de Macau' and its acronym in Portuguese remained as 'AMCM'. The term The Monetary and Foreign Exchange Authority of Macao as appeared in its Statute approved by Decree Law no. 14/96/M of 11th March shall all be regarded as the Monetary Authority of Macao.*"

***(acronym in Portuguese as AMCM) according to the stipulation of its Statute**."*

7. **The legislature seems to vest the AMCM with the right to issue "commemorative coins and coins specially used in Numismatics" in accordance with Paragraph 4 of Article 5 and the *Statute of the Monetary Authority of Macao*.**

8. Although the legislature approved the new *Statute of the Monetary Authority of Macao* by Decree Law no. 14/96/M of 31st March in 1996 after the Decree Law no. 7/95/M of 30th January came into force, the *Statute* has not made any corresponding regulations regarding the issuance of "commemorative money (coins) and coins specially used in Numismatics" as well as "commemorative notes".

9. Afterwards, both Ordinance no. 106/99/M of 12th April which amends the logo of the Authority and Administrative Regulation no. 18/2000 which amends the authority's name to the Monetary Authority of Macao (the current name) have not vested the Authority with the right to issue commemorative coins and commemorative notes.

10. Paragraph 1 and Paragraph 2 of Article 6 of Decree Law no. 7/95/M stipulates:

"1. ***The legal tender currency in circulation shall be enacted by Decree Law.***

2. **The Decree Law as specified in the above Paragraph shall include the denominations, features and quantity of the banknotes and coins.***"*

Thus, **the issuance of banknotes and coins in the local region is still enacted by Decree Laws/Administrative Regulations** (including the coins frequently in use, commemorative coins and coins specially used in Numismatics). **Feature and quantity of currency in different denominations shall also be stipulated**.

11. **In other words, under the current legislative system, although the legislature has not categorised banknotes into "banknotes in circulation" and "commemorative banknotes", the stipulation that "the issuance of currency system shall be enacted by Decree Laws/Administrative Regulations" has not regulated the issuance of commemorative**

banknotes and the local region can issue new types of currency, such as "commemorative banknotes" and "uncut notes" through Administrative Regulations, instead of by other legal means (such as Administrative Order, Order of the Secretary or Resolution of Board of Directors of the "AMCM").

12. Under the abovementioned legal system, the issuance of commemorative coins in the local region from Macao's handover to China to the year of 2012 is as follows.

Regulation no.	Purpose of issuing commemorative coins	Determination of selling price
Administrative Regulation no. 25/2003	50th Macau Grand Prix	Article 4 stipulates: "*The commemorative coins referred in this Administrative Regulation are for public subscription and their prices are determined by the Monetary Authority of Macao*."
Administrative Regulation no. 19/2004	5th Anniversary of the Return of Sovereignty of Macao to the Motherland	
Administrative Regulation no. 34/2004	Lunar Year of the Rooster	
Administrative Regulation no. 37/2004	The 4th East Asian Games	
Administrative Regulation no. 18/2005	Lunar Year of the Dog	
Administrative Regulation no. 18/2006	Lunar Year of the Pig	
Administrative Regulation no. 21/2007	2008 (Lunar Year of the Rat) to 2019 (Lunar Year of the Pig)	
Administrative Regulation no. 21/2009	10th Anniversary of the Return of Sovereignty of Macao to the Motherland	

13. The above stipulation of issuing commemorative coins shows that even though Paragraph 2 of Article 8 of Decree Law no. 7/95/M has appointed the "AMCM" to be responsible for the circulation of **"commemorative coins"** and **"coins specially used in Numismatics", the power to determine the selling price of the "commemorative coins" is usually vested with through Administrative Regulation**.

14. New banknotes were issued over ten times from Macao's handover to China to the year 2012. The following records the issuance of new banknotes for special occasions:

Regulation no.	Purpose of issuance and face value	Issuing uncut notes concurrently
Administrative Regulation no. 33/2000	It is believed that the purpose of issuance is related to the Millennium (Banknotes of MOP10)	Issuance of 1.5 million sets of 4-in-1 uncut notes and 30-in-1 uncut notes in the denominations of MOP10 for commercial use, pursuant to Administrative Regulation no. 33/2000 of 8th September, authorised by Order no. 240/2000 of the Chief Executive
Administrative Regulation no. 5/2008	Beijing Olympic Games (Banknotes of MOP20)	No relevant stipulation, the AMCM stated that uncut banknotes were issued.
Administrative Regulation no. 30/2011	Lunar Year of 2012-2023 (Banknotes of MOP10)	No relevant stipulation
Administrative Regulation no. 31/2011	100th Anniversary of Bank of China (Banknotes of MOP100)	No relevant stipulation (These are the new banknotes involved in this case)

15. The above information reflects that issuing uncut notes concurrently with new notes for every special occasion is not customary.

16. In fact, the issuance of "uncut notes" involved in this case is enacted by Administrative Regulation no. 31/2011 of 5th September. **According to Article 1** (authorising the Bank of China Limited to issue 3 million pieces of **new notes** in the denomination of MOP100 to commemorate its 100th anniversary), **and Article 3 regarding the design of the notes**, such as at the front side of the MOP100 note, at the right from the top to the bottom the following characters are printed: (1) "to commemorate the 100th anniversary of Bank of China" both in Chinese and Portuguese; (2) report concerning the establishment of the Bank of China in 1912 in Chinese; at the right of the back side of the MOP100 note, Chinese characters of "to commemorate the 100th anniversary of Bank of China" are printed vertically, **the new notes of MOP100 fall into the category of "commemorative notes".**

17. However, according to Article 2 of Administrative Regulation no. 31/2011, the above "**commemorative notes**" also have the following features:

"The abovementioned banknotes incorporate the following apparent features:

1) Key tone: the front side is tinted in gold and the back side tinted in green;

*2) **Size: 153mm x 76.5mm;***

3) Specification: the front side has a horizontal pattern and the back side has a vertical pattern."

3-in-1 uncut notes and 30-in-1 uncut notes

18. Upon reviewing **the sample of two sets of "uncut notes", there is neither significant cut in between every new note of MOP100 nor feature incorporating easily detached marks such as cutting lines or pinholes. Therefore, it can be confirmed that the size of the "uncut notes" does not conform to the legally stipulated one. In other words, the "uncut notes" issued by the BOC shall not be considered for sale just in different packaging.**

19. Under these circumstances, **the BOC has issued "commemorative notes" with three different apparent features (sizes)**, including **single note with a size of**

153mm x 76.5mm, 3-in-1 uncut notes with a size of 153mm x (76.5mm x 3) and 30-in-1 uncut notes with a size of (153mm x 5) x (76.5mm x 6).

20. **The latter two "uncut notes" have sizes significantly different from the size of a single note as stipulated in Administrative Regulation no. 31/2011. Thus, it implies that the "uncut notes" are not categorised in the type of currency stated in the abovementioned Administrative Regulation.**

〔Note: two types of currencies can be categorised in Numismatics:

(1) Commemorative money (*espécie comemorativa*) – incorporating two main features:

a) - serving as means of payment (i.e. circulating currency);

b) - its value can be higher than its face value.

(2) Money for collection (*espécie notafílica*) – also incorporating two main features:

a) - not serving as means of payment;

b) - for collection only, the 3-in-1 uncut notes belong to this category because these notes cannot be used for settlement (requesting the bank to collect the notes or the notes can serve as means of payment).〕

21. **Therefore, under the system that "the issuance of currency shall be enacted by Administrative Regulation", the issuance of "uncut notes" by the local region shall only be enacted by Administrative Regulation, rather than just approved by the Order of the Chief Executive or authorised by the AMCM**.

22. In other words, **when the AMCM received the BOC's application of "issuing uncut notes", the authority should have sent the proposal to the Chief Executive for approval and then published the relevant Administrative Regulation in the *Official Gazette of the Macao SAR***.

23. However, it is surprising that the above application was approved by the member of the Board of Directors of the AMCM surnamed Poon in Report no. 22/D/DFR of 30th August 2011 (**Sale of new banknotes as merchandises and**

issuance of uncut notes) (see P. 42-P.44). **This is "an act absolutely against legal procedure" that leads to invalid legal consequences in accordance with Sub-paragraph f of Paragraph 2 of Article 122 of the *Code of Administrative Procedure***.

24. **Thus, it is necessary to report the above analysis to the Chief Executive in order to take remedial measures, (the BOC stated previously that citizens could subscribe the notes through online registration from 11th to 30th June and a draw would be conducted on 11th July.) particularly on the approval of the issuance of the uncut notes by publishing relevant Administrative Regulation in the *Official Gazette of the Macao SAR* in order to carry out its legal effects. Meanwhile, ratification should also be made**.

* * *

II – Determination of selling price

25. The Report no. 06/D/DFR (see P. 14-16) of 29th March 2012 which was not ratified in time (a simple order) as referred to in the reply letter of the AMCM mainly covers the determination of selling price, which is MOP600 and MOP6,000 respectively, of the two categories of "uncut notes".

26. The authority stated that Resolution no. 356/CA of 30th May 2012 was made for ratification and was submitted to the supervisory body for approval. Considering that the AMCM drafted Resolution No. 067/CA of 30th January 2012 concerning the approval of the selling price of the single note and had it submitted to the Secretary for Economy and Finance for approval (see P.24-26), it is believed that the abovementioned Resolution No. 356/CA was similarly submitted to the Secretary for approval.

27. **It is noteworthy that if the AMCM immediately took the above remedial measures – the issuance of uncut notes enacted by Administrative Regulation, it can serve as a means to point out that the determination of selling price is either approved by the authority or the Secretary of Economy and Finance and the issues concerning the selling price of the "single note" and "uncut notes" can be solved at the same time**.

* * *

III – With regards to publishing Order of delegation of authority in accordance with the law

28. On the other hand, with regards to the price of uncut notes agreed by the member of Board of Directors, the authority replied that "the member of Board of Directors executed his power in accordance with Paragraph 5 of Article 17 of the *Statute of the Monetary Authority of Macao* approved by Decree Law no. 7/95/M of 30th January (amended by Decree Law no. 14/96/M of 11th March)".

29. Paragraph 4 and Paragraph 5 of Article 17 of the *Statute of the Monetary Authority of Macao*, which states that: "4. *The Board of Directors shall, based upon the Chairman's recommendation, assign its board member to be responsible for the specialised affairs with one or numerous corresponding departments of the Monetary and Foreign Exchange Authority of Macao. 5. The assignment of the specialised affairs shall include the delegation of corresponding powers concerning the relevant affairs*.", shall belong to the stipulation regarding the Board of Directors delegating its authority.

30. In fact, upon checking the *Official Gazette of the Macao SAR*, the AMCM just published the Order of delegation of authority concerning "Delegating certain functions to the Deputy Director of Finance and Human Resources Department, Chief of Human Resources Section and Chief of Finance Section" in the Series II, No. 21 of 22nd May 2002, and the Resolution or Order concerning the Board of Directors assigning its member to be responsible for corresponding duties, including Resolution no. 275/CA as mentioned in the above Order of delegation of authority made by the member surnamed Lou, had not been published in the *Official Gazette*.

31. Thus, it is doubtful whether the member of the Board of Directors was delegated the authority by the Board to be responsible for relevant affairs because Paragraph 2 of Article 39 of *Code of Administrative Procedure* states: "*The act of delegating authority shall be published in the Official Gazette of Macao* (the current ***Official Gazette of the Macao SAR***)".

32. In addition, the act of failing to publish the resolution about delegation in the *Official Gazette* is also allegedly violating the stipulation of the *Code of Administrative Procedure*. With regards to the affairs concerning in this case, the authority already made the relevant authorisation in Resolution no. 356/CA on 30th May 2012 and was waiting the supervisory body for approval and promised to the CCAC to provide the copy of relevant resolution in order to solve the problems raised in this case.

33. However, **it is necessary for the CCAC to remind the authority to pay attention to the issue of publishing Order of delegation of authority in accordance with the law**.

* * *

IV – Regarding the lack of transparency in sales information and supervision on selling procedure

34. It is mentioned in the notice of "Sales update and further sales arrangement of BOC 100th anniversary commemorative notes" from the BOC dated 5th April that "***In addition to the public sale of 1 million pieces of single notes in Macao****, all holders of a Macao permanent/non-permanent identity card will be eligible to register online for a chance to buy one of the 10,000 sets of the 3-in-1 uncut notes or one of the 2,800 sets of 30-in-1 uncut notes*." (Bold and underlined texts are inserted by the CCAC) This arouses the doubt of the public – where are the rest of the 2 million pieces of single notes and how will they be sold?

35. According to the document provided by the authority, the sales information of single notes, 3-in-1 uncut notes and 30-in-1 uncut notes furnished by the BOC to the AMCM was the same as it publicly announced (see P.7, 17-24):

Types	No. of sets authorised to issue	Equivalent to the quantity of single notes	No. of sets sold	Equivalent to the quantity of single notes
30-in-1 uncut notes	25,000	750,000	2,800	84,000
3-in-1 uncut notes	120,000	360,000	10.000	30,000
Single notes	1,890,000	1,890,000	As at 30th May, 704,960 were sold	704,960
Total	**--------**	**3,000,000**	**--------**	**818,960**

36. The AMCM bears the responsibility to oversee the monetary, financial, foreign exchange and insurance markets. If the BOC has not declared or disclosed the sale of the remaining 22,200 sets of "30-in-1 uncut notes" 110,000 sets of "3-in-1 uncut notes" and 1 million pieces of single notes as well as the procedure of the notes entering the market, the AMCM **is obliged to execute its powers to follow up the above issues and makes timely announcement to enhance the transparency**.

37. Considering that the authority will formulate relevant guidelines as the two note-issuing banks may request to sell "uncut notes" combination in the future, **it seems more appropriate for the CCAC, at this stage, to point out to the Chief Executive, the Secretary for Economy and Finance and the AMCM on the BOC's inadequacies in the selling procedure of the "commemorative notes" in order to solve relevant problems as soon as possible**.

* * *

Part III – Conclusion and recommendations

According to the aforementioned facts, the CCAC believes that:

1. **As the AMCM's decision to approve "issuing two types of uncut notes" is invalid, immediate remedial measures have to be taken**.

2. **The authority has to immediately deal with the issue of failing to publish the Order of delegation of authority in the *Official Gazette* according to Article 39 of the *Code of Administrative Procedure*, as well as follow up and pay attention to how the BOC handles the remaining some 2 million pieces of commemorative notes**.

3. Considering that the authority will formulate relevant guidelines as the two note-issuing banks may request to sell "uncut notes" combination in the future, **the AMCM has to adopt appropriate measures concerning the BOC's inadequacies in dealing with the selling procedure of the "commemorative notes**".

4. **The AMCM should draft the Administrative Regulation regarding the BOC's 100th anniversary uncut notes and send to the Chief Executive as soon as possible in order to solve the problem of lack of legal rationale**.

* * *

I hereby make the following orders:

1) **As the content of this report involves the Chief Executive's power in formulating regulation and the execution problems of the AMCM, we send this report to the Chief Executive for deliberation and making decision**.

2) **Notifying the AMCM of the content of the report**.

* * *

Commission Against Corruption, 11th July 2012.

The Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of this case:

(1) The AMCM, which is the target of supervision of the CCAC, is suggested to make a complementary step according to law upon finding out defects;

(2) It is the decision right of the note-issuing bank and the government to determine whether to issue "uncut notes" or not, the CCAC does not and should not hold any stance;

(3) If the AMCM immediately takes remedial measures to rectify the defects in legal procedure, it will be one of the most effective means to solve the problem;

(4) To oversee whether the concrete measures taken to exchange lunar year banknotes are effective or not and whether they conform to the regulations of public affairs administration belongs to the issue of another scope. It will be more appropriate to handle it through other procedures.

Case III

Investigation report on the light rail passing Rua de Londres and Rua de Cidade do Porto in Macao

Key points:

- Technical standards necessarily adopted for the construction of the LRT system in Macao;
- In administrative procedures, competent departments must provide the public with clear justifications for the technical standards adopted;
- In administrative procedures, public consultation should be carried out according to the public administration principles and the principle of "good father of a family".

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Contents

Investigation report on the light rail passing Rua de Londres and Rua de Cidade do Porto in Macao

Part I: Background

1. Some representatives of the Macao Community Development Association went to the CCAC on 29th May 2011 and filed complaints over various issues related to the construction of the Light Rapid Transit (LRT) system on the Macao Peninsula and Taipa. They voiced their suspicion over the existence of illegalities in relevant procedures and required CCAC's investigation.

2. The complaint convers a wide range of issues and has allegations of both criminal offences and administrative impropriety, among which the route selection of the LRT system is particularly called into question. It points out that the Transportation Infrastructure Office (hereinafter referred to as GIT) altered the previous plan by deciding to run the railway through Rua de Londres and Rua Cidade do Porto, however with no sufficient scientific grounds for acting so. The complaint goes further to criticise GIT for incorporating the said area into the project, believing it would cause a failure to meet relevant fire safety requirements. It therefore puts forward a request that the government reconsider the route.

3. On the issue that the railway will be designed to run through the interior of NAPE, the Macao Community Development Association expressed their concerns in the complaint letter, as follows:

   "(…)

   Running the light rail through Rua de Londres and Rua Cidade do Porto instead of the coastal area according to the original plan may involve the following illicit interests:

   (1) The two plots of land behind Zhu Kuan Building and Edifício Wan Yu Vilas, together with the area covering the road space to be freed up resulted from the use of a proposed underground tunnel at Avenida Dr. Sun Yat-Sen and Zone B of the proposed reclamation project (designed to

fill the coastal area between the Macao Science Center and the Kun Iam Statue), will be earmarked for the development of a couple of commercial and residential buildings. For already many years the government has only levied a nominal fee of 60,000-80,000 patacas on those developers. However, over the last few years, the transactions related to the said plots carried out by the developers already reached tens of billions. If the profits to be yielded from the concession for development on these plots in the future are also taken into account, the illicit interests might reach at least hundreds of billions. Therefore, it is not surprising that some associations would collude with the unscrupulous developers and officials and have the light rail run through the interior of NAPE at any costs;

(2) According to the press release issued by the Deputy Director of GIT on local newspapers last week, the LRT project has to commence shortly and therefore it will be impossible to take into account the future development of the five reclaimed zones, Shizimen and the Hengqin Island. If the railway is to run along the originally proposed coastal area in lieu of the interior of Rua de Londres and Rua Cidade do Porto, then the project will have to be postponed for two to three more years. That will mean kicking off the project at the current stage is solely for illicit profits, yet the practical needs of Macao in the following three years have been completely ignored. Suppose Phase I of the construction will span four years. Chances are it will have to be demolished before going into operation, due to the fact that re-planning has to be carried out as a result of rapid social development. It means yet another project generating greater illicit profits will be carried out. How could the official give such a ridiculous reason on a press release? They are just way out of line?

(…)."

4. Since relevant preparation work is set to commence shortly, the most pressing issue now is to examine the legality and rationality of running the railway through Rua de Londres and Rua Cidade do Porto, especially from the prospective of technical feasibility. Therefore, the said issues are the foci of our investigation and analysis, while the related side issues may also be discussed.

5. In view of the special nature, wide coverage and complexity of this case, the CCAC has marshalled a great deal of human resources to cope with it.

* * *

Part II: Investigative measures

The CCAC took a couple of measures in the course of investigation, as follows:

1. On 17th June 2011, the CCAC staff met the Director of GIT at a meeting to understand the conception, preliminary plan and progress of the LRT project. It also requested GIT to provide necessary information and documents.

2. On 1st July 2011, the CCAC staff had a meeting with the representatives of the Macao Community Development Association to hear their opinions and requests.

3. On 20th July 2011, the CCAC staff met with the Secretary for Transport and Public Works and the Director of GIT at a meeting, where the latter two parties were requested to present necessary information and explain some core issues (with special regard to whether it was a "policy decision" or a "technical requirement" to have the railway run through Rua de Londres).

4. In August 2011 the CCAC sent letters to GIT requesting the provision of other information relevant to the LRT project.

5. The CCAC received official letters and information from GIT on the following occasions:

   (1) On 24th June 2011, the CCAC received an official letter no.1048/ET/2011 and relevant information from GIT.

   (2) On 30th June 2011, the CCAC received an official letter no.1077/ET/2011 and relevant information from GIT.

   (3) On 2nd September 2011, the CCAC received an official letter no. GIT-O-11-1552 and relevant information from GIT.

   (4) On 6th September 2011, the CCAC received an official letter no. GIT-O-11-1555 and relevant information from GIT.

   The CCAC received the following supplementary information from the complainant: 809/C/2011, 817/C/2011, 926/C/2011, 1158/C/2011, 332/I/2011,

371/I/2011, 380/I/2011, 389/I/2011, 390/I/2011, 403/I/2011, 433/I/2011, 434/I/2011, 461/I/2011, 462/I/2011, 470/I/2011, 471/I/2011, 473/I/2011, 474/I/2011, 669/I/2011.

6. The CCAC obtained documents consisting of nearly 10,000 pages, many of which being architectural drawings and consultancy reports.

7. The CCAC designated professional engineers to take measurements and collect necessary information at Rua de Londres. These data were organised and analysed subsequently.

* * *

Part III: Introduction to the construction of the LRT system

The GIT published the progress of the LRT system*:

"– *In 2002, the first Chief Executive of Macao SAR, Edmond Ho, mentioned the following in his policy address: "In order to solve the urban transport problems, the Government will introduce a brand new mass transit system into the territory". It was also the same year that he entrusted Mass Transit Railway Corporation Limited of Hong Kong (now known as MTR Corporation Limited) to conduct a preliminary study on the development of an urban railway transport system in Macao.*

– *In February 2003, the Macao SAR Government officially began a research on the construction of the LRT System. The objective and necessity of building a railway transport system in Macao, preferably a light rail system, were recognised in the first feasibility study report. Concept corridors serving residential, commercial and tourist areas were also analysed in the report. Following the feasibility study report was a public consultation, where many residents voiced their opinions to the Government.*

* *The original translation provided by GIT is available at: http://www.git.gov.mo/en/history.aspx.*

- *Based on the railway technology derived from the first phase of research and public opinions and advices collected during the consultation, the Government conducted a more in-depth feasibility study on the LRT System in 2005. The report in this stage set out the target groups of the light rail service and analysed some possible routes covering Macao Peninsula, Taipa and Cotai. In the end, it was proposed in the report that three lines covering about 27 kilometres and 29 stations in total should be considered.*

- *In 2006, Macao Government conducted an in-depth research on the LRT System, aiming to further study the features of the line routes and service scope concluded from the previous reports. The "In-Depth Research on the Macao LRT System", announced in the same year by the Government, considers an elevated railway system the best option for the city. It recommends the construction of a double-track railway for trains running on rubber-tyred wheels, which should have a total length of about 22 kilometres, 26 stations and allow trains to arrive every 3-6 minutes. It also highlights the importance of installing platform screen doors, escalators and elevators and utilising natural light, ventilation and barrier-free access. During the four-month public consultation, the government collected and analysed various opinions from the public, communities and business owners. Some organisations and residents believed that the proposed train stations were too close to each other while the service might fail to cover the high-density residential areas.*

- *After conducting an exhaustive technology assessment and reviewing the opinions from the public consultation, the Government announced the "Optimisation Program for the Macao LRT System" in July 2007. This optimisation program proposed that Phase I of LRT System should total 20 kilometres in length and cover all the borders, high-density residential areas and some tourist attractions. There should be 12 stations to the east of the Macao peninsula connecting Border Gate and Barra. Also, 11 stations were suggested to be built on Taipa and Cotai to connect Sai Van Bridge and Pac On Ferry Terminal. Therefore, a total of 23 stations were proposed in Phase I of the LRT.*

  In addition, the LRT system was suggested to bear a design for fully-automated rubber-tyred trains that run every 3 to 6 minutes on elevated railways. It would also feature energy saving, environmental friendly

facilities and barrier-free access. In order to enhance the capacity of the current public transport service and the integration of different transport services, public transport interchange (PTI) facilities will be built at important locations where some of the stations are situated. Public car parks (there will be 11 in total, with 6 on the Macao peninsula and 5 on Taipa) will be built in the vicinity of the stations.

After the 45-day public consultation period, in October 2007, the Government announced that Phase I of LRT System will be under construction. The "Transportation Infrastructure Office (GIT)" was then established in November of the same year to undertake the design and construction of the project and its future operational arrangements.

- ***In October 2009, GIT announced the "Construction Plan of Phase I of the Macao LRT System 2009". The total number of stations to be built was adjusted to 21****. In order to preserve the view of the Macao World Heritages sites and reserve space for the connection with the underground railways of Phase II in the future,* ***the Barra station would be built underground on a larger scale*** *so that its function as a local and regional integrated transport hub can be consolidated. In addition, the rails at Nam Van Lake and Sai Van Lake sections which connect Barra and Nam Van would be built in the tunnel,* ***while the Sai Van Lake station would be underground and the Nam Van Lake station on the ground****. Taking into account the city positioning and the need for transport services integration in Macao, the construction plan estimated that there would be a gradual increase in the maximum passenger load per hour per direction during rush hour, from 8,000 at the early stage of operation to 14,200 in 2020.*

- ***International calls for tenders for the supply of "Rolling Stock and Systems of Macao LRT Phase I" commenced in December 2009. With the confirmation of the types of rolling stock and system to be used, the major construction works will take place subsequently in the second half of 2010 or later****."*

* * *

Part IV: Introduction to the preliminary issues

Before proceeding with analysis, some issues necessitate clarification, the most important two being the following:

First, the legal basis of CCAC's intervention in the case and measures that may be proposed.

Second, since this is a highly technical project, did the responsible department make sure that all the steps, namely preparation, planning, implemention and launching calls for tenders, were taken in strict compliance with applicable legal provisions and technical requirements?

* * *

1. The legal basis of CCAC's intervention in the case and measures that may be proposed:

According to Subparagraphs 4), 5), 11), 12) and 14) of Article 4 of Law no. 10/2000 of 14th August (*Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*) , the CCAC is vested with the following powers:

"The Corruption Against Corruption is entitled to:

(…);

4) 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;

5) Examine the legality and administrative correctness of acts which involve property entitlements;

(…);

11) Propose to the Chief Executive the adoption of administrative measures for

the purpose of improvement of the services provided by the public administration;

12) Address recommendations directly to the concerned authorities for the purpose of rectifying illegal or unfair administrative acts or procedures, or of performing due acts;

(…);

14) Seek, in cooperation with the concerned bodies and departments, the most adequate solutions to protect the legitimate interests of the individuals and to improve administrative activity;

(…).”

In addition, Article 2 of the *Code of Administrative Procedure* provides that:

“Article 2
(Scope of Application)

1. *The provisions of this Code apply to all bodies of the government that, in the performance of administrative activity of public management, establish relations with individuals as well as to acts performed by administrative bodies of the Territory that do not belong to the Public Administration while carrying out materialised administrative functions.*

2. *The provisions of this Code shall also apply to acts performed by concessionaires in exercising the powers of authority.*

3. *It may be mandated by law that provisions of this Code apply to activities of organs of private institutions in pursuit of public interest.*

4. *The general principles of administrative activities as defined in this Code apply to all the activities of the Administration,* ***even if such activities are only conducted for the purpose of technical or private management****.*

5. *The provisions of this Code relating to the organisation and administrative activities are applicable to all activities of the Administration in the field of public management.*

6. *The provisions of this Code are also complementarily applicable to special procedures, provided that they do not cause the reduction of guarantees of individuals."*

It should be noted that according to Paragraph 4, activities only conducted for the purpose of technical management shall also abide by the provisions of the *Code of Administrative Procedure*.

Therefore, administrative bodies should indicate the parametres and criteria upon which decisions regarding technical matters are based and make clear to the public, particularly the interested parties, the rationales and grounds for making such decisions. Administrative bodies are also to bear any civil compensation liabilities even if they have to resort to initial solutions due to the unavailability of better ones.

In addition, when making decisions administrative bodies must strictly comply with the two major principles laid down in Article 5 and Article 8 of the *Code of Administrative Procedure*, namely "principle of proportionality" and "principle of good faith".

With regard to the "principle of proportionality", Article 5 of the *Code of Administrative Procedure* provides that:

*"**Article 5***
(Principle of equality and proportionality)

1. *In their relations with individuals, Public Administration must be governed by the principle of equality and must not favour, benefit and harm any persons, deprive them of any right or exempt them from any duty on the basis of their ancestry, sex, race, language, original place of residence, religion, political or ideological convictions, education, economic situation or social status.*

2. *The management decisions which conflict with rights or legally protected interests of individuals can only affect such rights and interests when the objectives to be obtained are appropriate and proportionate*."

With regard to the "principle of good faith", Article 8 of the *Code of Administrative Procedure* provides that:

*"**Article 8***
(Principle of good faith)

1. In the exercise of administrative activities of any forms in any phases, Public Administration and individuals should act and establish relations according to the rules of good faith.

2. When the provisions of the preceding paragraph are observed, the fundamental values of law significant in certain situations shall be considered, in particular:

a) Trust of the counterpart raised by relevant activities;

b) The objective to be achieved from the undertaken activity."

Therefore, a proposal that is reasonable, the most cost efficient and with the least adverse impact should be chosen without prejudice to the objectives to be achieved and the approach to be adopted. Any irregularity or deviation will be deemed as a violation of the principles of public administration. In severe situations relevant administrator shall even be subject to legal liabilities.

Judging by the above considerations, the CCAC has the power to intervene in any administrative procedure, regardless of whether there has been a final decision or public money is involved or not.

However, there are quite some special factors that are worth our attention in this case, as follows:

Usually speaking, the intervention of the CCAC is requested upon the receipt of complaint against a decision made by the Public Administration on an issue or the execution of relevant acts that may be detrimental to the interest of the complainant.

In this case, however, there is no decision made by the Public Administration on the issues raised in the complaint yet. The issues are largely related to the period between planning and execution, which leaves the CCAC in a somewhat passive position in the intervention. This is an issue that inevitably comes along with "prior supervision". However, if the matter of such far-reaching significance were only subject to "subsequent supervision" (which occurs only when the construction has been completed), irreversible consequences would probably be seen. An enormous

damage may be done if an erroneous decision has been made.

In fact, this is probably one of the most technical, complex, far-reaching and sensitive issue that the CCAC has dealt with in recent years. Nevertheless, the CCAC will fulfil its duty independently according to law as it always does.

* * *

2. Relevant technical issues

The construction of the light rail system in Macao is undoubtedly an enormous initiative. From carrying out preparatory work to deciding the construction of light rail, a multitude of statistics and information need to be collected and analysed. In addition, it is indispensible to carry out site surveys and make necessary adjustments according to various actual factors, including the form and structure of streets, geologic characteristics, city planning, traffic requirements and demographics. Such factors should by no means be ignored.

In such context, a few important technical elements must be determined, including:

- road space to be occupied by the railway tracks;

- materials to be used;

- design of mechanical parts and railway tracks;

- standards and factors of fire safety, etc.

When it comes to fire safety, undoubtedly, the set of standards currently adopted in Macao were not intended for the construction of mass transit systems, like the light rail project. Therefore, introducing standards that are internationally recognised or adopted by advanced countries is a must.

We believe these technical standards should be determined at the design stage, and that the applicability of usual standards adopted by foreign countries should not be decided only when the construction plan and routes of the light rail are already confirmed. This clearly shows that the competent department has failed to carry

out strict technical inspection and conduct relevant activities in proper ways. These issues will be analysed in detail later.

* * *

Part V: Introduction to the light rail system

First, let us look at some basic information about light rapid transit.

According to the data available, light rail was the earliest means of rail transport adopted in metropolises in the world. Over a span of more than ten years, due to the disadvantages of road transport, such as pollution, traffic congestion and inefficient utilisation of energy resources, many cities that once relied on road transport started to adopt rail transport systems. Nevertheless, before deciding which type of rail transport to be adopted, it is necessary to take several factors into account, including passenger load forecast, geographical characteristics, environmental impact and economic effectiveness.

The advantages of light rapid transit can be summarised as follows:

(1) Great capacity to accommodate different passenger loads;

(2) High productivity service;

(3) Lower level of noise and air pollution;

(4) High degree of comfort.

Light rapid transit also has some drawbacks, including:

(1) High construction and maintenance costs;

(2) Negative visual impact of overhead cables.

* * *

Classification of the systems:

The rail transport systems can be classified according to the "track gauge[32]", the "right of way" and the "length of route". Details are as follows:

1. Classification by track gauge:

(1) Standard gauge: The gauge of 1,435mm (4 ft 8½ in), started to be adopted by the International Union of Railways as an international standard in 1937, is used by about 60% of the world's railways at present, including Taipei (Taipei Metro), Japan (SKS), France (TGV) and Germany (ICE). The standard gauge, also known as international gauge, originated in the UK.

(2) Broad gauge: This is wider than the standard gauge. Among the three existing gauges, broad gauge is the least adopted and is mostly adopted to meet national needs. Broad gauge tracks are used in Russia (1,524mm) and Spain (1,674mm).

(3) Narrow gauge: This is more narrow than the standard gauge. It varies in width due to the need to adapt to various landforms, including the most common types of 1,067mm and 762mm. Narrow gauge railways can be seen in places such as Taiwan (1,067mm) and forests (762mm).

Since railways started to emerge in the 19th century, debates regarding which type of gauges is the best have come along. As viewed from the modern standpoint, neither narrow gauge nor broad gauge has noticeable advantages. Reasons are as follows:

- The heaviest freight trains in the world can run on standard gauges in the United States and Australia. This means that broad gauge railways do not necessarily have a higher freight capacity.

- The standard gauge is also used in high-speed railways. This means that broad gauge railways do not necessarily support high speed trains better than the others.

[32] Gauge is the distance between the two rails on a railway track (the measurement between the inner faces of the two rails).

- There are also very heavy trains running on narrow gauge railways (1,067mm) in Queensland of Australia and South Africa. This means narrow gauge railways do not necessarily have a lower carrying capacity.

- The difference between the construction cost of a standard gauge railway and that of a narrow gauge railway is not significant.

- It is possible to build narrow gauge railways with a carrying capacity identical to that of standard gauge railways.

Judging from the above facts, it can be believed that laying broad or narrow gauge tracks are not necessarily more cost saving than laying standard gauge tracks, and that the former are not as compatible as the latter.

* * *

2. Classification by right of way

Rights-of-way can be divided into three types, as follows:

(1) Type A: With this right of way, vehicles travel on reserved routes, lanes, or tracks that are separate from ordinary roads, and therefore no level crossings can be seen. Such tracks can be elevated off the ground, go underground or be at ground level. High-speed rail transport and rapid transit have such right of way.

(2) Type B: With this right of way, vehicles travel on both reserved tracks and tracks intersected with roads intended for other means of transport. The light rapid systems of many foreign countries have such right of way.

(3) Type C: With this right of way, vehicles travel on the tracks built along oridinary roads for other means of transport. Trams or trolleybuses have such right of way.

* * *

3. Classification by length of route

A Rail Rapid Transit (RRT) system must meet the following five conditions:

- Being a mass transit system;
- Circulating within the city;
- Being driven by electricity;
- With majority of the routes running on tracks separated from other roads and railroad tracks;
- Providing frequent service.

In most cities, sections of a rail rapid transit system that circulate around the city centre are laid in underground tunnels, and therefore they are also called "underground railroad" or "metro"[33].

* * *

[33] In Taiwan this is called Mass Rapid Transit system (MRT).

Part VI: Technical standards necessary for the construction of the LRT system in Macao

So far, there are no specific rules for railway transport in the legal system of Macao. Therefore, the introduction of rules of foreign countries is inevitable.

According to Article 46.4 of the *Fire Safety Regulation* approved by Decree Law no. 24/95/M of 9th June:

"46.4 Fire safety systems, facilities and equipment shall be planned, designed, executed and assembled in accordance with the technical standards and rules contained in the legislation and regulations currently in force in Macao; ***when such standards and rules are absent, specific technical standards and rules contained in legislation and regulations internationally recognised and accepted by DSSOPT shall be observed, particularly those currently in force in*** *Portugal, the neighbouring territory Hong Kong (Codes of Practice), the UK (British Standards) or* ***the United States of America (NFPA Standards)****."*

NFPA stands for National Fire Protection Association[34], and has two meanings, as follows:

It is understood as "Fire Protection Association of the U.S." (National Fire Protection Association). Established in 1896, it aims to promote the development of fire protection science, improve fire protection technologies, organise information exchange and formulate standards for the installation of fire protection systems and thus to minimise the loss of life and property in the event of fires. As an international technical and educational organisation, it has 150 institutional members, 75,000 individual members, and members from more than 80 countries. Its missions include formulating standards and criteria and recommending fire operation rules, manuals, guides and standard provisions.

"NFPA" also means a set of standards for fire protection design of buildings, fire and rescue training, fire equipment (e.g., 1983, 1670) and the like. These standards have gained domestic and international recognition and many of them have been adopted by the American National Standards Institute (ANSI).

[34] Information is available on this website: www.nfpa.org and http://baike.baidu.com/view/2249268.htm.

In addition, the Association participates in standard drafting in conjunction with the International Organisation for Standardisation (ISO) and the Commission for the Canadian Electrical Code (CECC). It also maintains collaborative relationships with agencies such as the Department of Labour (DL), the Department of Health, Education and Welfare (DHEW), the National Bureau of Standards (NBS), the General Services Administration (GSA) and the Department of Housing and Urban Development (HUD) in the United States. NFPA makes its searchable database of standards, publication information, periodicals and meeting minutes available on its website.

NFPA 130 is known as NFPA 130:2010[35] Standard for Fixed Guideway Transit and Passenger Rail Systems. NFPA 130 covers fire protection requirements for all metro, rail transit and railroad systems. The purpose of this standard is to establish minimum requirements that will provide a reasonable degree of safety from fire and its related hazards in fixed guideway transit and passenger rail system environments.

NFPA 130 is officially known as:

- NFPA 130:2010 *Standard for Fixed Guideway Transit and Passenger Rail Systems*

[35] NFPA130 (*Standard for Fixed Guideway Transit and Passenger Rail Systems*) (According to the information on the internet, the updated version of 2011 is available).

Railway components tested by NFPA 130 are as follows:

Category	Function of Material	Test Item	Test Method
Cushioning	All individual flexible cushioning materials used in seat cushions, mattresses and mattress pads	Surface Flammability	ASTM D 3675
		Smoke Density	ASTM E 662
Fabrics	Seat upholstery, mattress ticking and covers, window shades, etc	Burning behaviour	14 CFR 25
		Smoke Density	ASTM E 662
Interior vehicle components	Seat and mattress frames, wall and ceiling lining and panels, partitions, windscreens, component boxes and covers.	Surface Flammability	ASTM E 162
		Smoke Density	ASTM E 662
	Flexible cellular foams used in armrest and seat and mattress padding	Surface Flammability	ASTM D 3675
		Smoke Density	ASTM E 662
	Thermal and acoustical insulation	Surface Flammability	ASTM E 162
		Smoke Density	ASTM E 662
	HVAC ducting	Surface Flammability	ASTM E162
		Smoke Density	ASTM E 662
	Floor covering	Critical Radiant Flux of Floor-Covering System	ASTM E 648
		Smoke Density	ASTM E 662
	Light diffusers, transparent plastic windscreens, etc.	Surface Flammability	ASTM E 162
		Smoke Density	ASTM E 662
Elastomers	Window gaskets, door nosings, etc.	Flame propagation	ASTM C 1166
		Smoke Density	ASTM E 662

Exterior vehicle components	Roof housings, exterior covering of vehicles	Surface Flammability	ASTM E 162
		Smoke Density	ASTM E 662
Wire and cable	All	Cable Flamability	UL 1581
		Smoke Density	ASTM E 662
Structural component	Flooring, other	Fire Resistence	ASTM E 119

Adopted by most countries and regions of the world, the NFPA130 has a very complete set of standards relating to rail transit systems, structure and design. The index is provided in the following to show the fundamental standards for different categories.

In addition, two of the chapters are cited here for better illustration:

Chapter 6 covers standards for railways, as follows:

Chapter 6 Trainways

6.1* ***Applicability.*** *This chapter applies to all portions of the trainway, including pocket storage and tail tracks not intended for occupancy by passengers.*

6.2 ***Egress and Emergency Access.***

6.2.1 ***General.***

6.2.1.1* *The system shall incorporate a walk surface or other approved means for passengers to evacuate a train at any point along the trainway so that they can proceed to the nearest station or other point of safety.*

6.2.1.2 *System egress points shall be illuminated.*

6.2.1.3 *Where the trainway track bed serves as the emergency egress pathway, it shall be nominally level and free of obstructions.*

6.2.1.4 *Walking surfaces shall have a uniform, slip-resistant design.*

6.2.1.5 *In areas where cross-passageways are provided, walkways shall be provided on the cross-passageway side of the trainway for unobstructed access to the cross-passageway.*

6.2.1.6 *Crosswalks shall be provided at track level to ensure walkway continuity.*

6.2.1.7 *Crosswalks shall have uniform walking surface at the top of the rail.*

6.2.1.8 *Walkway continuity shall be maintained at special track sections (e.g., crossovers, pocket tracks).*

6.2.1.9* *The means of egress within the trainway shall be provided with an unobstructed clear width graduating from the following:*

(1) 610 mm (24 in.) at the walking surface to

(2) 760 mm (30 in.) at 1420 mm (56 in.) above the walking surface and to

(3) 610 mm (24 in.) at 2025 mm (80 in.) above the walking surface

6.2.1.10* Guards.

6.2.1.10.1 *Raised walkways that are more than 760 mm (30 in.) above the floor or grade below shall be provided with a continuous guard to prevent falls over the open side.*

6.2.1.10.2 *Guards shall not be required along the trainway side of raised walkways where the bottom of the trainway is closed by a deck or grating.*

6.2.1.10.3 *Guards shall not be required on raised walkways that are located between two trainways.*

6.2.1.11* Handrails.

6.2.1.11.1 *Raised walkways shall be provided with a continuous handrail along the side opposite the trainway.*

6.2.1.11.2 *Raised walkways that are greater than 1120 mm (44 in.) wide and located between two trainways shall not be required to have a handrail.*

6.2.1.12 *Passengers shall enter the trainways only in the event that it becomes necessary to evacuate a train.*

6.2.1.13 *Evacuation shall take place only under the guidance and control of authorized, trained system employees or other authorized personnel as warranted under an emergency situation.*

6.2.2 Means of Egress Underground.

6.2.2.1 General*. Exit stairs and doors shall comply with Chapter 7 of NFPA 101, except as herein modified.*

6.2.2.2* Number and Location of Means of Egress Routes.

6.2.2.2.1 *Within underground or enclosed trainways, the maximum distance between exits shall not exceed 762 m (2500 ft).*

6.2.2.2.2 *For exit stairs serving underground or enclosed trainways, the width of exit stairs shall not be required to exceed 1120 mm (44 in.).*

6.2.2.3 Cross-Passageways.

6.2.2.3.1 *Cross-passageways shall be permitted to be used in lieu of emergency exit stairways to the surface where trainways in tunnels are divided by a minimum of 2 hour–rated fire walls or where trainways are in twin bores.*

6.2.2.3.2 *Where cross-passageways are utilized in lieu of emergency exit stairways, the following shall apply:*

(1) Cross-passageways shall not be farther than 244m (800 ft) apart.

(2) Cross-passageways shall not be farther than 244m (800 ft) from the station or tunnel portal.*

(3) Cross-passageways shall be a minimum of 1120 mm (44 in.) in clear width and 2100 mm (7 ft) in height.

(4) Openings in open passageways shall be protected with fire door assemblies having a fire protection rating of 1⁄2 hours with a self-closing fire door.

(5) A tenable environment shall be maintained in that portion of the trainway that is not involved in an emergency and that is being used for evacuation.

(6) A ventilation system for the contaminated tunnel shall be designed to control smoke in the vicinity of the passengers.

(7) Provisions shall be made for evacuating passengers via the non-incident trainway to a nearby station or other emergency exit.

(8) The provisions shall include measures to protect passengers from oncoming traffic and from other hazards.*

* * *

7.1, 7.2, 7.3 of the Chapter 7 cover the design of railways, as follows,

Chapter 7 Emergency Ventilation System

7.1 General.

7.1.1* *This chapter defines the requirements for the environmental conditions and the mechanical and nonmechanical ventilation systems used to meet those requirements for a fire emergency in a system station or trainway as required by Section 5.3 and 6.3.2.*

7.1.2 *The requirement for a mechanical or nonmechanical system intended for the purpose of emergency ventilation shall be determined in accordance with 7.1.2.1 through 7.1.2.4.*

7.1.2.1 *For length determination, all contiguous enclosed trainway and underground system station segments between portals shall be included.*

7.1.2.2 *A mechanical emergency ventilation system shall be provided in the following locations:*

(1) In an enclosed system station

(2) In a system underground or enclosed trainway that is greater in length than 305 m (1000 ft)

7.1.2.3 *A mechanical emergency ventilation system shall not be required in the following locations:*

(1) In an open system station

(2) Where the length of an underground trainway is less than or equal to 61 m (200 ft)

7.1.2.4 *Where supported by engineering analysis, a nonmechanical emergency ventilation system shall be permitted to be provided in lieu of a mechanical emergency ventilation system in the following locations:*

(1) Where the length of the underground or enclosed trainway is less than or equal to 305m(1000 ft) and greater than 61m (200 ft)

(2) In an enclosed station where engineering analysis indicates that a nonmechanical emergency ventilation system supports the tenability criteria of the project.

7.1.2.5 *In the event that an engineering analysis is not conducted, or does not support the use of a nonmechanical emergency ventilation system for the configurations described in 7.1.2.4, a mechanical emergency ventilation system shall be provided.*

7.1.3 *The engineering analysis of the ventilation system shall include a validated subway analytical simulation program augmented as appropriate by a quantitative analysis of airflow dynamics produced in the fire scenario, such as would result from the application of validated computational fluid dynamics (CFD) techniques. The results of the analysis shall include the no-fire (or cold) air velocities that can be measured during commissioning to confirm that a mechanical ventilation system as built meets the requirements determined by the analysis.*

7.1.4 *Where required by 7.1.2, the mechanical emergency ventilation system shall make provisions for the protection of passengers, employees, and emergency personnel from fire and smoke during a fire emergency.*

7.2 Design.

7.2.1 *The emergency ventilation system shall be designed to do the following:*

(1) Provide a tenable environment along the path of egress from a fire incident in enclosed stations and enclosed Trainways

(2) Produce sufficient airflow rates within enclosed trainways to meet critical velocity

(3) Be capable of reaching full operational mode within 180 seconds

(4) Accommodate the maximum number of trains that could be between ventilation shafts during an emergency

(5) Maintain the required airflow rates for a minimum of 1 hour but not less than the required time of tenability

7.2.1.1 *Where the airflow rates required to accomplish 7.2.1(1), 7.2.1(2), or*

approved alternative performance criteria are dependent upon the unimpaired function of the air distribution system, that system shall be designed to continue operation when exposed to the conditions generated during the design incident for the duration determined as per 7.2.1(5). Although rating is not required, materials or systems that are fire rated for the required duration shall be permitted to be used.

7.2.2 *Point-extract ventilation systems shall be permitted subject to an engineering analysis that demonstrates the system will confine the spread of smoke in the tunnel to a length of 150 m (500 ft) or less.*

7.2.3 *The design shall encompass the following:*

(1) The fire heat release rate and fire smoke release rate produced by the combustible load of a vehicle and any combustible materials that could contribute to the fire load at the incident site

(2) The fire growth rate

(3) Station and trainway geometries

(4) The effects of elevation, elevation differences, ambient temperature differences, and ambient wind

(5) A system of fans, shafts, and devices for directing airflow in stations and trainways

(6) A program of predetermined emergency response procedures capable of initiating prompt response from the operations control center in the event of a fire emergency

(7) A ventilation system reliability analysis that, as a minimum, considers the following subsystems:

(a) Electrical

(b) Mechanical

(c) Supervisory control

7.2.4 *Criteria for the system reliability analysis in 7.2.3(6) shall be established and approved.*

7.2.4.1 *The analysis shall consider as a minimum the following events:*

(1) Fire in trainway or station

(2) Local incident within the electrical utility that interrupts power to the emergency ventilation system

(3) Derailment

7.2.5* *The design and operation of the signaling system, traction power blocks, and ventilation system shall be coordinated to match the total number of trains that could be between ventilation shafts during an emergency.*

7.2.6* *The time-of-tenability criteria for stations and tunnels shall be established and approved. For stations, the time shall be greater than the calculated egress time used to establish egress capacity in 5.5.6.*

7.3 Emergency Ventilation Fans.

7.3.1 *The ventilation system fans that are designated for use in fire emergencies shall be capable of satisfying the emergency ventilation requirements to move tunnel air in either direction as required to provide the needed ventilation response.*

7.3.1.1 *Individual emergency ventilation fan motors shall be designed to achieve their full operating speed in no more than 30 seconds from a stopped position when started across the line and in no more than 60 seconds for variable-speed motors.*

7.3.1.2 *The ventilation system designated for use in emergencies shall be capable of operating at full capacity in either the supply mode or exhaust mode to provide the needed ventilation response where dilution of noxious products is to be maximized.*

7.3.1.3 *The ventilation system designated for use in emergencies shall be capable of being turned off and dampers closed to provide the needed ventilation response where dispersion of noxious products is to be minimized.*

7.3.2 *Emergency ventilation fans, their motors, and all related components exposed to the exhaust airflow shall be designed to operate in an ambient*

atmosphere of 250°C (482°F) for a minimum of 1 hour but not less than the required time of tenability.

7.3.2.1 *An engineering design analysis shall be permitted to be used to reduce this temperature; however, the temperature shall not be less than 150°C (302°F).*

7.3.3 *Fans shall be rated in accordance with the ANSI/AMCA 210, AMCA 300, AMCA 250, ASHRAE Handbook—Fundamentals, and ASHRAE 149.*

7.3.4 *Local fan motor starters and related operating control devices shall be located away from the direct airstream of the fans to the greatest extent practical.*

7.3.4.1 *Thermal overload protective devices on motor controls of fans used for emergency ventilation shall not be permitted.*

7.3.5 *Fans that are associated only with passenger or employee comfort and that are not designed to function as a part of the emergency ventilation system shall shut down automatically on identification and initiation of a fire emergency ventilation program so as not to jeopardize or conflict with emergency airflows.*

7.3.5.1 *Nonemergency ventilation airflows that do not impact the emergency ventilation airflows shall be permitted to be left operational where identified in the engineering analysis.*

7.3.6 *Critical fans required in battery rooms or similar spaces where hydrogen gases or other hazardous gases might be released shall be designed to meet the ventilation requirements of NFPA 91.*

7.3.6.1 *These fans and other critical fans in automatic train control rooms, communications rooms, and so forth, shall be identified in the engineering analysis and shall remain operational as required during the fire emergency.*

* * *

Among all the information presented to the CCAC, there was no document showing that any of these standards were adopted or considered in relevant project

design analysis. It should be noted that scientific data and technical standards must always be presented when it comes to achieving public acceptance of a project. This is what is expected in public administration and how public interest can be protected.

Even though GIT did not compare relevant data or carry out necessary technical analysis, the company awarded the contract of the project has the obligation to provide detailed technical information on such aspects. However, we did not find any such material.

* * *

Part VII: Irregularities found in the process of design and construction of the LRT system

In this part we will look at the problems found in the work performed by GIT and relevant departments in relation to the LRT project.

Analysis will be carried out on the following aspects:

1. Application of technical standards (unclear application);

2. Consultation on the construction of the light rail and route selection (insufficient and incomplete consultation);

3. Design;

4. Technical considerations reflected on the drawings.

* * *

Point 1: Application of technical standards (unclear application)

According to the information collected, in the preparatory stage and the final decision stage of the construction of the LRT system, GIT held various meetings with other public departments. Many of them were held with the Fire Services Bureau (CB). Some of these meetings will be shown here as examples for the purpose of our analysis.

(1) In the afternoon of 30th July 2009, GIT held a meeting with CB representatives on the subject "presentation and discussion on fire prevention equipment to be installed in the light rail stations". At the meeting, the CB representatives raised a question:

> ***"Do the fire prevention system and equipment to be installed in the light rail stations conform to the rules provided in the Fire Safety Regulation'?"***

(2) The following is the response of the GIT representatives:

> *"**Since there is no specific provision about the installation of the fire prevention facilities in light rail stations, NFPA 130 standards are adopted for the design of relevant system and equipment.**"*

(3) The reply clearly shows that relevant design should have been conducted according to NFPA 130 standards. The reason is simple: **It is impossible to commence design work before the standards are decided**.

(4) The CB representatives also made the following request at the meeting:

> ***"Certification from NFPA 130 regarding the distance between fire prevention facilities should be presented."***

(5) CB brings up a similar issue in a document drawn up on **29th September 2009**:

> *"**The basis of design** of the entire LRT system and its main stations **must be explained in detail**, especially when it comes to the design of fire prevention facilities; if relevant design is not to be done according to the Fire Safety Regulation, prior approval and authorisation must be obtained from the competent authorities."*

(6) CB also points out the following issues in a document drawn up on **23rd June 2010**:

> *"1. **Since CB has not yet received formal design drawings of the LRT system, no opinion regarding its fire safety can be given so far**. As soon as final drawings are received, CB will give necessary advice according to relevant legislation and actual circumstances.*

2. ***Tracks and train platforms to be built along the light rail must be designed to present no obstruction to fire-fighting and rescue operations. The design should conform to the provisions of Article 8[36] of the Fire***

[36] The content of the article is as follows:

"Article 8º
(Conditions of accessibility and intervention)

8.1. The location and urban integration of the buildings shall be subject to conditions that allow access of firefighters and fire service.

8.2. Buildings shall be served by roads that allow approach, parking, maneuver and operation of fire engines and aerial ladder trucks, in order to facilitate access from the outside to the various units of the floors, either directly or through public horizontal ingresses from the front of the buildings; Such roads, even when established in the private property, shall be permanently connected to public roads.

8.3. The roads for access shall have the following characteristics:

a) A minimum of 3.5 m in clear width;
b) A minimum of 5.0 m in clear height;
c) A minimum of 13.0 m as the bending radius.

8.4. In the zones where buildings have adjoining walls referred to in Paragraph 12, the roads must have areas for parking, maneuver and operation of fire engines and aerial ladder trucks. The areas shall also meet the following conditions:

a) The distance from the edge of the area to the walls of the building shall be big enough to allow the operation of aerial ladder trucks;
b) A minimum of 16.0 m in length;
c) A minimum of 6.0 m in clear width, which should be expanded to 8.0 m for roads without a way out;
d) Being situated at a plane distance not less than 8.0 m from the access points of the building to allow the parking of fire engines and aerial ladder trucks 3.0-10.0 m away from the outer walls of the building;
e) Allowing access to the front of the building without obstacles;
f) A maximum inclination of 10%;
g) Being able to support a vehicle with a weight of 230 KN (i.e., 155 KN of the rear axle load and 75 KN of the front axle load). The distance between the two axles shall be able to reach 4.5 m;
h) Being able to resist a puncture force of 150 KN over an area of 20 mm in diameter;
i) Being absolutely free of benches, trees, flower troughs, lamps, kerbs or other obstacles that impede access of the vehicles mentioned earlier.

8.5. The buildings of Class P and Class M, except those of Group VII, Class A and Subclass A1, except those of Groups VI, VII and VIII, and Class A and Subclass A2 of Group I must be served by accessible roads and areas for parking, maneuver and operation of fire engines along at least one side of the building.

8.6. The buildings of Class A and Subclass A1 of Group VII, Class A of Groups VI, VII and VIII, Class P and Class M of Subclass A2, except those of Group I and Class MA must be served by accessible roads and areas for parking and maneuver of fire engines and aerial ladder trucks along at least two sides of the building.

8.7. For buildings of Class P of Group I, the areas for parking and maneuver of fire engines and aerial ladder trucks can be located at a distance not exceeding 30.0 m from any egress of the escape routes of the building.

8.8. When it is not possible to observe the provisions of Paragraphs 5 and 6 due to the shape of the lot, the buildings of Class A and Subclass A2, except those of Groups I, VI, VII and VIII and Class MA, except those of Groups VII and VIII shall be served by accessible roads and areas with a minimum span of 12.0m

Safety Regulation'."

(7) **In a letter written on 15th July 2011 (as a reply to the letter from GIT dated 8th July, 2011), DSSOPT writes the following:**

" Regarding the subject of your letter, according to the order of the Director of DSSOPT of 12th July 2011, we hereby inform your office that, when there is no relevant standard or rule in the current Fire Safety Regulation, ***DSSOPT has no objection*** *to the application of NFPA as the fire safety standards for rail transit."*

So, here are parts of our conclusion:

a) Why did GIT not ask for DSSOPT's opinion on the possibility of adopting NFPA 130 standards until as late as July 2011?

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for parking, maneuver and operation of fire engines and aerial ladder trucks along at least one side of the building. These buildings shall also meet one of the following conditions:

a) Providing a refuge floor. For buildings of Class A and Subclass A2, the refuge floor shall not be located lower than half the height of the building or higher than 31.5 m; for buildings of Class MA, the refuge floor shall not be located lower than half the height of the building or higher than 47.0 m from the ground surface. In the latter case, the refuge floor shall not be higher than 47.0 m from the ground surface regardless of the height of the building;

b) Providing vertical and horizontal external passages that directly serve the front of the building.

Note: At least 33.4% of the accessible walls mentioned in this paragraph shall provide access points to the building.

8.9. The buildings of Group VI shall not be higher than those of Class A. Also, buildings of Subclass A2 shall provide a refuge floor which shall not be located lower than half the height of the building or higher than 31.5 m from the ground surface.

8.10. All buildings with more than 30 floors or with a height greater than 90.0 m, except those of Group I, shall provide refuge floors, which shall not be more than 15 floors apart.

8.11. Buildings of Class A and Subclass A2 of Group IV with individual flats facing public roads that provide access, parking, maneuver and operation of fire engines and aerial ladder trucks, and those of Class MA of Groups I and IV, are exempt from compliance with the provisions of Paragraph 6.

8.12. The exterior walls (accessible walls) of buildings through which are expected to be possible for rescue operations and fire fighting shall not contain protruding objects that hinder the access points of the buildings (windows, balconies, verandas, etc.) and fixed structures (bars, gratings, fencing, etc.) that hinder the entry; in addition, when the access points are window openings, a minimum of 0.50 m of the window sills shall not have a thickness greater than 0.30 m to allow the attachment of hook ladders.

8.13. According to the provisions in Tables III and IV, buildings shall be, depending on their height, served by areas of certain 'number' and certain 'outer perimeter' that have access to the fronts and allow entry, parking, maneuver and operation of fire engines and aerial ladder trucks."

b) It also means that, up to then, GIT did not communicate with the competent department or present any documents regarding the technical issues to it.

c) Also, in the reply letter of DSSOPT, we do not see any technical analysis or detailed reasoning. While it "had no objection" to application of NFPA 130, it did not give a clear assent to it either. What was the ground for this?

Judging from the above facts, the methods and data used by the competent department during the whole design process are far from convincing and illuminating. It is noteworthy that all of these are technical standards rather than dispensable reference information. According to information released by GIT on the internet, the design of the light rail system was already "finalised" in October 2010, so why was GIT still, in the year of 2011, raising the question of whether the NFPA 130 standards could be adopted? What was the reason of still seeking advice of other departments on such issues?

* * *

Point 2: Consultation on the construction of the light rail and route selection (insufficient and incomplete consultation)

Prior to making the decision to carry out consultation, a competent department should consider what should be covered in the consultation, including the following:

(1) What the subject matter is (the content of consultation should be specific);

(2) Whether consultation can be made on the relevant content or not;

(3) What is the consultation for;

(4) Who should be consulted with;

(5) How the consultation should be carried out (methods);

(6) How consultation results should be dealt with.

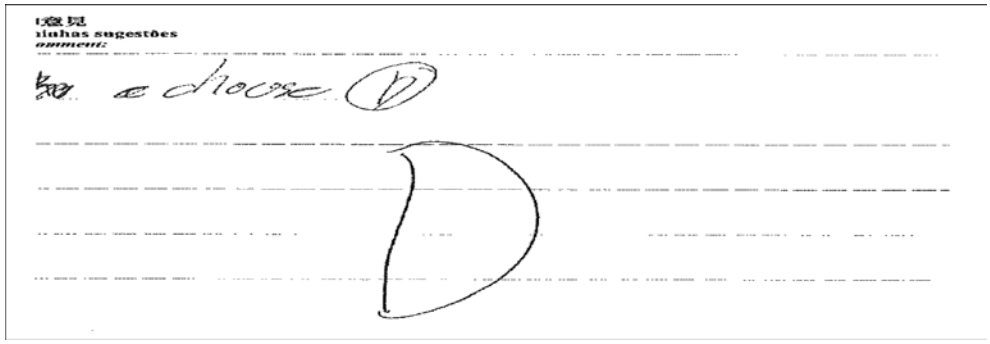
One should be clear that it is not possible to carry out consultation on some subjects or issues, **such as technical standards. Therefore the competent**

department should disclose the scientific data and technical standards to the general public faithfully and comprehensively. It should also point out the reason for using these data, as well as their advantages and disadvantages.

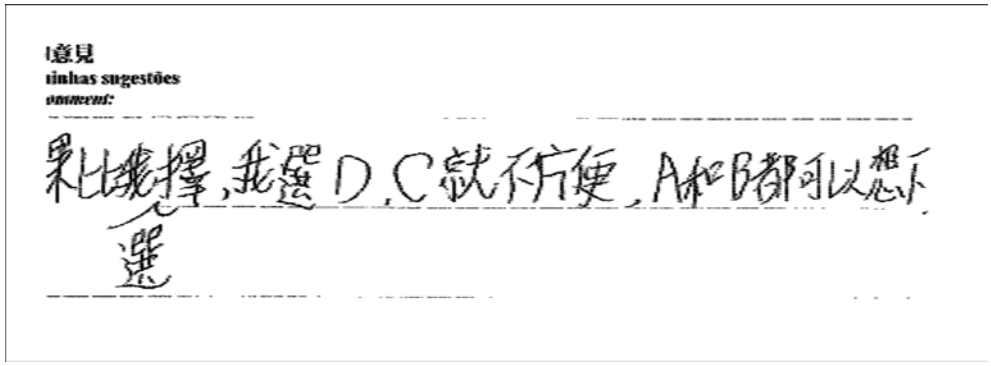
In addition, a detailed analysis report should be written after relevant consultation is completed, indicating how the data deriving from the consultation can be used.

During the construction of the light rail, the competent department did conduct several consultations to get public opinions. However, we have yet to see any elaborate report or convincing information indicating the reasons and grounds for changing the decisions made before and after the consultations, or any illuminating scientific data that the public can refer to.

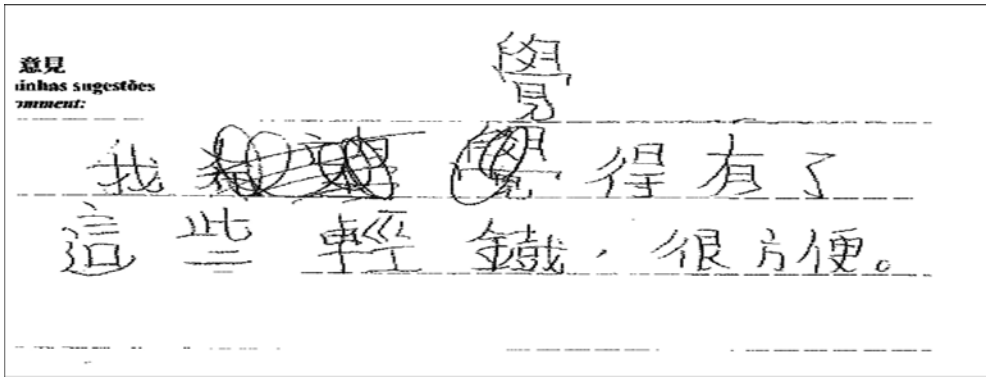
Among the documents presented to the CCAC, we have found the following opinions from the consultations:



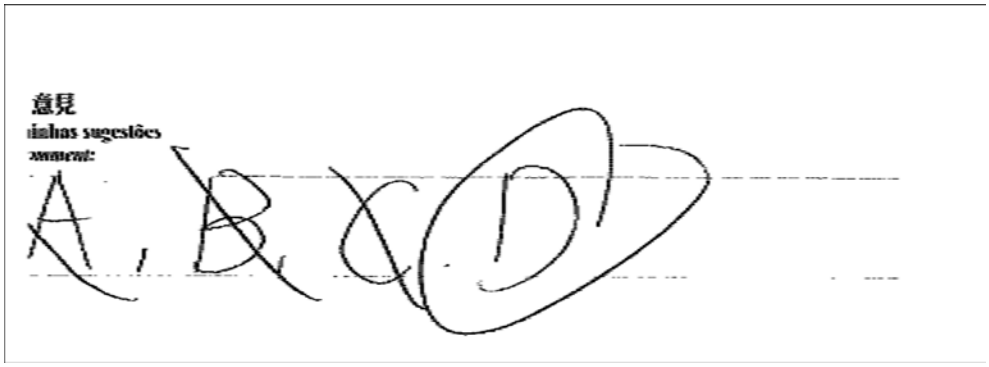
Suggested meaning: Choose D.



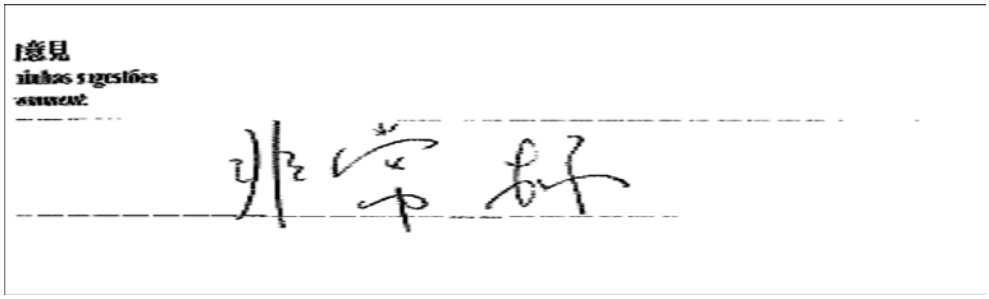
Suggested meaning: For me, I would choose D. C is inconvenient. A and B can also be considered.



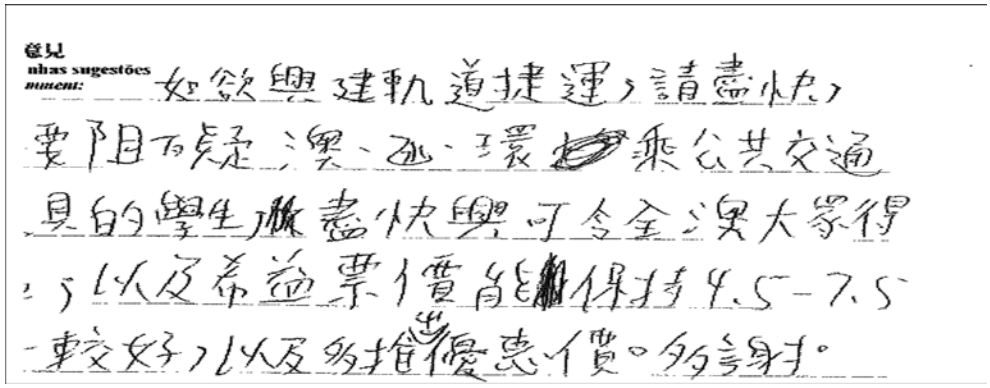
Suggested meaning: I think LRT will provide lots of convenience for us.



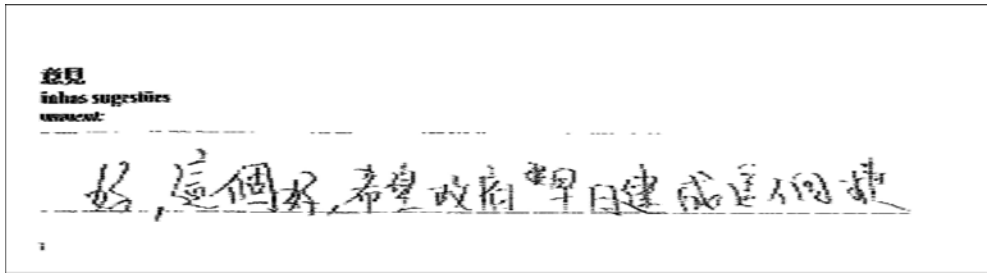
Suggested meaning: ~~A B C~~ D



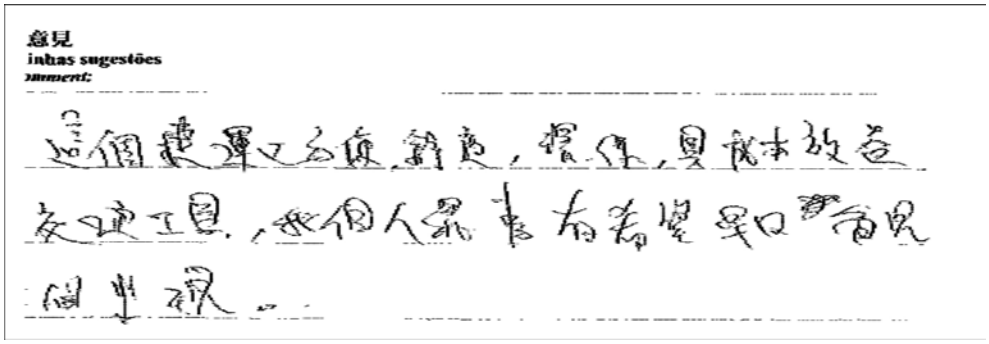
Suggested meaning: Very Good.



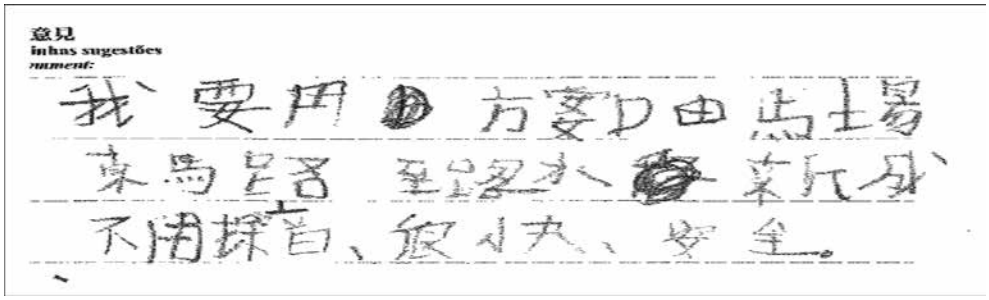
Suggested meaning: If the construction of the light rail has been decided, please start the works as soon as possible, or it will cause trouble to students who need to travel between Macao, Taipa and Coloane by public transport. The general public in Macao will also benefit from it. Hopefully, the ticket prices will be set between MOP4.5-7.5 and there will be discounts. Thank you.



Suggested meaning: Good. This is good. I hope that the government will complete the construction of the light rail as soon as possible.



Suggested meaning: The LRT is convenient, comfortable and eco-friendly. It is a means of transportation that can maximise the benefit. Hopefully the light rail service will be provided in the near future.



Suggested meaning: I will go for Plan D - from Avenida Este do Hipódromo to Cotai. It is not necessary to (…)[illegible words]. It's fast and safe.

We remain rather sceptical about the objectivity of these responses and consultation results, and we doubt if theses opinions are worth being used as reference.

The consultation methods and targets are also worth mentioning. If the light rail service is meant for those who live within 300 metres from the station[37] , then the consultation should be conducted with a clear target group (i.e., it does not make

[37] This does not mean that the CCAC thinks "300 metres" is a suitable distance. We also have no idea why it has to be 300 metres but not 500 metres or others. In addition, if the LRT system meets the technical requirements, the proposed routes are in the public interest and the competent departments can present scientific data, we believe the targets of consultation should not be limited to merely residents living in the areas adjacent to the stations. All the Macao residents should be able to involve in the consultation.

sense to consult residents who live in Coloane about their opinions on operating the light rail service at Rua de Londres in Macao). The most effective way is to send the consultation documents to residents who live in the concerned areas and collect their opinions. In the consultation, the respective residents may be requested to provide residence information without having to reveal their personal data. In addition, with the data from the Cartography and Cadastre Bureau and the Statistics and Census Services, consultation can be carried out among residents who live in the possibly benefited or affected areas. This is the type of consultation that should be done to collect useful opinions. Those deemed too general and arbitrary should not be considered at all. One should bear in mind that the light rail system is a significant infrastructure project that will tremendously influence Macao for a few decades or even a century. It is far too important to be dealt with like a short-term issue.

Obviously, the competent department failed to recognise these facts. Revising the route of a segment and building rail tracks are two different subjects. They necessitate different types of consultation. Ordinary consultation cannot and should not be applied.

For instance, when consultation on elderly policies is to be made, secondary school students or tourists should not be a target (or the only target) to consult with; similiarly, it does not make much sense to ask non-local workers about their opinions regarding Macao's education policies.

For such small cities like Macao, conducting a rigorous public consultation is not something extremely difficult. The key issue is whether appropriate methods and procedures are adopted or not.

In view of the far-reaching influence of the light rapid transit system on the city, safety and public interest must be regarded as two fundamental elements that must not be compromised. Since the project is deemed as "public property", it must be managed according to the rules of public administration. Despite that decision-making bodies have relatively greater discretion, it does not mean that they can act arbitrarily or make decisions on a coin flip. Each step and each decision must not only meet technical and safety standards, but must also be backed up and justified by clear rationale. They must be able to stand up to the voices of criticism and opposition from the society. Take, for example, the work of a doctor. It is unreasonable that a doctor gives no explanation to a patient about the diagnosis, remedy and prescription on the grounds that the patient has no medical knowledge. Therefore, as administrative bodies and staff, they must provide information everybody has the right to know.

This concept may also apply to the construction of light rail and route selection.

We came to know that at the preparatory stage the GIT had produced many publications and promotion materials in order to familiarise citizens with issues pertaining to the LRT system, including the following:

- *Research Report on Social and Economic Effectiveness of Phases I & II of Macao LRT System* (October 2010)
- A quarterly magazine - *LRT Zone*
- A brochure - *Introduction to LRT Route and Station Design of NAPE Zone*
- Construction Plan of Phase I of the Macao LRT System 2009
- Optimisation Program for the Macao LRT System 2007
- In-Depth Research on the Macao LRT System 2006
- Feasibility Study on the Macao LRT System 2005

We believe that the information about social and economic effectiveness of LRT is sufficient. However, the information about the most critical issues, i.e., technical standards and respective expositions, is still inadequate – this is also our main concern.

* * *

Point 3: Design

(I) – About the failure to comply with fire prevention provisions in Phase I of the LRT system (the segment of Rua de Londres and Rua Cidade do Porto)

According to the information from GIT, through Letter no. 736/ET/280/2009 dated 11th August 2009 and Letter no. 892/ET/337/2009 dated 24th September 2009,

GIT **requested CB to give opinions on fire safety techniques and plan drawings for the routes and stations of Phase I of LRT. CB replied GIT in two letters, namely official letter no. 5129/DT/2009 and official letter no. 5656/DT/2009**. (See Annex I)

The two reply letters are as follows:

"Subject: Request for opinions on fire safety techniques

Reference document: no. 736/ET/280/2009, 11/08/2009

On 11th August 2009, CB received the official letter no. 736/ET/280/2009 from GIT with plan drawings and documents enclosed. CB hereby gives its opinions, as follows:

Ø1. According to the preliminary designs of stations no. 1-5, 7 and 8, the locations of platforms and access staircases of station no. 3 (Estrada Marginal do Hipódromo) and station no. 7 (Dr. Carlos D'Assumpção Park) will affect the fire service intervention for the surrounding buildings .

Ø2. For the conditions of assess and intervention and the requirements on space for fire engines, please refer to the provisions of Article 8 of the Fire Safety Regulation.

Plan Drawing Analysis Unit of Technical Support Department,
4th September 2009."

(Official letter no. 5129/DT/2009 of CB, 8th September 2009)

* * *

"Subject: Plan drawings for routes and stations of Phase I of LRT System

Reference document: no. 892/ET/337/2009, 24/09/2009

On 24th September 2009, CB received the official letter no. 892/ET/337/2009 from GIT with plan drawings/documents enclosed. CB hereby gives its opinions, as follows:

*Ø1. **The basis of design of the entire LRT system and its main stations must be explained in detail, particularly the design of fire prevention facilities; if relevant design is not to be done according to Fire Safety Regulation, prior approval and authorisation must be obtained from the competent authorities**.*

*Ø2. As for station no. 11. which is adjacent to the fire station at Sai Van Lake, CB considers that the infrastructure of the station **must bear a design that do not affect the maneuver of the fire engines of CB and its water rescue operations**.*

Ø3. Measures to be taken to ensure the normal operation of the fire station at Sai Van Lake during the construction of station no. 11 should also be specified.

*Ø4. **CB believes it will better facilitate their fire fighting and rescue operations if the LRT has the capacity to transfer fire fighters and necessary equipment efficiently from the fire station to places where fire may break out at the light rail zones or surrounding areas (e.g., by providing exits leading to the fire station).***

Ø5. The new projects submitted by GIT have shown the improvements made on the designs of stations no. 3 and 7 according to the opinion of CB mentioned in Ø1 of no. 1502/DT/UAP/2009, 07/09/2009.

Plan Drawings Analysis Unit of Technical Support Department,
29th September 2009."

(Official letter no. 5656/DT/2009 of CB, 29th September 2009)

In addition, GIT disclosed the following information on its website:

*"The distance between the buildings on two sides of London Street [Rua de Londres] is 24 meters, and the width of the elevated rail is 9 meters. Consequently, if an elevated railway is built at the road centreline, **it will be 7.5-meter apart from the buildings on both sides of the road. The noise barrier wall will not be higher than 15 meters, which is equivalent to the height of the 4th floor; therefore, the views of the apartment above the 4th floor will not be affected**. On the other hand, the light rail project should comply with the Fire Safety Regulation and **the current ZAPE line can meet its requirement of a minimum 6-meter width**. It also has to pass the safety assessment processed by the international independent safety assessment consultants and meet the safety and other related standards given by the train supplier. Since the*

residents' safety is always a high priority for the Government, the emergency response measures are set up to raise the safety standards, for example, to ***buy targeted fire equipment and to exercise regular fire drills****. GIT, together with a few government departments, arranged a meeting with the representatives of the Macao Community Development Association (on 29th July 2011) and exchanged opinions on the issues residents were most concerned about. According to the government, the route at NAPE has eventually been decided after long-term study and extensive consultation. It would continue to ensure that the LRT system is safe and meets the requirements of environmental impact assessments and fire safety. GIT emphasised that the government would always give top priority to the lives and property of residents during the construction of the LRT system. It will strive to ensure that the LRT is safe, efficient and convenient when carrying out route planning and station design. When the construction of the LRT system is under process in the future, GIT will also join hands with public works, environmental protection and fire services departments to strictly supervise if relevant safety and environmental requirements are met. When it comes to fire safety, GIT has been in close communication with CB on related issues all along. In the planning and design stage of the LRT system, GIT carried out the design work in strict compliance with the safety standards on various aspects and presented them to responsible departments for review and evaluation. After detail design is completed, relevant plan drawings will be presented to CB for in-depth analysis and advice, so that relevant designs meets the fire safety requirements."*

We can draw the following conclusion from the above clarification:

1. GIT was trying to "varnish" the facts with nice words and vacuous remarks, instead of presenting technical data to convince the public.

   " (...) the government would always give top priority to the lives and property of residents during the construction of the LRT system. It will strive to ensure that the LRT is safe, efficient and convenient when carrying out route planning and station design. When the construction of the LRT system is under process in the future, GIT will also join hands with public works, environmental protection and fire services departments to strictly supervise if relevant safety and environmental requirements are met. When it comes to fire safety, GIT has been in close communication with CB on related issues all along."

   Such remark is not convincing at all. **The consideration for safety in the design procedure and route selection should not be confused with that in the light rail operation. In most situations, an error in the design procedure**

may lead to an irreversible consequence.

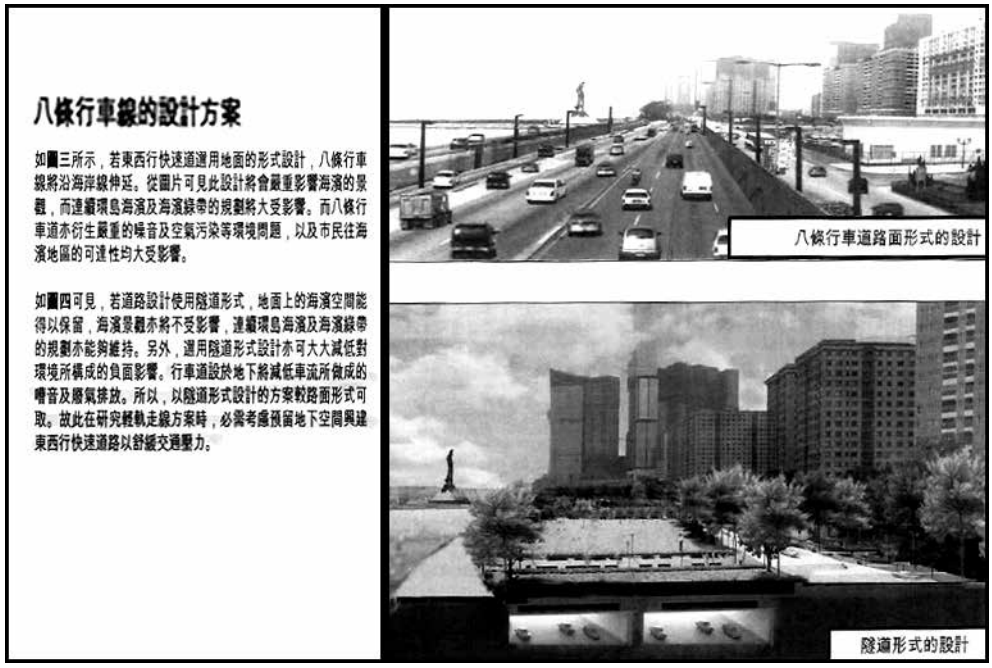
2. **Before making the decision to carry out the construction, GIT should have announced to the public the scientific data and standards it has decided to adopt**. It should have compared them with the existing data and standards, **and should have explained why their decision was correct and how it would meet the technical requirements**. This is how people should be convinced with justifiable grounds. For example, Chapter VI of NFPA130 sets the widths of the railways. Therefore, if the width of the street is X metres that does not meet the standard, the proposal should not be adopted. This is what a report or a technical explanation should be like.

3. It is far from being convincing if, even in the conception and design stage, only empty remarks, instead of technical standards or facts, are presented to the public. As mentioned above, one should not confuse the qualified data (including data for deciding the routes) at the design stage with the fire safety data to be based on when the LRT system is operated. Significant amendments or revision can still be made at the design stage. However, it will be too late and too difficult to make any changes or adjustments after the light rail goes into operation. The competent department should therefore be aware of this fact. After all, building a large infrastructure is not as simple as buying vegetables in the market. If you do not like the vegetables you have bought, you just throw them away - it only costs you a penny.

4. **In 2011, GIT were still consulting CB in a few official letters if the design can be based on NFPA 130 standards. This demonstrates that GIT was not clear about the matter from the very beginning**. Strictly speaking, before any design work should take place, GIT should have a document detailing which NFPA 130 standards are applicable to the light rail project and make it open to the public. However, GIT has never done this. If GIT itself is not sure which NFPA standards are applicable and which are not, we doubt if any of its technical decisions is convincing at all. Even if GIT defends that the contractors should be responsible for making relevant decisions because the major parts of the project (including design work) have been outsourced to them, it is logically wrong: if a department with decision-making power has no idea what to base on when making a decision, how can it decide if a proposal complies with relevant technical requirements and safety standards or not?

5. What is also worth our attention is that according to GIT, "*The distance between the buildings on two sides of London Street is 24 meters, and the width of the elevated rail is 9 meters. Consequently, if an elevated railway is built at the road centreline,* ***it will be 7.5-meter apart from the buildings on both sides of the road. The noise barrier wall will not be higher than 15 meters, which is equivalent to the height of the 4th floor; therefore, the views of the apartment above the 4th floor will not be affected****. On the other hand, the light rail project should comply with the Fire Safety Regulation and* ***the current ZAPE line can meet its requirement of a minimum 6-meter width****. It also has to pass the safety assessment processed by the international independent safety assessment consultants and meet the safety and other related standards given by the train supplier*. (…)" If we compare this with another document, we will find something strange and dubious.

We find the following illustrations in the "Final Report - Preliminary study on the integration of the light rail system into Zone B" of GIT:

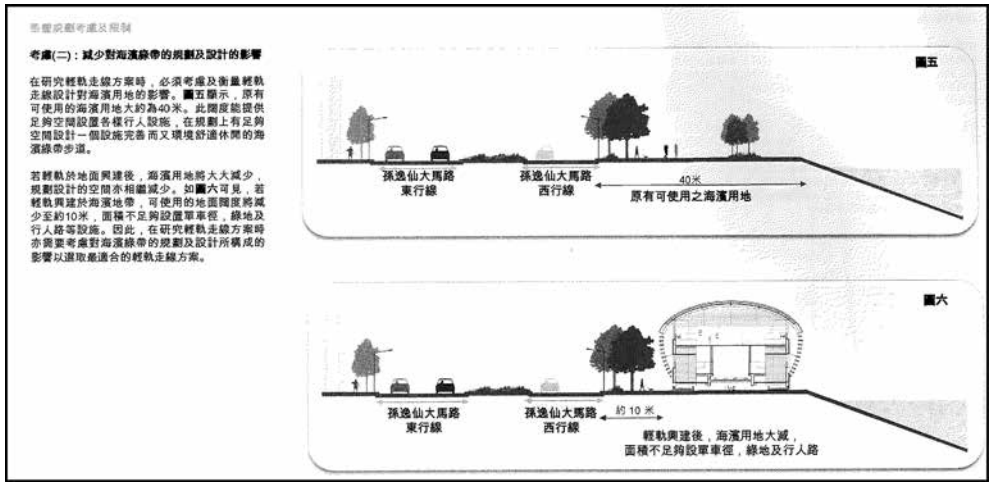


The eight-lane motorway designs

Illustration no. 3 *shows that the east-west motorway is built above ground, which means the eight-lane motorway will occupy the waterfront. This will seriously affect the landscape of the coastal area. The planning of a coastal green corridor will also be affected. Furthermore, the eight-lane motorway will cause serious environmental problems, such as noise pollution and air pollution. It will also be difficult for citizens to reach the waterfront area.*

In illustration no. 4*, the eight-lane motorway is built inside an underground tunnel, so the waterfront will be reserved and its landscape will be left unaffected. The planning of the coastal green corridor can also be maintained. In addition, the negative environmental impacts will be greatly reduced as the underground design will help reduce the emission of noise and waste air of vehicles. Therefore, building an underground motorway would be more beneficial. When the route planning of the LRT system is carried out, consideration should be given to the reservation of a space for the construction of an east-west underground motorway that will help ease traffic movements.*

Captions:
***Illustration no. 3** – The above-ground design of the eight-lane motorway*
***Illustration no. 4** – The underground design of the motorway*



Considerations and limitations on the overall planning
Consideration (2): Reducing the impact on the planning and design of the coastal green corridor

*When route planning of the LRT system is carried out, the influence of the routes on the coastal green corridor should be evaluated. According to **illustration no. 5**, the width of the original area available for coastal planning is 40 metres, which may provide sufficient space for the construction of pedestrian facilities. Therefore, adequate space should be reserved for the development of a well-equipped and comfortable coastal green corridor.*

*If the light rail system is to be built above ground, the space for building a green corridor at the coastal area will be greatly reduced. According to **illustration no. 6**, if the light rail is to run along the coastal area, the width of the original area available for coastal planning will be reduced to about 10 metres, which is insufficient for building any bike lane, green space or footpath. Therefore, when the route planning of the LRT system is carried out, consideration should be given to its influence on the planning of the coastal green corridor so that the best route can be decided.*

Captions:
Illustration no. 5 *–*
Eastbound motorway at Avenida Dr. Sun Yat-Sen
Westbound motorway at Avenida Dr. Sun Yat-Sen
Space available for coastal planning (40 m)

Illustration no. 6 *–*
Eastbound motorway at Avenida Dr. Sun Yat-Sen
Westbound motorway at Avenida Dr. Sun Yat-Sen
After the light rail is constructed, the space available for coastal planning will be greatly reduced, which is insufficient for building any bike lane, green space or footpath (10 m)

(1) Why is the light rail decided to run along a street with a width of only 24 metres instead of a space with a width of 40 metres? We have not seen any scientific justification for such decision. Moreover, at that time, there was actually suggestion that the light rail should be built in an underground tunnel.

(2) The last illustration above, where the light rail is suggested to be built in an underground tunnel, was prepared when several proposals were made at that time. **Since this solution was not adopted in the end, why was not there a set of scientific data explaining the infeasibility of it**? Anyhow, it was not Rua de Londres but the coastal area of Avenida Dr. Sun Yat-Sen being considered to have an underground tunnel built for the light rail.

(3) Furthermore, according to the conception at that time, an eight-lane east-west motorway will be developed along the coastal area.

We have doubts about the following issues:

a) - Where is the proposal for the eight-lane east-west motorway? Who made this decision on the proposal?

b) - Now that the light rail is to be constructed in the district, why should there be an eight-lane motorway? What was the ground for this conception? Does it mean that the reclaimed area in the future aims for the development of the eight-lane motorway? (We are sure the answer will be “no”!)

c) - How could the competent department decide it is impossible to have the

rail tracks laid underneath Avenida Dr. Sun Yat-Sen simply based on some very initial ideas that have not been proved adoptable yet?

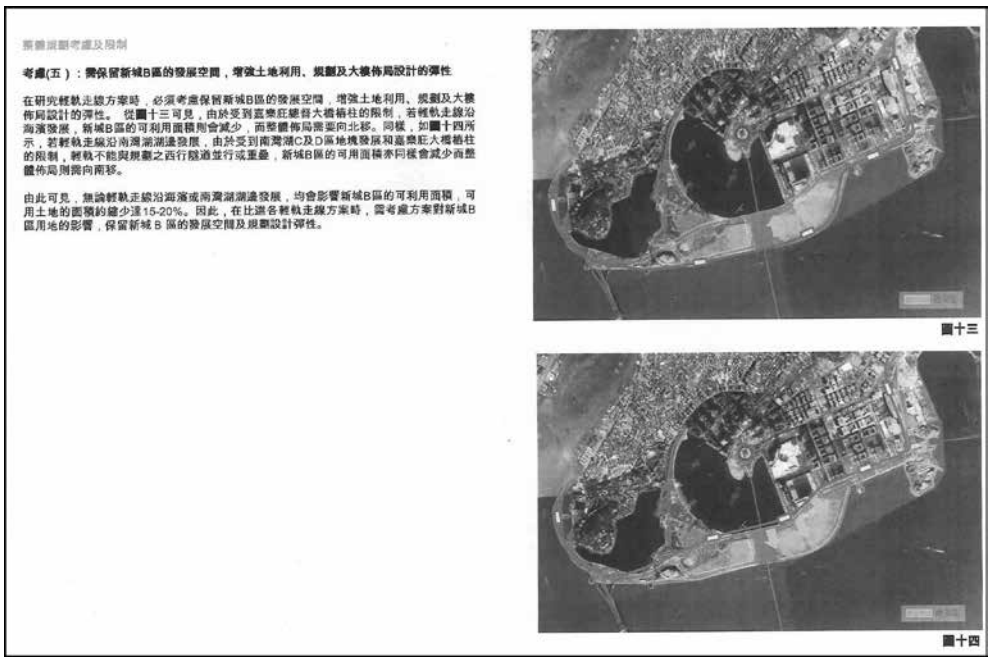
The decision is neither justifiable nor beneficial to public interest.

d) - Moreover, according to the routes already decided by GIT, elevated rail tracks will be used at the segment between Sai Van Bridge and MGM Grand Macau. If the landscape of the coastal area mentioned above is to be affected, will the landscape of this segment not be affected? This decision does not seem justifiable at all.

e) - Besides, has GIT ever considered the possible impact of the elevated light rail bridge on the reclaimed area next to the Governor Nobre de Carvalho Bridge if the Government decides to build the buildings for the judicial organs, the Commission Against Corruption and the Commission of Audit there? Apparently, GIT has shown no consideration for the influence of the elevated bridge on the look of the city, landscapes and the significant increase of commuters in the area. This has once again reflected that the failure of relevant department to make comprehensive analysis of situations and its lack of vision when making judgements. The problem is the same: lack of scientific and technical analysis.

* * *

(4) Recently, relevant public works department released a document for public consultation, titled "Overall Planning of New Urban Areas (for consultation)", which has the following suggestions on the infrastructure and urban planning of Zone B:

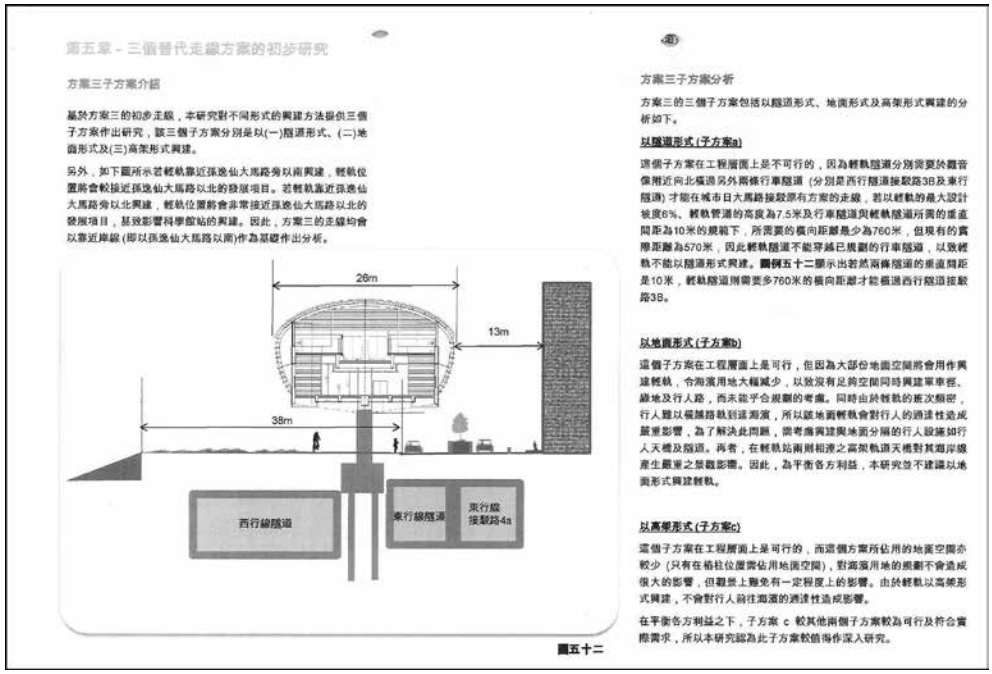


Considerations and limitations on the overall planning
Consideration (5): The necessity to reserve space for the development of Zone B in the new urban areas, thus allowing more flexibility for land exploitation and planning and the design of buildings

When planning the routes of the light rail, it is necessary to reserve space for the development of Zone B in the new urban areas, thus allowing more flexibility for land exploitation and planning and the design of buildings. According to ***illustration no. 13****, by virtue of the structural constraints resulting from the positioning of the pillars of the Governor Nobre de Carvalho Bridge, if the light rail is to be built along the coastal area, the utilisable space in Zone B will be reduced, which means that Zone B will have to be moved northwards. Similarly, according to* ***illustration no. 14****, by virtue of the development of Zones C and D of Nam Van Lake and the structural constraints resulting from the positioning of the pillars of the Governor Nobre de Carvalho Bridge, if the light rail is to be built along the Nam Van Lake, it cannot be laid*

parallel to or inside the westbound tunnel. In this case, the utilisable space in Zone B will also be reduced, which means that Zone B will have to be moved southwards.

Judging from the above analysis, no matter whether the light rail is to be built along the coastal area or the Nam Van Lake, the utilisable space in Zone B in the new urban areas will be reduced by about 15%-20%. Therefore, when comparing various proposed LRT routes, it is necessary to consider their impacts on the utilisable space in Zone B, thus allowing more flexibility for land planning and the design of buildings.



Chapter V – Preliminary study on the three proposed LRT routes

Introduction to a sub-proposal of proposal no. 3

According to the preliminary route of proposal no. 3, this study aims to analyse the three sub-proposals regarding the ways of construction of the LRT, namely, (1) underground construction, (2) above-ground construction and (3) elevated railways. Furthermore, according to the illustration below, if the light rail is to be built to the south of Avenida Dr. Sun Yat-Sen, it will be close to the development projects situated in the north of the road. But if the light rail is to be built to the north of the

road, it will be much closer to those development projects and will even affect the construction of the Macao Science Center station. Therefore, this analysis will be based on the route planned along the coastal area (i.e., to the south of Avenida Dr. Sun Yat-Sen).

Analysis of three sub-proposals of proposal no. 3

Underground construction (Sub-proposal A)

This sub-proposal is technically infeasible as it means that the light rail tunnel will have to cross another two tunnels (the 3B link of the westbound tunnel and the east-bound tunnel) towards the north near the Kum Iam Statue so that it can connect with the route planned in the initial proposal at Avenida 24 de Junho. Considering that the light rail can only have a maximum slope of 6%, the light rail tunnel must have a height of 7.5 m and the vertical distance between the motorway tunnel and the light rail tunnel must be 10 m, the construction of the underground light rail will need a minimum horizontal distance of 760 m. Since the actual horizontal distance is only 570 m, it is impossible to build an underground light rail. According to ***illustration no. 52****, if the vertical distance between the two tunnels is 10 m, the light rail tunnel will need a horizontal distance of 760 m to be able to cross the 3B link of the west-bound tunnel.*

Above-ground construction (Sub-proposal B)

This sub-proposal is technically feasible. However, since most of the above-ground space will be reserved for the construction of the LRT, the space available for coastal planning will be greatly reduced, which is insufficient for building any bike lane, green space or footpath. So this sub-proposal is not suitable for relevant planning. In addition, by virtue of the high frequency of the light rail service, it will be very difficult for pedestrians to cross the tracks and get to the coast. To solve this problem, it might be necessary to build footbridges or underpasses. Furthermore, the elevated light rail bridge over the light rail station will seriously affect the coastal landscape. Therefore, with various interests taken into account, this sub-proposal is not recommended in this study.

Elevated railways (Sub-proposal C)

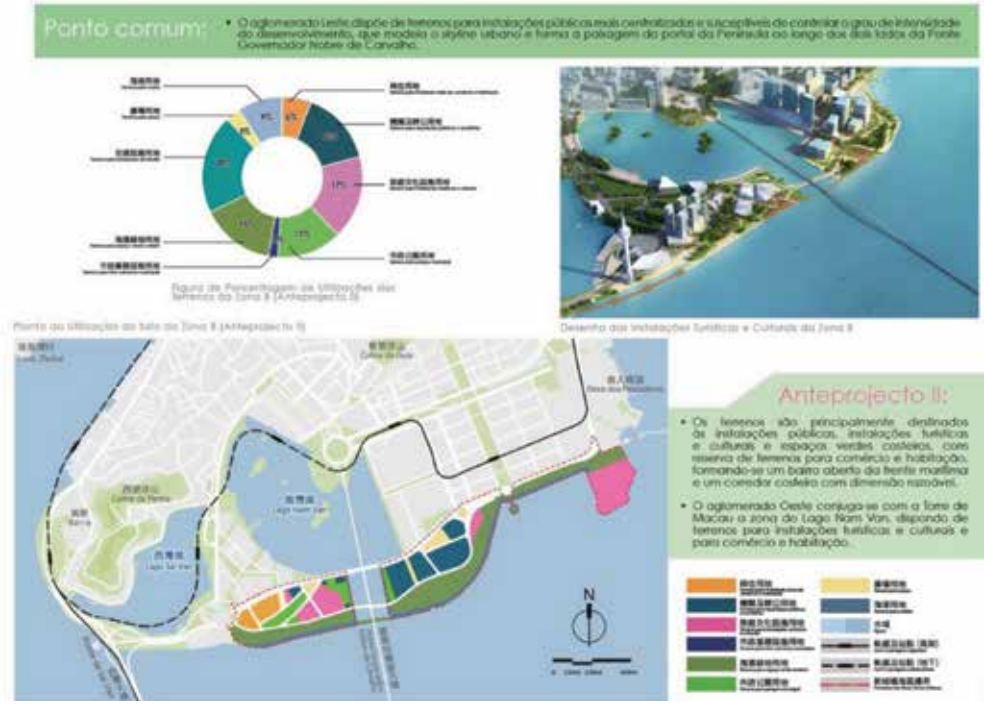
This sub-proposal is technically feasible. Morever, the light rail will take up less above-ground space (only the pillars of the elevated bridge will do) and it will not

have too much impact on the coastal planning. While the landscape of that area will inevitably be affected to a certain extent, the construction of elevated railways will present no obstacle for citizens to reach the coast.

With various interests taken into account, sub-proposal C is considered to be more feasible and practical as compared with the other two sub-proposals. Therefore, this study concludes that sub-proposal C is worth further consideration.

Illustration no. 52

〔The following illustrations are only available in Chinese and Portuguese on the website of the DSSOPT〕



Sistema do Trânsito

Pontos comuns:

- A circular externa fica no espaço subterrâneo, reduzindo a influência da circulação do trânsito sobre a zona da frente marítima. Os arruamentos internos são principalmente destinados à interligação interna da zona.
- Em articulação com o corredor verde que se estende ao longo da costa do sentido Leste-Oeste, são criadas uma zona pedonal e ciclovia contínuas. Beneficia as instalações para atravessamento de peões da Avenida do Dr. Sun Yat Sen, elevando a acessibilidade pedonal entre a Zona E e o NAPE.

Desenho da Frente Marítima da Zona B

Desenho do Sistema Rodoviário da Zona B

Desenho do Sistema de Mobilidade Leve da Zona B

Espaço Subterrâneo

Anteprojecto I:

- As construções públicas são concebidas de tal maneira que permita a utilização, no máximo, do espaço subterrâneo, enquanto os terrenos são utilizados de forma intensiva na construção do coredor verde costeiro.

Desenho da Organização do Espaço Subterrâneo da Zona B (Anteprojecto I)

Anteprojecto II:

- Incentivar a utilização no máximo do espaço subterrâneo por construções comerciais e habitacionais, rentabilizando-se a eficácia na utilização dos terrenos.

Desenho de Organização do Espaço Subterrâneo da Zona B (Anteprojecto II)

Pontos comuns:

- Dá ênfase ao desenvolvimento das instalações públicas e instalações do trânsito no espaço subterrâneo.
- A circular externa será construída no espaço subterrâneo, com parques de estacionamento público criados centralizadamente.
- Planeia a implantação de uma galeria técnica comum e

The Zone B urban plannng proposal for public consultation is again different from the original proposal:

(1) **There is no indication that any underground tunnel for vehicles has been planned in the Eastern and Western districts**;

(2) **If this is simply an omission, it means the urban planning proposal for public consultation could have been better**;

(3) Suppose buildings for the judicial organs will be constructed in Zone B and the light rail is to built on an elevated bridge in this area. Has there been any consideration regarding the impact of the bridge on these buildings, particularly on the traffic and safety problems to be faced by the staff who will have to travel between their homes and the new work places every day? The said urban planning will obviously fail to produce a beneficial effect, not to mention its negative impact on the look of the landscapes.

* * *

(II) - About the government's environmental impact assessment of LRT System Phase I construction (at Rua de Londres and Rua Cidade do Porto)

According to the information provided by GIT, GIT requested the Environment Protection Bureau (DSPA) for opinion on the route and floor plans of stations of the Phase I of LRT system through official letter no. 888/ET/334/2009 on 23rd September 2009, while the latter made a response through official letter no. 498/013/DAMA/DPAA/2009, which indicates that:

"Technical opinion on the route and floor plans of stations of Phase I of LRT system

On the design of Phase I of the LRT system, the former Environmental Committee submitted an environmental impact assessment (EIA) report and opinions to GIT through official letter no. OF.1570/CA/2008 on 4th November 2008. Based on the revised information about the route and floor plans of stations of Phase I of LRT system and the abovementioned official letter, we would like to give the following suggestions:

1). Since the locations of some of the stations have been adjusted, it is necessary to conduct another EIA on the noise and air pollution caused by the construction and operation, especially the dust (total suspended particles) and noise produced by piling and the noise caused by the trains approaching and leaving the stations, the facilities of the stations, the broadcasting and the passengers, and once again calculate the total density of suspended particles and the level of noise at the sensitive receivers. GIT should try to evaluate the effectiveness of the measures in a quantifiable way in order to meet the standard provided by Decree Law no. 54/94M of 14th November about noise and the 'Guidelines on the smoke and noise caused by construction and foundation works' and minimise the impact to the citizens living nearby.

2). There are many sensitive receivers along the LRT route (e.g. residences, schools) and even some routes or stations are very close to them, such as Border Gate, Estrada Marginal da Areia Preta, Rua de Londres and Rua Cidade do Porto, Nam Van Lake and Estrada Governador Albano de Oliveira in Taipa, etc. Therefore, stricter standard should be adopted to evaluate the affect of noise, such as the level "B" under the noise criterion of Hong Kong, in order to better protect the living quality of the residents along the route. Moreover, GIT should assess the impact on the sensitive receivers, especially the views at the lower-level residences and light pollution, in order to ensure the illumination of the stations will not affect the indoor facilities subject to light pollution, such as residence. At the same time, we suggest that the vertical luminance on the windows of the residences should not be over 41x. If needed, the GIT should take relevant measures and their effectiveness should be evaluated in a quantifiable way.

3). Since part of the route will run through narrow streets, such as station no. 3 located at Estrada Marginal da Areia Preta, the GIT should evaluate the ventilation and environmental factors, such as sunshine, at those locations. If needed, the GIT should take relevant measures and their effectiveness should be evaluated in a quantifiable way.

4). In view of serious pollution of the deposits of Sai Van Lake and Nam Van Lake, for the design of the route from station no. 9 to station no. 12, which has been changed to be under the two lakes, GIT should carefully and thoroughly assess the influence of the construction and operation of LRT system on the hydrology,

quality of water, ecology, landscape of the two lakes and on the residences, and render relevant remedies and try to evaluate the effect in a quantifiable way after the measures are taken, in order to formulate effective pollution prevention measures, decrease the negative impact of the construction and operation on the residents and environment, and avoid damage to the ecology of Sai Van Lake and Nam Van Lake.

5). Since the LRT route will pass the Ecological Zone of Cotai, in order to prevent the birds that rest there, especially the Black-faced Spoonbill, an endangered species, from threats, an EIA should be conducted on the zone as one of the main sensitive receivers. The level "A" under the noise criterion of Hong Kong is recommended to be adopted to reassess the noise. Taking into account the affect of the light at the metro route on the Zone, mitigation measure is suggested and its effectiveness should be evaluated in a quantifiable way.

6). Estimation of the quantity of solid waste possibly caused by the construction and operation of the LRT system and stations is suggested. In particular, methods of chemical waste disposal should be suggested in order to meet the requirements under local laws and relevant international conventions.

7). The adjustment of some of the stations will cause damage to existing vegetation in the city and therefore measures for prevention or compensation should be taken. The guidelines of tree transplantation provided by the Civic and Municipal Affairs Bureau (IACM) should be observed in the first place. In case new planting of trees or plants is needed, technical opinions should be sought from the IACM in order not to introduce external species and affect the ecological system of Macao.

8). We suggest compiling and updating the EIA report."

Moreover, the GIT states on its official website that:

"LRT system is an effective, convenient, eco-friendly and reliable public transport system which does not produce any pollution and noise. For the issues of noise that concern the citizens, the government will consider installing noise barrier or adopting a design of full-roofed track, in order to further elevate the standard. Moreover, respective mitigation measures will be implemented for the places possibly affected through on-site monitoring. In 2008, GIT commissioned a Hong Kong-based

consultancy company to conduct a comprehensive EIA on the route and operation of the LRT Phase I, which was initially confirmed at that time. Based on the demands brought by social development and the said EIA, a supplementary research on the environmental impact on the selection of location of factory and the construction of tunnel sections was also commissioned in order to formulate the environmental standards for different phases of the construction of the LRT system. On 31st August 2011, GIT released the EIA report, which indicates assessment of potential impact on noise, air, water quality, ecology, landscape, the cultural heritages, waste disposal and light pollution. Respective mitigation measures were raised in order to meet the standards provided by the laws of Macao and the environmental criteria of Hong Kong applied here and try the best to minimise the impact on Macao citizens. After the mitigation measures were taken, the standards are basically met. GIT stresses that the Macao government makes citizen's lives and property as priority. Therefore, during the construction of the LRT system, the authority will jointly conduct strict supervision of the design and the works done by the contractors with other related departments, in order to ensure that all requirements and safety standards are met and that a convenient, comfortable and eco-friendly LRT service will be provided to the citizens and thus enhance their quality of life. The report of comprehensive EIA on Phase I of LRT system construction is downloadable on the GIT's website at www.git.gov.mo."

(1) - Here comes the same question. The decision to build the LRT system was made in 2009, but why was the EIA report not released until 2011? Did the competent department have no need to release the information because no one had raised objection? We have reiterated that: Information related to technical standards and scientific data shall be fully made public as soon as possible because this is about citizens' right to know but not secrecy or confidentiality of the information and national or regional safety.

(2) - For the EIA reports and their content, some of them were made and compiled by companies which are not specialised in related domains. Therefore, those information and conclusion were not convincing.

* * *

Point 4: Technical considerations reflected on the drawings

Analysis on the technical drawings:

GIT passed a number of technical drawings to the CCAC, including annexes no. C10a, C10b, C10c, C11, C12, C13 and C14. Here is our analysis on the important parts.

- C10a (analysis on the impact of LRT Phase I on surrounding buildings along the route based on the fire safety regulation of Macao **written on 18/05/2010**) 〔see P. 1-39 of the annex〕 points out which parts of the overground track and stations from station no. 1 to no. 23 of Phase I do not meet the requirements provided by Article 8 (Conditions of accessibility and intervention) in Chapter II of the *Fire Safety Regulation* (Decree Law no. 24/95/M of 9th June). There are 15 parts that do not meet the standards, including:

  (1) Pak Tou Garden at the intersection between Avenida do Comendador Ho Yin and Rua dos Currais ahead of station no. 1 (See P. 5 and 9 of the annex);

  (2) Hoi Nam Garden at the intersection between Avenida de Artur Tamagnini Barbosa and Praça das Portas do Cerco (See P. 5 and 10 of the annex);

  (3) Jardim San Pou at Rua dos Hortelãos (See P. 5 and 11 of the annex);

  (4) Macao Government Service Centre at Avenida do Almirante Magalhães Correia (See P. 5 and 12 of the annex).

  (5) Edifício Kin Wa at Estrada Marginal da Areia Preta (See the other side of P. 5 and 12 of the annex);

  (6) Edifício Kin Wa, Edifício Hoi Pan Garden and Veng Kin Industrial Building at the intersection between Estrada Marginal da Areia Preta and Rua do Canal Novo (See the other side of P. 5 and P. 13 of the annex);

  (7) Edifício Nam Wa San Chun at the intersection between Estrada Marginal da Areia Preta and Avenida do Dr. Francisco Vieira Machado (See the other side of P. 5 and P. 14 of the annex);

(8) Nam Fung Industrial Building at Avenida do Dr. Francisco Vieira Machado (See the other side of P. 5 and P. 14 of the annex);

(9) Chong Fong Industrial Building at Avenida do Dr. Francisco Vieira Machado (See the other side of P. 5 and P. 14 of the annex);

(10) Bai Yun Garden at Avenida do Dr. Francisco Vieira Machado (See P. 6 and P. 14 of the annex);

(11) Sands Hotel at Avenida Dr. Sun Yat-Sen (See P. 6 and P. 17 of the annex);

(12) Macao Cultural Centre at Avenida Dr. Sun Yat-Sen ahead of the entrance of Rua de Londres (See P. 6 and P. 18 of the annex);

(13) A construction site at Rua Cidade do Porto, between Edifício Brilhantismo and Edifício Vista Magnífica Court;

(14) A construction site at Rua Cidade do Porto, between Edifício Kam Yuen and Edifício Hoi Keng Jardim (See P. 6 and P. 19 of the annex);

(15) Edifício Kam Yuen at the intersection between Rua Cidade do Porto and Avenida 24 de Junho (See P. 6 and P. 19 of the annex).

- All these 15 sites that do not meet the requirements under the *Fire Safety Regulation* refer to overground track and stations. The clear width between them and the surrounding buildings is less than 6m (See the other side of P. 4 of the annex).

- **Annex C10b [see P. 40-49 of the annex],** written by EFS Consortium on **27/07/2011, shows the locations of section C220 of the route at NAPE,** i.e. locations no. 11 to 15 mentioned in Annex C10a **(See the photo on P. 65 of the annex), does not meet the requirements under the *Fire Safety Regulation*** and **indicates how to solve this problem, such as making slight adjustment of the route to enable the sections at the Sands Hotel, the Macao Cultural Centre and Rua Cidade do Porto to meet the requirements under the** *Fire Safety Regulation***.** For this purpose, it explains Article 8 of the regulation and asserted that it is possible to fulfil the requirements under this article (See the

other side of P. 42, P. 46 and 48 of the annex). Finally, the sectional view of the overground section at Rua de Londres, which indicates that the distance between the track and the surrounding buildings is 7.54m (See P. 49 of the annex].

We are skeptical about GIT's approach of management of this project: The parts of the design which did not meet fire safety requirements were still being amended in July 2011 but it repeatedly told the public that the route had been finalised.

Take the Taipa section as an example, after the CCAC commenced investigation, it was not until 2011 that the GIT suggested the Chief Executive confirming the LRT route in Taipa, while the latter officially signed to confirm the route of Taipa section on 25th August 2011.

As to the section in Macao Peninsula, the CCAC has not yet found out any official documents proving that the Chief Executive had already signed to confirm the relevant route and construction plan.

- Annex C10c (See P. 50-57 of the annex) is an assessment report given by Mitsubishi Heavy Industries, Ltd. to EFS Consortium on 29/07/2011. Written on 24/07/2011, **the report indicates the solution to the problem concerning the insufficient width between the overground section at Rua Cidade do Porto and Avenida 24 de Junho and the surrounding buildings. For this purpose, the requirements for stations and overground sections adopted in neighbouring regions such as Singapore and Hong Kong and Paragraph c) of Article 8 of the *Fire Safety Regulation* are taken as reference. The conclusion is that the distance between a station or overground section and surrounding buildings should be 6m**. The last page indicates a draft drawing of the relevant section **which shows the adjustment of the distance between the overground section at Rua Cidade do Porto and Avenida 24 de Junho and the surrounding buildings to be 6m**. (See P. 57 of the annex).

- Annex C11 (See P. 59-60 of the annex) is official letter no. 5095/DT/2011 dated 15/08/2011 from CB, as a reply to official letter GIT-O-11-1180 (Request for technical opinions on "Basic Plan of Design of routes and stations of LRT sections at Nam Van Lake and Barra") dated 14/07/2011 from GIT. **It indicates that the design of station no. 9 (Nam Van Lake station) does not meet the**

requirements and that NFPA can be applied to the design to supplement the *Fire Safety Regulation* when there is no relevant provision under the latter. Although the DSSOPT did not oppose to the suggestion, it requested for approval by the competent department regarding the scope of application of the NFPA and evaluation and testing based on the section about design under the NFPA conducted by a third entity which is internationally recognised.

- Annex C12 (See P. 62-167 of the Annex) is a report about fire safety of section C220 of LRT Phase I conducted by XXX Construction and Design Consultancy Company Ltd., **which defines the distance between emergency exits based on the NFPA since the overground sections at Rua de Londres and Rua Cidade do Porto are full-roofed**.

- Based on the regulation applied to the MRT system in Taipei and Article 8 of the *Fire Safety Regulation*, **in the section at NAPE, only the sections at Sands Hotel and Macao Cultural Centre** (locations no. 11 and 12 mentioned in Annex C10a) **do not meet the standard. The document is enclosed with a design chart of the section of NAPE area**, part of which indicates that **some of the flowerbeds on the route should be removed in order to leave enough space for fire engines pursuant to Paragraph 3c) of Article 8 of the *Fire Safety Regulation*, which stipulates that the minimum bending radius shall be 13 m**. (See P. 84-102 of the annex).

〔Note: Obviously, this is one of the remedies for the adjustment of the route to run through Rua de Londres and has reflected that there were many loopholes and deficiencies of the design at that time!〕

- Some parts of the annex (See P.103-122 of the annex) highlight the issues about 6 m distance between the track and surrounding buildings with drawings attached. **The sections at Sands Hotel 〔See P.105 and 107 of the annex〕 and Macao Cultural Centre [See P. 108 of the annex] do not meet the requirement of maintaining a 6m distance from surrounding buildings. On the other hand, some parts highlight the requirement for minimum width of 3.5m provided by Paragraph 3a) of Article 8 of the *Fire Safety Regulation*, which is basically met**.

- Finally, there are profiles of the LRT route and surrounding buildings (See P.

144-167 of the annex), among which the profile no. A-A of Sands Hotel (P. 146 of the annex), **profile no. C-C of Sands Hotel (P. 150 of the annex) and profile no. D-D of Macao Cultural Centre (P. 152 of the annex) show that the distance between these three sections and the surrounding buildings is less than 6 m**.

- Annex C13 (See P.169-171 of the annex) **is official letter no. 5097/DT/2011 dated 15/08/2011 from the CB**. As the reply to official letters no. GIT-O-1198 dated 15/07/2011, GIT-O-1245 dated 22/07/2011, GIT-O-1256 dated 25/07/2011 and GIT-O-1322 dated 01/08/2011 from GIT, **it points out that the whole design of LRT system should relate with the conditions for intervention of fire service in case of emergency. In the reply, CB requested GIT to solve the problem concerning accessibility of fire engine to a section at the Macao Cultural Centre, from which the distance to the surrounding building is only 4.77 m (location no. 12 in annex C10a)**.

- **Regarding the relevant distances of only 3.32 m and 5.51 m at two sections at the Sands Hotel** (location no. 11 in annex C10a), **CB considered that they might not cause significant impact on the project but suggested improving the pedestrian zones at relevant areas of the Sands Hotel**.

- Annex C14 (See P. 173-297 of the annex) is a report of risk assessment of Phase I of the LRT system conducted by a company in Hong Kong. Written on 15/03/2011, the report analyses the risk of the nearby oil depots, gas stations, petroleum gas depots and underground natural gas pipelines posed to the route of LRT Phase I.

- Annex C15 (See P. 293-295 of the annex) is a compilation of related regulations in Macao and neighbouring regions, including Paragraphs 3 a) and 4 c) of Article 8 of the *Fire Safety Regulation* of Macao, **some laws provided by the Land Transport Authority of Singapore and the Buildings Department of Hong Kong, and the Regulations Governing Prohibitions and Restrictions on Construction along the Routes of Mass Rapid Transit System of Taiwan. All of them have one point in common: the stipulation that the distance between the metro system and surrounding buildings shall be 6 m**.

- To sum up annex C10a to annex C14, for the design of LRT Phase I by GIT, the section between stations 1 (ST1, Barrier Gate) and 9 (ST9, Nam Van Lake), including the stations and the track, will be elevated. **Following analysis, it**

is discovered that there are 15 sites along the elevated route that do not accord with Article 8 of the *Fire Safety Regulation*, i.e. the distance between the respective sections and surrounding buildings is less then 6 m. They are listed and illustrated to show the relative locations.

- In order to solve the problems, Mitsubishi Heavy Industries, Ltd., EGIS Rail, FASE and Setec Its" Consortium (EFS) and a local construction and design consultancy company, based on the examples of the metro systems of neighbouring regions, suggested the standard, which is that the distance between the elevated sections and surrounding buildings should be 6 m.

- NFPA is applied to the distance from the emergency exits to the elevated section when there is no provision in this aspect under the *Fire Safety Regulation*. The DSSOPT did not oppose to this point, **but CB requested for approval by the competent department regarding the scope of application of the NFPA and evaluation and testing based on the section about design under the NFPA conducted a third entity which is internationally recognised**.

- As to the solution to the problem concerning less than 6 m between the elevated sections of LRT Phase I and the surrounding buildings, the EFS (See P. 48 of the annex) adopted the suggestion raised by Mitsubishi Heavy Industries, Ltd. (See P. 57 of the annex), **which is to make a slight change of the track at Rua Cidade do Porto towards Avenida 24 de Junho, so that the track will be slightly leftward at the rightward turning corner to Avenida 24 de Junho so as to leave sufficient space for the turning when driving a car. Finally, the local construction consultancy company also adopted this suggestion** (See P. 114 of the annex). Therefore, the problem at locations no. 13, 14 and 15 in annex C10a can be solved. **If the change is made, the section at Avenida 24 de Junho will be closer to Wynn Hotel with a distance of 7.67 m** (See P. 114 of the annex)**. The change of the turning curve can be seen in annex C10a** (See P. 19 of the annex)**, C10b** (See P. 48 of the annex) **and C12** (See P. 114 of the annex).

- **However, for locations no. 11 and 12, both EFS and the local consultancy company have never raised any effective solutions. As shown in the annex, the distance between them and the surrounding buildings is still less than 6 m**. (See P. 145-146 and P. 149-152 of the annex).

- Therefore, based on the design of LRT Phase I, there are 16 places which failed to meet the requirements under the *Fire Safety Regulation* at the very beginning mainly because of inadequate distance to surrounding buildings [under Article 4c of Article 8]. In order to solve the problem, adjustments have been made to the route and relevant standards adopted in neighbouring regions have been taken as reference. As a result, **it is found that locations no. 13, 14 and 15 (at Rua Cidade do Porto) have been amended. However, no. 11 and 12 (Sands Hotel and Macao Cultural Centre), still have not been improved. Moreover, no amendment to no. 1 to 10 (from Barrier Gate Station to Bai Yun Garden) was seen in the Annex**.

- The drawings in the annex showed that the requirement about accessibility of emergency vehicle (Paragraph 3 of Article 8 of the *Fire Safety Regulation*) was basically fulfiled.

- In the official letter from the CB indicated in C13, only the direction of amendment to 11, 12, and 13 was mentioned, but the solution was not indicated in the annex. **This shows that what the annex indicated was not the final version and the solutions to the parts which failed to meet the requirement under the regulation were still to be revised**.

Therefore, up to 2011, GIT has still been revising the design in order to solve the technical problems but has never revealed any substantial data related to safety. Therefore, it is reasonable for the citizens living in this area to question the safety of the LRT system, since it is directly related to their safety of life and property.

* * *

As to whether there was any discrepancy between the measurements of the sections at Rua de Londres and Rua Cidade do Porto and the design, the CCAC has collected the following data after it dispatched staff to the site for measuring:

1. The distance between Zhu Kuan Building and Kao Ip Secondary School at Rua de Londres is 23.88m. **Although there is a difference of 12 cm from the 24 m distance shown in the drawings, it still meets the requirement for 6 m distance between the LRT and surrounding buildings**.

2. The distance between Edifício Wan Yu Vilas and Edifício Tong Nam Ah Jardim is 24.01 m.

3. The distance between Edifício Brilhantismo and the fencing boards outside the construction site at Rua Cidade do Porto is 22.594 m. **Although there is a difference of 1.406 m compared to the 24 m distance shown in the drawings, the distance could not be accurately measured due to the fencing boards**.

4. The distance between Edifício Kam Yuen and the construction site at Rua Cidade do Porto is 21.58 m. **Although there is a difference of 2.42m from the 24 m distance shown in the drawings, the distance could not be accurately measured due to the fencing boards.**

5. The intersection between Rua Cidade do Porto and Avenida 24 de Junho (the corner of Rua Cidade do Porto toward Wynn Hotel) is 52.42 m (from Kam Yuen Building to MGM), 40.84 m (from another corner of Kam Yuen Building to the fencing boards of Wynn Hotel). **Since there is no information and drawing of the area, the CCAC is not able to make any comparison.**

* * *

Analysis of the annexes

Let us take a look at ANEXO 1, ANEXO 2, ANEXO 3, ANEXO 4 and ANEXO 5 provided by GIT.

- **ANEXO 1** comprises five parts, namely 1.1 to 1.5 (See P. 1-95 of the annex). 1.1 to 1.3, 1.4 and 1.5 correspond to C10a, C12 and C15 respectively in the analysis report dated 24/10/2011.

- **ANEXO 2** comprises two parts (See P. 97 to 204 of the annex):

- The first part is a report "Comprehensive EIA of Phase I of LRT system" written by YY Consultancy Co. Ltd. (See P. 97-186 of the annex) **dated August 2011**, which is an assessment of environment impact of the Phase I of LRT system (on the route starting at Barrier Gate, running through Areia Preta, NAPE,

Nam Van Lake, Sai Van Lake and Barra, Taipa Pequena, Jockey Club, Cotai District, Macao East Asian Games Dome, Macao University of Science and Technology ending at Avenida Wai Long) in the aspects of noise, air, water quality, landscape, cultural heritages, disposal of waste, ecology and light pollution. The report pointed out that since there is no statutory EIA procedure and regulations in Macao, the assessment was conducted based on not only related regulations of Macao but also guidelines and criteria adopted in Hong Kong and Mainland China. In addition, the report also suggests some measures to be taken during construction and operation, so as to meet the relevant laws of Macao and the requirements of Hong Kong adopted in the EIA. To conclude, the report indicates that if the suggestions are adopted, the requirements can be met basically and that if there is any update of the project, the company will update the EIA and render relevant suggestions.

- The second part is the summary of data for presentation during the "Briefing Session on the EIA on LRT Phase I on 31st August 2011" (See P. 187-204 of the annex), which is based on the content of the EIA report mentioned above and includes a compilation of the data about the train to be used. As to the environmental impact, all information is based on the EIA report, including regulations, observation points and relevant solutions (mitigation measures). Finally, the conclusion suggests that statutory requirements should be met and environmental supervision and examination should be carried out during the construction in order to ensure effective implementation of all mitigation measures.

- **ANEXO 3** comprises two parts (See P. 206-218 of the annex).

- The first part is "ESTUDO DE IMPLEMENTAÇÃO DO SISTEMA DE METRO LIGEIRO PARA MACAU, RELATÓRIO DE CONSULTAS PÚBLICAS" (hereinafter "Public Consultation Report") (see P. 206-201 of the annex) written by the Infrastructure Development Office (GDI) in May 2007 based on the public's opinions and suggestions (including views and suggestions collected through meeting with organisations and representatives of different sectors such as transportation, construction, environmental protection and gaming as well as questionnaire surveys) and surveys and researches conducted by the University of Macau. According to the views collected, the factors which should be considered included connection with other public transportation tools, harmony with the landscape, price ranges and environmental impact of noise. The conclusion was that the public's perception on the LRT system is positive

in general and they were concerned with the possible approaches to perfect the transport network. Moreover, 70% of them favoured the construction of LRT system.

- The second part is "ALINHAMENTO E ESTAÇÕES DA FASE 1 DO SISTEMA DE METRO LIGEIRO DE MACAU, OPTIMIZAÇÃO DO TRAÇADO, RELATÓRIO" (hereinafter "Report of Route Improvement") (See P. 211-218 of the annex) written by the GDI in 2007, which firstly pointed out 11 points that deserve public attention as the Public Consultation Report had mentioned:

  (1) Connection with buses;

  (2) Connection with taxis;

  (3) No station at the Inner Harbour and the Central District;

  (4) Underground track in Taipa;

  (5) Privacy;

  (6) Parking lots;

  (7) Visual affect on cultural heritages;

  (8) Noise caused by construction;

  (9) Coverage of LRT network;

  (10) Prepaid card recharging system;

  (11) Monorail system.

- For these 11 points, the Public Consultation Report had already addressed part of them. Therefore, the Report of Route Improvement only analysed no. 7 and 9. For the route of Phase I, there were options A (running through Avenida de Venceslau de Morais and Rua dos Pescadores to Avenida da Amizade) and B (running through Avenida do Dr. Francisco Vieira Machado to Avenida da Amizade) for the section in the Northern District (See the other side of P. 217 of the annex), while there were options C (running through Avenida da Amizade

and Avenida Dr. Sun Yat-Sen to Avenida 24 de Junho) and D (running through Avenida da Amizade and Rua de Londres to Avenida 24 de Junho) for NAPE as well (See the other side of P. 217 of the annex). The report suggests choosing B and D because B is located in a residential area with large influx of people, from which the walking distance to the stations is short, but A would only pass an industrial area. D was suggested because it is far away from Kun Iam Statue (located at line C) and thus visual impact and possible affect on Avenida Dr. Sun Yat-Sen, which would become a new transportation centre, will be minimised. Moreover, the report also suggests that the route should run through Praça de Ferreira do Amaral instead of Arts Garden and Nam Van Lake in order to avoid visual impact on the Military Club. For the route in Taipa, the report proposes having one line instead of two due to technical issues and difficulties for passengers to transfer to other means of transportation.

- **ANEXO 4** is "Summary of Technical Analysis on Building NAPE Section of LRT Phase I in Underground" (hereinafter "Analysis on Underground") (See P. 220-246 of the annex) written by GIT on a date unknown (The content reflected that the date might be 17/10/2011 or later). It comprises two appendices:

- Appendix 1 is "data to be presented at meeting with citizens for clarification" (See P. 222-236 of the annex), which comprises two parts:

- Part 1 is an introduction of the section at NAPE of the LRT Phase I and the stations;

- Part 2 is an analysis on the plans of building the section at Rua de Londres underground in response to citizen's suggestions, which contains the following three plans:

- Plan 1 is "to build the section at Rua de Londres underground", for which two options were provided:

  A. "Underground section starting at Rua de Londres" (See P. 231-233 of the annex): At the section between Rua de Londres and the Cultural Centre, starting from Kao Yip Secondary School/Zhu Kuan Building, the elevated track at 5.5m height would sink gradually by 5% inclination (See P. 232 of the annex) through Edifício Tong Nam Ah/Edifício Wan Yu Vilas. Finally, at Dr. Carlos d'Assumpção Park, the route will run underground. The required length of this section is at least 293m. In this case, the driving

routes at Avenida do Governador Jaime Silvério Marques and Alameda Dr. Carlos d'Assumpção will be blocked permanently (See P. 236 of the annex).

B. "Underground section starting at Avenida Dr. Sun Yat-Sen (next to Sands Hotel)" (See the other side of P. 233 of the annex): Since the relevant section of the road is elevated, **it should be removed first. However, the removal might increase the cost, lengthen the construction period and disconnect Avenida Dr. Sun Yat-Sen from Avenida da Amizade**.

- **Plan 2: to replace the section at Rua de Londres by an underground one via Avenida Dr. Sun Yat-Sen (See P. 234 of the annex). GIA pointed out that this solution would affect the views and the future planning of Avenida Dr. Sun Yat-Sen. Like Plan 1, there is also an elevated section 293 m in length sinking gradually into underground, which will end up becoming a barrier. Since within a radius of 300 m of the surrounding area of the station, 40% will be situated on water, the service might not cover more citizens.**

- Plan 3: to replace the section via Rua de Londres by an elevated one via Avenida Dr. Sun Yat-Sen (See the other side of P. 234 to P. 235 of the annex). **GIT pointed out that this solution would affect the views and the future planning of Avenida Dr. Sun Yat-Sen. Since within a radius of 300 m of the surrounding area of the station, 40% will be situated on water, the service might not cover more citizens.**

〔 Note: We consider that all these reasons were not backed by sufficient basis and therefore they were unconvincing. Take Plan 3 as an example. In this case, given that Rua de Londres and Avenida Dr. Sun Yat-Sen are very close to each other, what is the basis for the reason that 40% of the surrounding area will be situated on water? Even if the route will run through Rua de Londres, for the side of Kun Iam Statue, there is still no residence in this seaside zone. It is normal that 40% of the stations will be on water. In this sense, why the route is set to run through Rua de Londres? Once again these reasons are not convincing. We do not understand why the percentage of water surrounding the station was considered as a factor of the issue. Is it impossible to adjust the locations of the stations?〕

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- Appendix 2 is "Data for presentation at Legislative Assembly" (See P. 237-246 of the annex), which is an introduction to the section of LRT Phase I at NAPE with a brief summary of the three solutions indicated in Appendix 1. Finally, GIT concludes that the alteration of the route at NAPE will cause eight problems:

  (1) The social consensus achieved through the public consultation conducted in 2007 cannot be adopted;

  (2) The efficiency of service will decrease drastically;

  (3) Negative impact on the seaside urban landscape will be caused;

  (4) Bypass roads will be blocked during construction;

  (5) Construction cost will increase dramatically beyond expectation;

  (6) Traffic condition will be difficult to improve and thus society will pay a heavy price for it;

  (7) Relevant awarded contracts will have to be altered or suspended;

  (8) Even if the current route is replaced by a route via bypass roads, there will be opposite opinions. At the end of the summary, there are suggestions of improvement measures for remaining the route via Rua de Londres.

- **ANEXO 5** comprises two parts (See P. 248-279 of the annex):

- The first part is "Technical analysis on the impact of including the construction of NAPE section into LRT system Phase 2" (hereinafter "impact analysis") (See P. 248-254 of the annex) without specified date, which analysed the feasibility of including the NAPE section in Phase 2 of LRT project in the following three aspects:

  (1) The construction of NAPE section cannot be postponed in terms of overall strategies and sustainable development;

(2) The construction of NAPE section cannot be postponed in terms of technical conditions of LRT system;

(3) The construction of NAPE section cannot be postponed in terms of social and economic situations.

– The impact analysis lists various reasons against including the construction of NAPE section into Phase II, including:

(1) The effectiveness of LRT system as a public transport tool cannot be exerted as its role in relieving traffic congestion will be weakened when the route of Phase I is shortened and consists of only a section from Taipa to Nam Van Lake;

(2) If the NAPE section is included into Phase 2, the construction of north-east section needs to be postponed. Moreover, in order to maintain normal operation of the entire route during construction, it will be necessary to expand and upgrade the control centre being in use, which will cause technical difficulties and significant increase of costs;

(3) The contracts of design of details of Phase I have already been outsourced after referring to "Supplementary study on integration of LRT system into Zone B". Excluding NAPE section from Phase I might cause problems concerning compensation and alternative options. Finally, the analysis cites the content of the supplementary study as solutions to the eight problems listed in the second part of ANEXO 4:

Problem	Conclusion
Will the social consensus achieved through the public consultation in 2007 not be adopted?	Because the proposal in 2009 has reflected the social consensus on the route and the public's support, the consultancy company did not suggest disusing the social consensus achieved through the public consultation conducted in 2007.

Will a proposal that will affect the efficiency of service for citizens be accepted?	Comparing with the alternative route, the proposal in 2009 accords the best with the principles of the traffic strategies adopted in Macao and maximises the effectiveness of LRT service.
Will a proposal that will have negative impact on the seaside urban landscape be accepted?	The alternative route has a negative impact on the seaside corridor and is against the will of a majority of Macao citizens, so it is unacceptable.
Can the effect on the bypass roads during construction be accepted?	During the construction period, the impact of the alternative route on the mainline will be bigger than that of the proposal in 2009. Moreover, it will also affect the design of circular tunnel, causing significant impact on the overall planning of the new urban areas as well as the traffic condition.
Can the dramatic increase of construction cost be accepted?	The cost for the construction of the alternative route will increase by 2.3 billion to 3.1 billion, which may be considered as ineffective use of government resources.
Can the difficulties caused by significant delay of the construction be accepted?	As calculated by the consultancy company, the estimated social cost for the adoption of the alternative route will amount to 8.2 billion to 10.7 billion.
Can termination of related outsourced contracts be accepted?	The government has to pay a compensation amounting to about 500 million, which may damage the government's image and credibility and cause a waste of public fund.
If there are public opinions against the replacement of bypass routes, is it necessary to conduct review or consultation again?	The consultancy company did not suggest conducting another consultation or review on the proposal as this approach would contradict the purpose of public consultation and trigger a vicious circle.

- The second part is "Final report: Supplementary study on integration of LRT system into overall planning of Zone B (revised)" (hereinafter "supplementary report") (See P. 255-279 of the annex). Written on an unknown date, it focuses on evaluating the impact of the integration on the completion and inauguration of LRT Phase I and proposes the following three plans (See the other side of P. 259 and P. 260 of the annex):

  - Plan 1 – to set up a station at Macao Science Centre, from which the elevated track sinks into underground and runs through the seaside of Zone B;

  - Plan 2 – to set up a station at Macao Science Centre, from which the elevated track sinks into underground and runs through Avenida Dr. Sun Yat-Sen;

  - Plan 3 – to set up a station at Macao Science Centre from which the route will run through Avenida 24 de Junho and connect to the Arts Garden and Nam Van Lake stations.

- The supplementary report pointed out that Plan 1, Plan 2 and ANEXO 4 had the same problem concerning building the section at Rua de Londres underground, which is that **a certain length of ramp** (based on the information indicated on the other side of P. 260, the inclination is 6%) **will be required for the connection between elevated section and underground section, which will cut the roads and affect the views. The utilisation rate in the initial stage will be lower. Plan 3 will affect the construction of underground tunnel at the new urban areas**. Moreover, the supplementary report also indicates that since some relevant contracts have already been outsourced, changing the design will cause problems concerning compensation for cancelling the contracts and a loss due to increase of construction costs, which is estimated to be MOP10,720,000,000 (See P. 271 of the annex). Therefore, according to the report, improving the original plan will be a more reasonable approach. The conclusion drawn by the consultancy company has responded to the eight problems listed in appendix 2 of part 2 of ANEXO 4 (the table above).

* * *

Upon a synthetic analysis on ANEXO 2 to 5, our initial conclusion is the following:

(1) The public consultation about the LRT system of Macao was conducted in 2007. At the same time, the University of Macau was commissioned to conduct a research about it. Based on them, the GDI wrote the Public Consultation Report and the Report of Route Improvement (ANEXO 3), which respectively show the data collected through the public consultation and indicate a revised version of the route of LRT Phase I, which runs through Avenida do Dr. Francisco Vieira Machado instead of Avenida de Venceslau de Morais, because the former is closer to residential area, which will thus cover larger residential area (within a radius of 330m), boosting convenience for citizens and utilisation;

(2) **As to the NAPE section, the plan to replace the section via Rua de Londres by an elevated one via Avenida Dr. Sun Yat-Sen was given up because it will have negative visual impact on the area at Kun Iam Statue and affect the construction of underground tunnel at NAPE. Moreover, the station at Rua de Londres would have a larger coverage of users** (if the route runs through Avenida Dr. Sun Yat-Sen, 40% of the coverage of the station would be on the sea)**. Therefore, the route of Phase I has been finalised basically**.

(3) As to the route of Phase I, GDI and Mitsubishi Heavy Industries, Ltd. respectively commissioned YY Consultancy Co. Ltd. to conduct an EIA (ANEXO 2) on the route and depots. In the end, suggestions about the construction and operation of the LRT system based on the result of the research were raised.

(4) Facing the demands brought by the residents living at Rua de Londres at NAPE, the GDI conducted the Analysis on Underground, in which three plans were proposed. The first one is that the route will run through Macao Cultural Centre and sink into underground gradually by 5% inclination starting from Rua de Londres. The sinking section, which is required to be 293 m in length, however, will cut Avenida do Governador Jaime Silvérìo Marques and Alameda Dr. Carlos d'Assumpção. Therefore, this plan is considered unfeasible. **The remaining two plans provide two options – to run through Avenida Dr. Sun Yat-Sen underground or overground, which are considered by GDI to have negative visual impact and insufficient coverage following analysis** (sharing the same perspective as the Report of Route Improvement in ANEXO 3).

(5) At the same time, the GDI was also considering the feasibility to include the NAPE section of LRT Phase I in the overall planning of new urban areas (Zone B) (ANEXO 5). Following analysis, the GDI considered that it would lead to an economic loss corresponding to MOP10,720,000,000 and technical difficulties in the construction of the tunnel to be built at NAPE (for example, the inclining section into underground by an inclination of 6% would crash into the tunnel [See the other side of P. 260 of the annex]). Therefore, the GDI suggested improving the original plan by increasing soundproof boards and green areas and improving the landscaping along the route.

However, there are problems including:

(1) These documents show that the route of LRT Phase I was finalised by the GDI with reference to the result of public consultation and the research done by the University of Macau, **but there were no original documents that presented the information. For example, there was no information to support how the coverage area within a radius of 300 m was defined (The GDI might refer to the experience of other countries and regions)**.

(2) **The GDI factored a maximum inclination of 5% into the rejection of the plan of building underground section at Rua de Londres, but for the analysis of the feasibility to integrate LRT system into the overall planning of new urban areas (Zone B), the inclination that the GDI referred to is 6%. For the same LRT system, different calculation methods have been adopted. Since there is a lack of original documents, it is difficult to know whether the difference was due to typo mistake or other reasons. The CCAC has no intention to ponder on this matter**.

(3) For the tunnel to be built at NAPE which was mentioned several times, since there is no source of information, it is difficult to ponder on it.

(4) **For another alternative plan to build underground section at Rua de Londres, which will start to sink into underground at Avenida Dr. Sun Yat-Sen (next to Sands Hotel), according to the information, this plan is not impractical from a technical perspective, in spite of the fact that society will have to pay a higher price for it as mentioned in ANEXO 4. However, this is directly related to the mistake of management made by the competent authority**.

(5) **There is indeed a lack of scientific data and technical criteria. In this sense, what is the reason for changing the section running through in front of Headquarters of Macao SAR Government to the underground design? We do not believe that the technical conditions for constructing tunnel at this area are better than that for Avenida Dr. Sun Yat-Sen**.

* * *

A report made by a local consultancy

XXX Civil Construction and Design Consultancy Co. Ltd. (See P. 70 of the report) made a consultant report named Abstracts on Preliminary Design on 13th July 2011 and sent it to the GIT on 19th July 2011. Here we reveal part of its content:

" Plan for Construction of Section C220 of LRT System of Macao:
Abstracts on Preliminary Design

The graph above shows that the distance between the buildings at both sides of Rua de Londres and Rua de Cidade do Porto is 24 m. After due consideration of various factors, the width of the elevated track has been narrowed down to 9 m, leaving a distance of 7.5 m to surrounding buildings, while the height (the distance between the surface of the track to the road) is 10 m, which is similar to that of the podia of surrounding building, so that the impact on the residents nearby will be minimised.

Landscape

The elevated section located at Rua de Londres and Rua de Cidade do Porto will have negative impact on the landscape, so we suggest taking the construction of some overpasses in Macao as reference, such as the overpass at Avenida do Comendador Ho Yin, of which the pillars are surrounded by plants in order to increase green areas to minimise the impact.

Noise

After consulting the EIA report enclosed with the tender documents, we suggest installing soundproof blocks at the elevated section at Rua de Londres and Rua

de Cidade do Porto in order to decrease noise pollution and negative visual impact on residents caused by operation. We also suggest referring to some construction projects in progress in Hong Kong, where vertical greening has been adopted as soundproof barrier.

Utilisation of the space under the track

There are many streets surrounding Alameda Dr. Carlos d'Assumpção, but the traffic condition at Rua de Londres and Rua de Cidade do Porto is not very heavy. If these two street are reserved exclusively for pedestrians and the green space under the elevated track is enlarged to improve the conditions for pedestrians and tie in with the pedestrian facilities of the station at Alameda Dr. Carlos d'Assumpção (station no. 7), the pedestrian conditions in east-west direction at this area will surely be improved, encouraging citizens to travel on foot. With better distribution of traffic flow, it is expected that this will not cause serious pressure on the traffic.

Fire safety

According to the fire safety laws in Macao, adjourning buildings with 50% accessible exterior walls that are served by areas with a clear width of 6 m fulfil the requirements for access of fire engines ***pursuant to Article 8 of Chapter II of the Fire Safety Regulation of Macao. For the buildings nearby, the free access areas which do not directly face the LRT route already allow sufficient space for access of fire truck required by the law****. Nevertheless, in order to facilitate access of fire truck, the two streets can be reserved exclusively for pedestrians as mentioned above. As a result, there will be sufficient space to be reserved as an emergency passage way and a clear width of more than 6 m and thus the residents' worries about fire safety will be eliminated.*

B.3 Integration of Station at Alameda Dr. Carlos d'Assumpção (station no. 7) into the park

Requirements

1. The station situated at Dr. Carlos d'Assumpção Park will undoubtedly bring an increase of the flow of people on the both side of the park. In order to decrease the conflict between the increase of passers-by and the traffic condition, improvement of the pedestrian facilities between the

buildings surrounding the park and the station is the main point which should be considered.

2. *The station will occupy the space intended for greening. In order to make up for the loss of space and beautify the surrounding environment, another main point which should be considered is to improve the exterior design of the station in order to integrate it into the greening of the park.*

3. *Features of station no. 7*

- *Change of exterior design of the station in order to match the greening of the park*
- *A platform for scenic viewing on the top in order to make up for the occupation of spaces of the park*
- *A pedestrian passage beneath the ground floor of the station which allows free access of passengers*
- *Outdoor elevators to the platform (stairs and elevators)*

C. Major problems concerning the alternative plan (Avenida Dr. Sun Yat-Sen)

C.1 Conflict with government's infrastructure planning

According to the research and proposal submitted by GIT to Urban Planning Department of DSSOPT, an underground driveway and a coastal corridor with greenery will be built at Avenida Dr. Sun Yat-Sen. If the LRT track is built there, the future planning will be affected. At the same time, the planning of the land reclamation project at Zone B is ongoing. If LRT route is included in the plan, the objective to put LRT Phase I into operation by 2015 will be affected;

C.2 Visual impact of the overground track on the coastal line and Kun Iam Statue

If the elevated section of LRT system is built at Avenida Dr. Sun Yat-Sen, there will be a visual impact on the coastal line of the road and Kun Iam Statue as well as the coastal corridor being planned by the government;

C.3 Service radius and convenience for citizens

Plan for reference

The station is located within Dr. Carlos d'Assumpção Park, near office and residential buildings. Within a radius of 300 m, it covers a terrestrial area of 244,000 m², which allows more efficient service for the citizens;

Alternative plan

The station is located next to Kun Iam Statue at Avenida Dr. Sun Yat-Sen, which is far away from the buildings surrounding the Dr. Carlos d'Assumpção Park, covering a terrestrial area of 156,000 m² within a radius of 300 m. Compared with the plan above, this is less convenient and citizens are less likely to be encouraged to use the station;

C.4 Pedestrian facilities at Avenida Dr. Sun Yat-Sen

Due to existence of LRT station, the flow of people between the station and surrounding buildings will dramatically increase. If the station is built at Avenida Dr. Sun Yat-Sen, the pedestrian facilities will have visual impact on the coastal line and the Kun Iam Statue. Meanwhile, in view of the traffic flow of high speed at Avenida Dr. Sun Yat-Sen, if citizens walk across the road directly instead of using the pedestrian facilities, the risk of traffic accident will increase dramatically.

D. Comparison

Comparison in terms of environment ("A")

Order	Item	Plan for reference	Grade	Alternative plan	Grade
A.1	Landscape	The width of the part of the road occupied by the elevated track 37.5% (9/24=0.375), Visual impact on inner streets and lower-level residences.	6	Visual impact on the coastal line of Avenida Dr. Sun Yat-Sen and Kun Iam Statue.	8
A.2	Noise	Place soundproof blocks in order to reduce the impact of the elevated track located at an inner street on surrounding residents	4	Located on coast and far away from residential areas, the station has low impact.	6
A.3	Air pollution and ventilation	As the elevated track is located at inner streets, appropriate test and simulation on computer should be conducted to analyse the air pollution and change of ventilation.	5	Due to the development of new urban area Zone B, the buildings surrounding the track will be affected by air pollution and noise	6
A.4	Light pollution	No need to use strong lighting system as the trains are automatic	6	No need to use strong lighting system as the trains are automatic, but the impact on the Kun Iam Statue will be more obvious at night	4

A.5	Impact of location of station on surrounding environment	The station is located to the south of Alameda Dr. Carlos d'Assumpção, so its exterior design should match the park in order to minimise the impact.	6	Citizens'right to enjoy the views of coastal line should be taken into account as it will be affected.	4
		Subtotal of A =	27		28

Comparison of issues related to citizens' daily life ("B")

Order	Item	Plan for reference	Grade	Alternative plan	Grade
B.1	Conflict with government's infrastructure development project	As Rua de Londres and Rua de Cidade do Porto has been developed, there is no large infrastructure development project so far	8	The exterior road will be rebuilt as a green coastal corridor and an underground driveway will be built in order to increase the capacity of flow of vehicles. The construction of LRT system along the coast will have significant impact on the traffic planning	3
B.2	Issues about fire safety	Accord with fire safety laws of Macao	5	Accord with fire safety laws of Macao	6

B.3	*Accessibility to LRT (radius of service) and connection with other transport tools*	*As the station is located at Alameda Dr. Carlos d'Assumpção, it is well connected with other transport tools (especially there is an existing bus stop)*	*8*	*As the station is located on the coast, the pedestrian conditions and facilities between Alameda Dr. Carlos d'Assumpção and the coast need to be improved, resulting in increase of cost and visual impact on Avenida Dr. Sun Yat-Sen*	*5*
B.4	*Utilisation of the space under the track*	*The elevated track will occupy the centre of the road, but the parking spaces under the track will be complement to the parking spaces cancelled. There will be no construction of new facilities*	*6*	*Community facilities can be built under the track, such as basketball field or gymnastic amenities to make up for the lack of sports facilities in this area*	*7*
		Subtotal of B =	*27*		*21*

Comparison of impact of the construction, length of construction period and cost ("C")

Order	Item	Plan for reference	Grade	Alternative plan	Grade
C.1	Noise and vibration produced by construction	As done at inner streets, the residences nearby will be affected	4	Done at seaside, far away from residential area, less impact on citizens	6
C.2	Air pollution during construction	The branch roads near the inner streets can release the pressure on traffic flow despite of temporary block of relevant sections	4	Located at a main road at outer circle, having large impact on traffic	6
C.3	Impact on traffic	The branch roads near the inner streets can release the pressure on traffic flow despite of temporary block of relevant sections	8	Located at a main road at outer circle, having large impact on traffic	4
C.4	Construction period	Shorter track will take shorter time	8	Longer track will take longer time	5
C.5	Cost	Lower cost for shorter track	8	Higher cost for longer track	5
		Subtotal of C =	32		26

Total ("A"+"B"+"C")

Order	Item	Plan for reference	Alternative plan
A	Environment	27	28
B	Citizens' daily life	27	21
C	Impact of the construction, length of construction period and cost	32	26
	Total =	86	75

E. Conclusion

The team working on section C220 conducted a preliminary research on both the plan for reference and the alternative plan, during which they also paid attention to society's suggestions and demands about the construction of LRT system. In the stage of preliminary research and design, we, the team, carried out preliminary exploration and more professional analysis on the two plans.

According to the plan for reference, the section C220 begins at Station no. 5 (near Fisherman's Wharf) located at the north-east corner of Avenida Dr. Sun Yat-Sen towards Macao Cultural Centre (in south-west direction), where it turns to Rua de Londres towards Station no. 7 at Alameda Dr. Carlos d'Assumpção, to Station no. 8 at the Arts Garden via Rua de Cidade do Porto and Avenida 24 de Junho and ends at Station no. 9 next to Lam Van Lake via Rotunda de Ferreira do Amaral. Within C220, the sub-sections at Rua de Londres, Alameda Dr. Carlos d'Assumpção and Rua de Cidade do Porto are the closest to residences, causing great concern among the residents nearby. In this sense, thorough consideration of the concerns about noise pollution, air pollution, ventilation, light pollution and location of stations on this section and a lot of supplementary facilities and improvement of the design of the track and Station no. 7 is needed.

In response to the request indicated in the tender document of C220, the company also conducted preliminary research on the alternative plan. The section begins at Station no. 5 in south-west direction and runs through the Kun Iam Statue along Avenida Dr. Sun Yat-sen instead of Rua de Londres, Alameda Dr. Carlos d'Assumpção and Rua de Cidade do Porto, and turns to Avenida 24 de Junho at MGM and finally towards Station no. 8 via the route originally planned.

In the preliminary research, we compared the plan for reference with the alternative plan and analysed thoroughly the problems concerning the route. Based on the preliminary research and analysis on the concerns to the residents at NAPE, the alternative plan will actually solve many of the problems they will face, such as noise pollution, air pollution, ventilation and fire safety issues. However, the LRT system is the largest infrastructure project ever in Macao. It involves many issues about the society and economy and has tremendous influence on the transportation, economic and urban developments. Therefore, when comparing the plan for reference with the alternative plan, we have to conduct an in-depth analysis on other influential factors to different LRT routes

due to the limitations caused by the special objective conditions of this project.

After cooperating with several government departments for months and gathering various information, we found that there is a significant conflict between the alternative route and the new urban planning projects to be commenced shortly and the existing facilities in relevant important districts, such as the issues about negative impact on the cost-effectiveness of extension of the track, visual impact on the area near the Kun Iam Statue, the significant obstruction to the future development caused by the alteration of the south-east coastal line of Macao Peninsula. And the locations of the stations at marginal areas of the peninsula will weaken the economic dynamics of the NAPE. On the contrary, the route in the plan for reference has positive impact on the development of NAPE and even the whole peninsula as the areas surrounding the route have been developed. Therefore, the plan for reference matches the objective of construction of LRT system better. However, without doubt, a lot of supplementary facilities should be built at the sections at inner streets in the plan for reference in order to eliminate surrounding residents' worries.

In view of the comparisons and impacts of environment, citizens' daily life and construction, we found in the first stage of designing period that the plan for reference is slightly better than the alternative one. The subsequent basic design will be based on the plan for reference."

We remained reserved about the nature, function and purpose of this report because:

(1) **What is the purpose for requesting the consultancy to provide such a report which is not supported by any scientific and testing data in July 2011?** The construction should have begun at that time?

(2) In the report, **we do not find any analysis based on scientific data. It only concludes the issues and tries to make an expected conclusion by grading.**

(3) **Take the grading table as an example, the grading criteria is unknown. In what way? What are the reasons? The result is ineffective and as reference, its value is in doubt**.

(4) Obviously, the purpose of the report is to try to support the stance of GIT (to have the track running through inner streets), **but it does not indicate any**

convincing scientific analysis and technical data. Even there is no big difference between the grades of the two plans, which is only within 100 points, showing that the plan with the higher score does not have any apparent advantage.

(5) The conclusion of the report is unrealistic, as it does not mention any technical and scientific data, especially the issues about fire safety, but only reiterates the stance of GIT without any substantial basis.

* * *

In fact, some other companies have already suggested building the LRT track underground:

- In December 2005, the MTR Corporation of Hong Kong made a report named "Summary of Final Report of Feasibility Study on Macao LRT System" (See P. 1968-2516 of the annex), which is based on the ideas of the GDI, i.e. making it a subway system. The research was done on the route which consists of an underground section in Macao Peninsula and an elevated section in Taipa and suggests that the most feasible system for Macao is **Automated People Mover (APM)**, which allows a maximum inclination of 6% and a bending radius of less than 100 m. The report also suggests a station coverage radius between 300 m and 500 m (See P. 2025 of the annex), while the route is basically the same with slight modification. Running through Avenida de Amizade and Avenida da Praia Grande is proposed.

- Later, another consultancy and MTR company conducted analysis on the route designated by the GDI respectively. Coincidentally, both of them suggested a maximum inclination of 6% and a design comprising of both underground and elevated sections. The section at NAPE proposed by the GDI runs through Avenida Dr. Sun Yat-Sen, but there is no information showing why the GDI chose this route.

- After that, the consultancy conducted a research regarding the feasibility study made by the MRT Corporate of Hong Kong and pointed out that building the track underground will lead to increase of not only costs for construction and operation but also risk due to more complicated technical issues. However, this is not backed by any detailed scientific data and arguments.

- In 2007, GDI made a report of route improvement. Since there were plans A and B for the northern section and C and D for the NAPE section, the GDI, considering the service coverage radius of 300 m, the visual impact on the Kun Iam Statue and the conflict with the driveway to be built, gave up the plan of running through Avenida Dr. Sun Yat-Sen and **proposed running through Rua de Londres**, which is also not backed by any comprehensive scientific data and arguments.

Therefore, building an underground section at Avenida Dr. Sun Yat-Sen is not an absolutely impossible plan (Nevertheless, we certainly believe that the cost may be higher than building an elevated section).

* * *

Part VIII: Conclusion

In view of the complexity and speciality of the LRT system construction project, the CCAC is unable to propose a single feasible plan, but is absolutely able to analyse the technical and safety issues as well as point out the problems that have caused doubts and the things overlooked and the defects appearing in the course of making decision by the competent departments. To sum up, the CCAC believes that:

1. In the course of deliberating and deciding the design of the route, **approach and procedure adopted by the competent department are inappropriate, leading to an unconvincing result, because comprehensive technical data and criteria were not publicised**.

2. **Facing such a large and influential project, GIT did not handle the technical and administrative issues properly, which led to numerous problems and conflicts. It should have considered and made decisions on many technical issues instead of doing it after the design has been finalised.** Whether to adopt NFPA130 is a typical example. After the plan was finalised and even right before the construction started, GIT still consulted the CB about whether to adopt NFPA130 or not. It is hard to understand which standard has been adopted for the design.

3. **During the public consultation period, unconvincing rules and procedure**

were still adopted. The organisations commissioned and the interviewees were not representative and there was no convincing standard for the consultation, which will only lead to disappointing results.

4. For the consultation about the track, i.e., the structure of the track and the route, the procedure and approach also do not meet the requirements of modern public administration, as the technical data and safety issues have never been explained to the public. This has inevitably raised doubts.

5. **For the selection of route plan**, choosing to run through Rua de Londres instead of Avenida Dr. Sun Yat-Sen is not backed by convincing basis and the reason stated is not scientific and technical.

   (1) If this change was based on technical consideration, the original design should be a defective one.

   (2) If the original plan was satisfactory, the plan of running through Rua de Londres should be inappropriate.

   (3) If both the two plans are feasible on condition that they accord with technical and safety standards, the one that meets the following requirements should be chosen:

      (a) The lowest cost;

      (b) The highest degree of safety;

      (c) The least impact on the rights and interests of surrounding residents or having regard to their legitimate rights and interests;

      (d) Matching up with urban development plan and the plans that have already been confirmed.

   Regarding these, GIT has never stated any systematic and scientific basis.

6. The reason that was stated for not choosing to have the track running through Avenida Dr. Sun Yat-Sen is for satisfying the demands brought up by the projects of land reclamation and the west-bound motorway. However, it should be noted that: the so-called development of west-bound motorway is simply

a preliminary idea of GIT which has not been finalised. If we have a look at the urban development plan which has come out recently, it is not difficult to discover that the traffic network project stated by GIT does not exist, or this urban development plan is not the case. In this sense, given different prerequisite, why does GIT insist on adopting the original plan? Moreover, where did the idea of the east-west motorway come from? The competent authority has never approved this idea. The reasons stated by GIT are groundless and unconvincing.

7. **Other reasons for citizens' resentment are the lack of effective coordination between the relevant public departments and their inability to provide prompt solutions to problems. The relevant departments include GIT, CB and DSSOPT**. For the technical issues, they should not keep procrastinating. If the project accords with technical standard, there is no need to delay. As a Chinese proverb goes, "true gold is fire-resistant".

8. There are slight differences between the data shown in the drawings submitted and those measured on site. We think that this is unacceptable since it occurs in a real project.

9. It was not until the residents raised concerns about some details or technical problems that the GIT commissioned consultancies to conduct technical analysis. Those consultancies are unconvincing in technical aspects, so the results are also unconvincing, showing the lack of in-depth consideration of many problems concerning the designing and optional plans, and especially the consideration of technical standards and degree of safety.

10. According to the abovementioned report submitted to GIT by the consultancy, the difference between the two options of passing Rua de Londres and Avenida Dr. Sun Yat-Sen is 11 points (based on a 100-point scale). What does the difference actually mean? We think it does not mean much. The competent department should have clarified the truth and stated the technical and scientific criteria instead of meaningless words.

〔Note: If a more thorough and comprehensive analysis is conducted on the current plan of LRT project, we believe that there will be many more issues worth exploring, but here we only address the key problems above.〕

* * *

Part IX: Recommendations

1. Since the LRT system construction project is large in scale, demanding in technical aspects and complex, the CCAC, as mentioned above, is unable to propose a single feasible plan, but any of a suggestion that accords with safety requirements and technical standards is worth consideration. We are confident to bring out the following opinions:

   (1) To have the LRT route running through Avenida Dr. Sun Yat-Sen instead of Rua de Londres and build it underground, and re-develop Rua de Londres as a road only with driveway and walkway (cancel all parking spaces), thus it will serve as one of the main driveways that connect the NAPE and the future Eastern and Western Districts.

   (2) The merits of the above suggestion are that it will bring a balanced utilisation of the spaces at the zone, protect residents' legitimate rights and interests and the coastal landscape and meet the demands brought by the future development of Eastern and Western Districts, thus minimising the impact and even facilitating underground development of the coastal area for urban development in the future.

2. Although we understand that any change will involve extra spending or delay of the construction, it is important to understand that it is such a large-scale project that has significant influence on the development of Macao and the life of its citizens in the following decades. Every decision shall be made carefully. Once the project is completed, everything is irreversible. (The lower deck of Sai Van Bridge is the best example.)

3. If GIT insists in the option of running through Rua de Londres, it should disclose to the public all evidence and basis which can prove that the plan meets the safety standards instead of elaborate it by meaningless words.

4. GIT should explain the technical analysis to all Macao citizens but not only to those living near Rua de Londres or the CCAC, because this is a public project for Macao and all citizens. As it is funded by the government, financial management and the management concept and style of "good father of a family" are the key factors.

* * *

Moreover, according to the information gathered so far, since the preliminary work was not well prepared, it is expected that there will be many technical problems to be solved during the construction, involving different competences of public departments. Therefore, we suggest the Chief Executive issuing an order to establish a technical task force which reports directly to him or any authorised official. The members should include officials of DSSOPT and CB to centralise relevant works and promptly solve all technical problems (those coming out due to alteration or new problems), in order to avoid delay and confusion.

* * *

Since the report involves technical issues, government policies and final decision, the following parties will be notified:

(1) The Chief Executive;

(2) The Secretary for Transport and Public Works;

(3) The Transportation Infrastructure Office;

(4) The complainant (Macao Community Development Association).

* * *

The Commission Against Corruption, 5th September 2012.

Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of the case:

(1) For making administrative decisions on general matters, the law (Articles 114 and 115 of the *Code of Administrative Procedure*) requires administrative bodies to give adequate explanation. The same provisions shall be observed when facing technical issues;

(2) The departments responsible for public works enjoy certain degree of discretion in technical aspect, but this is still subject to regulation. Therefore, since all plans and decisions related to the project are, in fact, within their scopes of competence, they shall observe the principles of the aforementioned articles;

(3) Adoption of NFPA130 should have been confirmed in the stage of design, GIT should not linger on the question whether to adopt NFPA130 or not;

(4) For the matters involving citizens' interests, public consultation should be conducted in a fair, just, transparent, effective and objective way;

(5) Significant transport system development project should match up with overall urban planning and should be assessed and approved by competent body;

(6) Lack of coordination between technical departments or adopting inconsistent standards leads to failure to satisfy citizens' demands and eliminate public's worries;

(7) The supervisory department has the power to supervise the concepts and plans provided that they respect the technical decisions made by competent departments. If there is technical mistake or inappropriateness, it is still related to management of public works and the decision-maker is responsible for it;

(8) Due to professionalisation of different industries, regulation also follows the trend. Overall supervision and technical supervision are new models of modern regulation. For example, for Beijing Olympic Games, Asian games in Guangzhou and Universiade in Shenzhen, the relevant supervisory departments regulated everything of the event to guarantee every detail. These examples are valuable references;

(9) The technical problems found by the supervisory department from the drawings should be solved by the competent department in priority; otherwise they shall be liable for mismanagement;

(10) The final decision on solution to a problem is not within the scope of competence of the supervisory department. The competent department shall make the best decision which caters the best to citizens' interests based on technical requirements and principles of public works management (only one of those plans is the case).

Case IV

Analysis report on a complaint related to an administrative omission

Key points:

- Interpretation of law shall be done according to Article 8 of the *Civil Code*;
- If the law provides the obligation to establish a norm, the norm shall be substantial and clear so that the one who enforce the norm can fulfil his/her duties;
- The norm established first still can be one of the ways to implement the one established afterwards. There is no conflict between the two.

* * *

Part I: Subject

1. The New Macau Association presented, in 11th September 2012, the following complaint to the Commission against Corruption (hereinafter referred to as the CCAC):

   "11th September 2012

   The New Macau Association hereby requests the CCAC to follow up a case of omission by the Government of the Macao SAR

   According to Article 19 of Law no. 2/99/M, Regulation of Rights of Association, it is incumbent upon the Governor (currently the Chief Executive) to publish annually the accounts regarding subsidies allocated to associations, and the associations that benefit from subsidies of public entities in an amount greater than the value set by the Governor (current Chief Executive), should publish their accounts in the local press within the period of a month.

The New Macau Association, mailed in July (2012) a letter addressed to the Chief Executive requesting to publish as soon as possible the aforementioned value pursuant to law. However, the Macao SAR Government, despite not having published so far the referred value, did not yield any justification to society or to the New Macau Association of the reasons.

Macao SAR public entities (namely the Macao Foundation) have awarded annually high-value subsidies to certain local associations, an issue that has been the subject of criticism by the public and by members of the legislature, raising doubts concerning the impartiality and the lack of rigor in assessment and authorization of these subsidies as well as on the monitoring of the related procedures. The strict compliance with this law constitutes a booster of an improved supervisory factor on the part of citizens concerning the use of public money. On the contrary, if the SAR Government failed to abide by the law, it could hardly self-defend, and it would be certainly qualified as an accomplice of those high-spending associations.

New Macau Association"

2. After collecting, comprehending and accessing the materials related to the complaint, the CCAC will proceed to a more complete analysis.

* * *

Part II: Analysis

The two main issues of this complaint are:

(1) **The interpretation and application of Article 19 of Law no. 2/99/M of 9th August**;

(2) **The relationship between the provisions in force governing the publication of a list of financial support (subsidies) assigned to associations by Public Services and the cited article**.

* * *

A – About the aforesaid law

Article 19 of Law no. 2/99/M of 9th August provides:

"Article 19
(Publication of accounts)

1. The associations benefited from subsidies or from any other financial contributions from public entities, in an amount greater than the value fixed by the Governor, should publish annually its accounts in the month following that in which those accounts are approved.

2. The publication is made on one of the newspapers registered in the Territory."

With regard to the content of the complaint, in fact, either before the handover, or after the establishment of the Macau SAR, the value referred to in Article 19 of Law no. 2/99/M, of 9th August, which regulates the right of association was never defined nor published. Is this an omission? Is this a gap in legislation? Or lack of supervision? We can analyze this matter at various levels.

I – Analysis on the textual structure of the rule

Article 19 of the aforementioned law provides:

*"**Article 19***
(Publication of accounts)

1. The associations benefited from subsidies or from any other financial contributions from public entities, in an amount greater than the value fixed by the Governor, should publish annually its accounts in the month following that in which those accounts are approved.

2. The publication is made in one of the newspapers registered in the Territory."

1. As to the content of Article 19, it is not difficult to notice that, at the time, the legislator did not anticipate, compulsorily and imperatively, the formulation of the respective Order within a given period and left, at least, to the Governor, before the transfer of sovereignty (Chief Executive, after the establishment of

the Macao SAR)[38], the discretionary power to decide on the two strands:

a) Time – when will the said Order be produced and published, it is not expressly stated in the legal diploma;

b) Amount – As it is not provided for in Article 19, the power of decision on this matter was left to the Governor (i.e. Chief Executive, after the establishment of the Macao SAR).

2. With regard to the right timing of a legislative act or the elaboration of a statute, some scholars understand that:

"Administrative acts of omission include the omission of acts in concrete under the administrative level and the omission of a legislative act. The administrative and legislative omission constitute acts that bring together these two characteristics, i.e. the omission of a legislative act and the omission of an administrative act, meaning that certain legislative bodies or administrative authorities fail to enforce the discipline imposed by a superior rule, not assuming, unjustifiably, the responsibilities created by law, for example, to set in a timely manner the shapes and suitable conditions for the establishment of regimes through acts of legislative innovation, revocation and amendment of legislation. The administrative and legislative omission constitutes acts of clearance of administrative and accountability responsibility, on the part of the administrative or legislative body. On a doctrinal approach, administrative and legislative omission integrates three key factors:

1) Normative responsibility of administrative and legislative bodies;

2) The normative power of the administrative and legislative bodies;

3) An omission or negative act practiced by the administrative and/or legislative bodies.

(…)

[38] See paragraph (4) of Annex 4 of Law no. 1/1999 of 20th December, *Reunification Law.*

3. *The relationship between the regulatory omission by the administration and the use of discretionary power in the area of legislative production*

We can distinguish the various types of omissions, that is, a violation of the obligation of action. According to the "theory of restrictive discretionary power", the abuse of discretionary power is one of the reasons that give rise to the practice of an administrative illegality by omission. In terms of the degree of freedom of the normative power of the Administration, the omission of the Administration in this respect has two modalities: omission in fulfilment of what is imposed by a superior law and omission in the exercise of discretionary power in the field of legislation. Such modalities are closely linked to the clarity degree of coercion and rigor of the regime of authorisation of legislative power of the State. At the same time, such a regime is also an important criterion for verifying the manifestation of illegality of the omission of the Administration. This is because it is precisely the lack of coercive strength, of clarity and logic in the authorisation regime of normative power in the Administration that affects the justifiability of the use of the discretionary power of the Administration in the field of legislation. This phenomenon raises many difficulties in identifying whether or not there are administrative illegalities by omission, from the viewpoint of the rule of law in the formal sense, and also in determining the type of omission of the regulatory power. When there is an absence of legislative rules delegated by a superior law or there is ambiguity or weakness of enforceability, we can only evaluate whether or not there is omission of normative power considering the historical background of the development of the respective administrative legislation and the needs and development of society.(...)"[39]

This is the specificity of the normative omission by the Administration.

* * *

[39] See the study on the normative omission by the Administration by Yu Lishen, in *Legal Regime and Social Development*, no. 2 of 2011.

II – The analysis of the objective of Law no. 2/99/M and the content of Article 19

1. It is obvious that the law above referred to is not intended to regulate the financial support allocated to associations, but rather to declare freedom of association, which is a fundamental principle.

2. All associations enjoy freedom in terms of its inner operation, on the condition that they do not violate the law. As a general rule, the Administration cannot arbitrarily intervene in the internal affairs of associations, namely concerning their financial situation. In accordance to Article 19, the associations benefiting from financial support, in an amount exceeding a value to be fixed by Order, need to publish their accounts. If the content of Article 19 is considered as an "order to regulate", there are considerable ambiguity in it, which is why the executing entity faces immense difficulties, namely:

   (1) With regard to the publication of the accounts, which accounts shall be published? The total of the accounts? Or only the part of the accounts related to the financial support provided by the Government?

   (2) It will only be the subsidised projects which will be the subject of publication? Or it must be published the specific way of application of the subsidies received?

   (3) The accounts will be published in details? Or in a synthetic form?

   Given the lack of clarity of the content of the referred article, its fulfilment and implementation become difficult. If the limits laid down in the law are exceeded, the act may constitute a case of usurpation of power.

* * *

B – Concerning the provision on the publication of the list of subsidized associations

In fact, before the publication of Law no. 2/99/M, the allocation of financial support was already regulated by an administrative order – See Order no. 54/GM/97 of 1st September, which provides:

"1. The allocation of financial support to individuals and private institutions (codes 04-02-00-00, 04-03-00-00, 08-02-00-00 and 08-03-00-00 of the Territory General Budget — economic classification of public expenditure, in accordance with annex II to Decree-Law no. 41/83/M, of 21st December, amended by Decree-Law no. 49/84/M, of 26th May), shall be governed by the following principles:

1.1. Private institutions can benefit from financial support if they develop activities of public interest, are legally constituted and proceed to non-profit-making and also those individuals that promote activities considered also of public interest and non-profit making.

1.2. The financial support should be granted for specific activities well defined in time, and may also, exceptionally, aim to ensure the operation of private institutions.

(…)

2. Autonomous services and funds covered by this Order shall publish in the Official Gazette, in the months of January, April, July and October, listings referred to the previous quarter, identifying the recipients of financial support and the amounts allocated.

(…)."

We can proceed to the analysis of the order above in many ways.

I – The analysis of subject regulated by the Order

1. Strictly speaking, the subject under discussion in the Order must be regulated by an Administrative Regulation. However, the then Governor of Macao enjoyed legislative power in some matters. It is clear that the matter under consideration is not a matter of the Administration itself, but rather a regime of allocating financial aid, which should be regulated by a higher-ranking norm. In short, the matter under consideration must be the subject of a "Regulation".

2. Considering that what bound to the Order are not only the Administration but also the entities that are not part of it - applicants and associations, the effects go beyond the sphere of Administration.

3. In a normal situation, in the case of abstract provisions and of reiterated application, the form of a Regulation should be adopted, being that the Order applies to specific and individual cases.

II – From the analysis of the Order recipient

Paragraph 1 of Order no. 54/GM/97 of 1st September, states:

"The allocation of financial support to ***individuals*** *and* ***private institutions*** *(codes 04-02-00-00, 04-03-00-00, 08-02-00-00 and 08-03-00-00 of the Territory General Budget — economic classification of public expenditure, in accordance with annex II to Decree-Law no. 41/83/M of 21st December, amended by Decree-Law no. 49/84/M of 26th May shall be governed by the following principles:*

1.1. Private institutions can benefit from financial support if they develop activities of public interest, are legally constituted and proceed to non-profit-making and also those individuals that promote activities considered also of public interest and non-profit making.

1.2. The financial support should be granted for specific activities well defined in time, and may also, exceptionally, aim to ensure the operation of private institutions."

Hence we can see that the abovementioned Order is intended to the following two groups:

- Private individuals;

- Associations (Private institutions).

On the contrary, the Law no. 2/99/M of 9th August, through its Article 19, is intended exclusively for associations, being relatively restrict its scope.

III – About the allocated amount

Pursuant to paragraph 2 of Order no. 54/GM/97 of 1st September:

"Autonomous services and funds covered by this Order shall publish in the Official Gazette, in the months of January, April, July and October, listings referred to the previous quarter, identifying the recipients of financial support and the amounts allocated."

Therefore, even if the public services (including the autonomous services) give financial support to the value of just MOP1, they have to publish in the Macao SAR *Official Gazette* the list of financial support granted. So, what is its purpose? The purpose is to comply with the principles of transparency and publicity of public finances, in the way to familiarise the citizens and produce a monitoring effect.

IV – In relation to the form of publication

1. Pursuant to Order no. 54/GM/97, it is required that public services publish the decision awarding financial support and its contents, in the *Official Gazette of Macao SAR Government*, which is the official periodical publication, and constitutes the appropriate mean to publish the documents with legal value or the subjects of solemn nature.

2. Differently, Article 19 of Law no. 2/99/M only requires that the covered associations publish their accounts in one of the newspapers and the referred publication is held on the initiative of the beneficiary associations. Therefore, the Order no. 54/GM/97 chooses and defines a way of publication with a higher level, a more stringent surveillance and a greater accuracy.

V – About the order of the dates of entry into force of the various diplomas

In terms of the analysis of the order of the dates of entry into force of the various diplomas, there may be a doubt: the Order no. 54/GM/97 was drawn up before Law no. 2/99/M. And what is the relationship between the two?

The answers are simple:

1. Prior to the entry into force of Law no. 2/99/M, the competent authority to address this matter had already chosen a form of regulation more solemn and at a higher level and, so far, this form is still in force;

2. Although the legislators require, through Law no. 2/99/M, the definition of another content, Order no. 54/GM/97 almost fully contains it and goes beyond the contents of that one. In this regard, Order no. 54/GM/97 is still one of the ways of implementation of Article 19 of Law no. 2/99/M.

VI – About the informatics development and the ease of consultation

1. Both the Law no. 2/99/M and the Order no. 54/GM/97 require the publication of the value and content of financial support, and this aims to inform the general public and allows a certain supervision. In order to do this supervision, first it is necessary to have knowledge of the situation. And to have knowledge of the situation, there must be opportunities to query the respective information.

2. At present, with the computer development, the *Official Gazette of Macao SAR Government* is accessible on the Internet and its query is more convenient than reading the local newspapers. Public services have to carry out the publication in the defined periods (quarterly) and therefore this information is more concentrated and more convenient for the query by the general public. In spite of the fact that several newspapers are also accessible on the Internet, some still have not offered this service. This may cause inconvenience or other problems to familiarise citizens (for example, in the case of associations that choose the publication of their accounts in a weekly newspaper with only a few readers, the effectiveness of supervision will be much diminished). And, in conclusion, the publication in the *Official Gazette of the Macao SAR Government* prevails.

VII – About the use of resources

In case it is required that the associations shall publish their accounts, it is the associations who must pay the publications at their own costs. And this may result in additional costs, because the repetition of the act practiced by public services (services that allocate subsidies) may or may not correspond to a procedural efficiency and a subject of discussion.

* * *

Part III: Conclusion

In view of the above, the CCAC considers that:

1. Pursuant to Order no. 54/GM/97 of 1st September, all the public services (including the autonomous services) which give subsidies to associations must publish on the *Official Gazette of Macao SAR Government* the value, the date and purpose of the financial support. This already fulfils its functions and has the effect of supervision of the financial sources of associations;

2. Even if the financial support is just on the value of MOP1, public services must comply with the provisions of the above mentioned Order, this, to some extent, already produces the effects that Article 19 of Law no. 2/99/M seeks to achieve;

3. Regardless of the form of publication (publication in the *Official Gazette of Macao SAR Government*) or the publishing content (any value of subsidy has to be published), the requirements of the regime laid down in Order no. 54/GM/97 of 1st September, is more complete, its form of execution is more rigorous and the strength and the supervisory role is stronger in comparison with the provisions of Article 19 of Law no. 2/99/M of 9th August;

4. In this sense, we conclude that the Order no. 54/GM/97 of 1st September also constitutes one of the ways of implementation of Article 19 of Law no. 2/99/M of 9th August. A gap in the regulation of this matter cannot be

found;

5. Being this, as mentioned before, as a principle, it is to the competent authority to determine the opportunity of enacting the law or regulation, except if a timetable is set by the constitutional law. This case is not an example of an exceptional case, and therefore there is no omission on the part of the administration;

6. It is obvious that the government should follow the development of society and should define a more perfect regime regarding the form, procedure and supervising of subsidies. However, that is another matter and is not the subject of the complaint.

* * *

The report shall be submitted to his Excellency the Chief Executive.

A certified copy of this report shall be sent to the association to which the complainant belongs.

* * *

After being executed the present proceeding must be filed.

* * *

Commission against Corruption, 7th November, 2012.

Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of this case:

(1) The norm established first still can be one of the ways to implement the one established afterwards and there is no exclusiveness between them;

(2) The law provides the obligation to establish a norm shall be substantial and clear. Otherwise, it will be difficult for the application;

(3) If the rights of associations and the basic rights of individuals are of similar nature, matters involving associations should not be regulated through administrative orders;

(4) If one considers that the government's supervision of granting of subsidies to associations is incomplete or insufficient, he/she has to request the competent body to perfect the relevent measures in terms of general systems. For example, legislative and adminstrative methods worth consideration.

〔Note: After the report was released, the CCAC received a letter from the complainant about their disagreement of our conclusion. The post-analysis is to be carried out in 2013 and therefore is not published in this Annual Report.〕

Case V

About the investigation report on the basis for termination of fixed-term appointment of Deputy Director of Fire Services Bureau and relevant complaints[40]

The CCAC did not make public this report in 2012 because:

1. The behaviours being complained about were considered by the CCAC to constitute violation of discipline based on investigation. Therefore, the CCAC suggested the Secretary for Security opening a file for disciplinary inspection. These facts should be kept confidential in the current stage, since they may influence the disciplinary inspection if they are disclosed to the public;

2. On 19th December 2012, the entity that received the recommendations made a response concerning the report and later sent the second sets of documents of the reply to the CCAC on 18th January 2013. The CCAC is conducting an in-depth analysis on the response. Before the final decision is made, the CCAC considers that it is not suitable to disclose the report of analysis.

3. Currently (March 2013), the CCAC is still handling the matters about the report, given that it shall fulfil the obligation of confidentiality – Paragraph 1 of Article 294 of the *Statute of Personnel of the Public Administration of Macao (*hereafter the *Statute)*:

"Article 294
(Confidentiality of Procedure)

1. Before a complaint is filed, the disciplinary procedure is confidential. However, it may be viewed by the defendant at his/her request on the condition that s/he shall not disclose the content.

(…) ."

[40] It is necessary to cite many witnesses' testimony in the analysis. Under the principles of confidentiality and moderation, these witnesses are identified by letters.

Therefore, disclosure of the information may contradict the law.

4. Paragraph 13 of Article 4 of the *Organic Law of the Commission Against Corruption of Macao Special Administrative Region* (as amended by Law no. 4/2012 of 26th March) states:

"The Commission Against Corruption is entitled to:

(…);

13) Publicize, through the mass media, its opinions pursuant to the aims enshrined in the Subparagraphs of Paragraph 1 of the preceding Article, ***subject to its duty of secrecy****;*

(…)."

Therefore, in order to strike a balance between the general public's right to know and the duty of secrecy, the CCAC partly reveals the contents of the report – only the conclusion of the response to the complainant:

Conclusion and recommendation

I. Subject to which the complaint refers and which was not given procedence after the investigation

1. From an objective point of view, the fact that the complainant has not reported, on 12th April 2010, to the Director, the day after being absent due to sickness and without any evidence that the referred absence has been verbally authorised by the Director, the act committed by the complainant violates the provisions of subparagraph e) of Paragraph 1 and Paragraph 2 of Article 76 of the *Internal Service Regulation of the Fire Services Bureau (CB)*; on the other hand, after investigation, there are not sufficient evidence that the Director has said publicly that the complainant would have to assume criminal liability for committing this act.

2. Querying the *Statute of the Macao Militarized Security Forces (EMFSM)*, there is no rule that determine explicitly that when a superior criticise

a subordinate, he cannot do it in the presence of other subordinates of the one being criticised or any staff of a less category. To this extent, the complaint concerning the matter in which, according to the complainant, the Director should not criticise him in front of his subordinates and that this act constituted a violation of the *EMFSM*, is dismissed.

3. Both in the *EMFSM*, as in the *Internal Service Regulation of the Fire Services Bureau* and in the *Statute*, there is no regulation that determine the mandatory publication of the vacation plan in the service order. Therefore, the complaint, in the part where the complainant considers that it is necessary to the Director of the CB to approve his vacation plan of year 2011 for publication on a service order pursuant to law, is dismissed.

4. It is true that the Director of the CB, in some occasions, did not distribute to the complainant, but rather to the Deputy Director S, documents intended for the management, since such documents referred to the operations of the CB and that in this case it is the duty and responsibility of the Director of the CB to decide which Deputy Director is responsible for those operations and for receiving the referred documents. Moreover, when it came to documents pertaining to activities organised by the Fire Services Bureau Welfare Association, the secretary to the Director **O** distributed spontaneously those documents to the complainant. Therefore, there is no reason on the claim that its access to information had been sealed.

5. The internal instructions of the CB establish that its personnel, including the leadership and management staff, is obliged to sign the registry book at the beginning and ending of the normal working periods. In this instruction, there is no infringement of the principles of equality and good faith. Therefore, it is considered unfounded the argument of the complainant, that the fact of having been requested to comply with the fixed working hours schedule, constitutes a violation of the law.

6. Whereas the guard-doorman also processes the registration of the entry and exit of other chiefs whenever they leave their workplace during the normal business hours, there's no reason on the claim by the complainant that the measure in question, implemented by order of the Director, was manifestly directed against the complainant, this argument was based on the internal instructions for the control of attendance of the CB staff, which

provides that the personnel belonging to divisions or superior organic units are exempted from the registration carried out by the referred guard-doorman.

7. It was due to the existence of problems related to the attendance of the complainant that the Director of the CB has determined to the subordinates to proceed to the guard and conservation of the video that has the record of the entries and exits of the complainant. For this reason there are no irregularities on the demarche made by the Director of the CB.

8. The head of the Resource Management Department **T** referred that the complainant could not summon the Department staff to attend meetings nor could force them to participate in the drafting of the Administrative Guide, carried out by the Department. He informed the complainant that, if necessary, he would have to seek instructions and obtain his prior authorization. There was no gross illegality in this act.

9. The head of the Department **T** ordered **AA** to send by fax, at 09:01 am and 2:31 pm daily, the timesheet regarding the Central Operating Station to the Resource Management Department and to the Secretariat and Reception at the Director of the CB at the Sai Van Lake. This was a special request and not a usual one, and above all, this was put into practice only after the transfer of the complainant to the Resource Management Department. However, taking into consideration that the timesheet of the other employees in the same Department who work at the Headquarters at Sai Van Lake is also collected at 09:00 and 02:30 pm and immediately submitted to the head of the Department for checking, there are no conditions, at present, to conclude that these measures adopted by the head of the Department **T** constitute a violation of the principle of good faith and a lack of justice.

10. Being this, it is not possible to conclude that the claims of the head of the Department **T** were unreasonable, according to which the complainant had arrived late.

II. Administrative illegalities and irregularities detected after investigation

Concerning the Director of the CB

1. On the *Performance Evaluation Report of the Management Staff* drafted on 6th May 2011, the Director of the CB, used several events occurred before 18th August 2010 (outside the evaluation period) **to evaluate the performance of the complainant, which the content presents contradictory information and shows lack of reasoning**.

2. Without having done the proper hearing for the complainant to comment, it was included on the *Performance Evaluation Report of the Management Staff* of 6th May 2011, facts against the complainant that the Director considers real **harvested merely of conversations among some fellow CB officers, this act violates the provisions of Article 10 of the *Code of Administrative Procedure* (Principle of participation)**.

3. The Director **refers in the *Performance Evaluation Report of the Management Staff*** of 6th May 2011, **that the complainant violated his duties enshrined in the *EMFSM***, without having instructed any **disciplinary proceedings aimed at the discover of the true facts**.

4. As for the transport service requested by the complainant to the staff (drivers) of the CB between his home and his workplace, for the provision of work, the Director stated that such could not be considered for "reasons of service" and had constituted a violation of the legislation concerning the use of government vehicles and the Order of the Secretary for Security no. 38/SS/2002. **Objectively, there is no legal basis for this claim**.

5. Some CB staff referred that they have received orders and implications by the Director with the aim to avoid personal as well as professional relationships with the complainant. Other CB officials claim they have been pressured by the Director, who could reduce the classification of their performances, if they maintained close relationships with the complainant, a situation that may jeopardize their promotion opportunities, forcing them to marginalize the complainant. Some officials, because they were close friends of the complainant, in addition to not being appointed to positions of leadership, have had a lower performance evaluation, and they were withdrawn from the tasks for which they were initially responsible, becoming totally outdated and functionally impaired with regard to career development, etc.

6. Several officials of the CB referred that the Director, without sufficient evidence, made several allegations about the complainant, such as that he would take meals and set up a businesses with a certain leader and several influential figures in order to "obtain some advantages".

7. A leader of the CB stated explicitly, by written form, that the Director told him that he, by manipulating his own power, had prevented the complainant from the enjoyment of holidays in December 2010.

8. The Director of the CB did not indicate clearly, to the participants at the meeting in question, that the document submitted by the complainant was to transfer his holidays to the following year. This act gave the participants the impression that the complainant had changed his vacation purposely, opting for a vacation period coincident with the one of the Director, which is unfair to the complainant.

9. By his own order, the Director of the CB ordered the complainant to perform "individually and confidentially" a study and analysis of the internal operation of the Bureau, being this order formulated in terms contradictory and unreasonable. In his statement, the Director explained that the work distributed to the complainant through his order was a routine task which consisted in the preparation of the annual activity report and the plan of activities for the following year. However, from the mere analysis of the order in question, it is impossible to reach that conclusion. This shows that the Director, with his order, could not properly convey his orders and instructions to his subordinates.

10. The Director asked the chiefs of the several subunits of the CB not to report to the complainant of the work of the Bureau during the period in which he has exercised the functions of Director in his replacement, which clearly violates the provisions of Article 42 of the *Code of Administrative Procedure*.

On the issues concerning the internal management and operation of the CB

11. It should be noted that, on one hand, it is not appropriate that the registration of the complainant's attendance had to be endorsed by the Commander of the Central Operating Station and, on the other, there were also problems within the internal communication of the CB, since the complainant was not unequivocal

notified after the timesheet template was modified and approved by order of the Director. Thus, with the modification of the model of the timesheet, the problem of the "register of attendance of senior staff to be endorsed by the lower category personnel" ceased to exist, having, the complainant, also been expressly notified by the Director in the way to sign the timesheet already modified, at which time the complainant should have asked for clarification from the Director in relation to his questions concerning the entity empowered to approve the new model of the timesheet.

12. In relation to the specific record of the timing of entrance and exit of the complainant, such an act clearly offended the dignity of the person concerned, in violation of the principle of good faith.

13. With regard to the use of private vehicles for the exercise of public functions, there is no specific and clear guidance in the CB. In reality there are various practices – namely with regard to situations in which some staff in the performance of their duties, drive to and from the workplace in their own private vehicles. There are also circumstances in which government vehicles are required to do the transport service to travel between home and the workplace of the officials. However, the CB should carry out the review of the use of government vehicles regime to avoid unnecessary disputes and the worsening of conflicts among the staff.

14. The CB must undertake the review of the *Internal Service Regulation of the Fire Services Bureau* aiming for its improvement.

On the issue concerning the head of the Resource Management Department of the CB

15. During the elaboration of the *Fire Services Bureau*, the head of the *Department Resource Management Administrative Guide* of the **T** did not provide the complainant enough manpower and informatics support.

16. With regard to the allocation of the workplace of the complainant, the head of the Resource Management Department **T** has not achieved a fair allocation and he allocated an inappropriate workplace to the complainant.

17. **T** claimed that the complainant did not report to him in the terms of subparagraph e) of Paragraph 1 of Article 76 of the *Internal Service Regulation of the Fire Services Bureau*. This is an allegation that misses "*de facto*" and legal basis.

18. The head of the Resource Management Department **T** mentioned that the complainant, without superior authorization, had given orders to staff who do not belong to the same Department, being this an allegation without legal grounds and an unjustified one.

Concerning the processing of the complaint directed to the head of the Resource Management Department T and its hierarchical appeal by the respective authority

19. Part of the subject to which the complaint against T refers, that was presented to the Deputy Director S is, to a certain extent, founded. Therefore, the orders no. 16/CB/2011 and 17/CB/2011 by the Deputy Director S, stating that the complaint presented by the complainant is "completely unfounded" and that "there is no irregularity or improper act practiced by T", is unsubstantiated.. Simultaneously, the order of the Director of the CB in which he maintains the previous decision taken by the Deputy Director is also unsubstantiated.

20. It was requested, in the request made by the complainant, the annulment of the Order no. 04/CB/2012 of 20th January 2012, by the Director of the CB and of the Orders no. 16/CB/2011 and 17/CB/2011 of 21st December 2011 and 27th December 2011 respectively, by the Director of the CB. Besides, it was requested in those orders the investigation and reform of the acts practiced by the leadership and management staff of the CB against the complainant. However, the said request has not yet been handled by the Secretary for Security nor any decision was taken.

III. Proposals

Taking into consideration that it is the competence of the Secretary for Security to initiate disciplinary proceedings against the leadership and chiefs and the supervision of the internal operation of the CB, the CCAC has communicated to the Chief Executive and to the Secretary for Security the illegalities and administrative irregularities detected, as well as the alleged practice of disciplinary infringement by the officers. In addition, pursuant to subparagraphs

6) and 7) of Article 4 of the *Organic Law of the Commission Against Corruption of Macao Special Administrative Region*, we request to the Secretary for Security the adoption of due diligence for the follow-up of the case, namely:

1. Undertake research and appropriate follow-up of the case, considering the starting of a disciplinary or investigation procedure, in accordance with the provisions of the *EMFSM* in relation to the alleged practice of disciplinary offences by the Director of the CB and the internal operation problems of the CB.

2. Proceed, again, to the assessment and to the investigation of the complaint filed by the complainant against the head of the Resource Management Department T in accordance with Article 253 of the *EMFSM*.

* * *

Having in consideration that this Report reveals a number of serious problems related with the operation and management of the CB, the CCAC proposes to the Secretary for Security to consider the application of the mechanism of inquiry provided for in Paragraph 2 of Article 354 of the *Statute of Personnel of the Public Administration of Macao* with the objective to solve the various problems currently existing in the CB.

(…).

Case VI

Investigation and analysis report on complaints regarding the information requested when handling birth registration by Civil Affairs Registry

Key points:

- Administrative procedure always consists of a series of acts, with some obligatory and some voluntary. The supervisory authority should grasp them accurately and execute them clearly;
- Exceptional cases should be differentiated from normal ones and solve the problems raised in the exceptional cases with appropriate legal provisions.

* * *

Part I: Background

1. This case originated with a complainant named A coming to the Commission Against Corruption (hereafter CCAC) to lodge a complaint on 13th August 2012. The details are as follows: the complainant indicated dissatisfaction with the attitude of the Head of the Civil Affairs Registry. He expressed grievance with not yet receiving the call from the superior of the staff surnamed Chan from the Legal Affairs Bureau and indicated dissatisfaction with the Civil Affairs Registry for delaying to handle/not handling the birth registration of his baby.

2. To follow up the above complaint, the CCAC sent a letter to the Legal Affairs Bureau on 31st August 2012 requesting for details of the issue (see P. 9).

3. The CCAC received a reply letter and a disc from the Legal Affairs Bureau on 11th September 2012 (see P.10-12).

4. Upon preliminary analysis, the CCAC sent another letter to the Civil Affairs

Registry to request for supplementary information on 16th October and a reply was received on 17th October.

* * *

Part II: Analysis

The details of complaints are as follows. The complainant was:

1. **Dissatisfied with the attitude of the Head of the Civil Affairs Registry during their meeting and communication**;

2. **Dissatisfied with not yet receiving call from the superior of the staff surnamed Chan from the Legal Affairs Bureau**;

3. **Dissatisfied with the Civil Affairs Registry for delaying to handle/not handling the birth registration of his baby**.

i. First of all, with the CCAC's intrusion into the issue by flexible means, the birth registration procedure of the complainant's son was completed on 13th November 2012. Therefore, it is meaningless to claim that the Civil Affairs Registry has delayed handling the birth registration at this moment. However, other points are worth analysing.

ii. The major reason why the complainant indicated his dissatisfaction was that he was requested to fill in the marital status on the "Supplementary information form". Upon viewing the video surveillance, the CCAC found that:

   a) - During the first half session of the birth registration procedure, the complainant and the staff talked to each other peacefully without any problem.

   b) - **However, when the complainant was requested to fill in the "Supplementary information form", the situation became worse**. Firstly, the complainant asked why he needed to fill in the marital status. The staff replied that **if it was not filled in, the birth registration could not be handled. (…) The application could only be processed upon approval of the Head of the Registry. (…)** Afterwards, the complainant

requested to obtain the photocopy of the "Supplementary information form", but he was rejected by the staff, saying that this was an internal document which could be shredded. However, its photocopy could not be provided. Then there was quite a lot of conversation with the Head of the Registry, words indicating dissatisfaction and conversation regarding the complainant requesting to meet the superior of the Head of the Registry (…).

The key points lie in:

1. **Is the applicant obliged to fill in the marital status for birth registration?**

2. **If the applicant refuses to provide the marital status, is it that only the Head of the Civil Affairs Registry has the power to approve the handling of birth registration?**

3. **If the applicant refuses to provide the marital status, is it that the application of birth registration cannot be processed?**

* * *

We try to analyse these problems, especially on the stipulation of the provisions.

1) Paragraph 2 of Article 1657 of the *Civil Code* in force states:

"2. The husband of a mother is determined as the father of the child. For a child born out of wedlock, ***the identity of the father has to be confirmed for verification****."*

In this case, the complainant applied for registration of the child's birth in person and signed to declare his paternity. Thus, the identity of paternity would not be a big problem.

2) In addition, Article 27 of the *Civil Registry Code* stipulates:

"For each registration, ***the interested party refers to the declarant, the person who is directly related to the fact registered or the person whose consent must***

***be sought in order to make a registration completely effective**."*

Article 28 of the same *Code* states:

"(Declarant)

1. With the full name and ordinary residence presented in the originals of relevant records, the identity of a declarant shall be authenticated.

2. With the presentation of the identity document which is recognised by the provision in force or on the evidence of two witnesses, the identity of a declarant shall be verified."

In addition, Article 76 of the aforementioned *Civil Registry Code* also stipulates:

"(Declaration)

All births in this region have to be orally declared in the competent registry within 30 days."

This is the rights of a new born baby. The person who has the obligation to make the registration shall protect the rights of the baby.

3) With regards to the information required for birth registration, Article 81 of the *Civil Registry Code* stipulates:

"(Content of the record)

*1. Apart from the required document, **the birth record shall also include the following information**:*

*a) **Full name of the registrant,** with capital letters presented for romanisation;*

*b) **Gender;***

*c) **Date of birth**;*

*d) **Place of birth by parish of residence;***

e) ***Full name, place of birth and ordinary residence of parents;***

f) ***Other issues required due to particular circumstances according to law.***

2. *All information shall be provided by the declarant and the identity documents of the registrant's parents shall also be presented whenever possible.*

3. *The public servant who is responsible for making the record should ensure the accuracy of the declaration through checking the presented or archived documents, or any information which could be obtained and meanwhile undergoing necessary investigation."*

Thus, it can be seen that neither articles in the above quoted provisions nor any law request the complainant to submit information regarding "marital status".

4) The staff of the Registry has pointed to the complainant in their conversation, "*If the martial status is not pointed out, the Registry will send the information to the court for handling*." This statement is worth considering because:

a) **The parents of the new born baby are not Macao residents and Macao is not their ordinary residence**;

b) Due to the fact that the Personal Law of the parents is not the law of Macao[41] , even if the identities of the parents have to be investigated (The mother went to make the application in person, thus her identity did not have any problem.), the law of Macao is not applicable and the court of Macao does not have the jurisdiction[42] as well.

5) Therefore, the major reason for this complaint is that the Registry regarded this case as a normal case and requested the complainant to fill in the marital status

[41] See Article 30 of the *Civil Code*.
[42] See Article 17 of the *Civil Procedure Code*.

(although the law does not have this requirement), resulting in the occurrence in this issue.

6) Information required for birth registration indicated in the website of the Legal Affairs Bureau:

"When handling the relevant procedure, the presence of the baby is not required. However, if the parents have not yet completed their marriage registration or are unmarried, both of them have to go to the Civil Affairs Registry or its branch office for registration. For those who have their marriage certificate, either the father or the mother can make the application.

When applying the registration, the following documents have to be provided:

1. Identity documents of the parents;

2. If either spouse or both of the parents do not hold the Macao identity cards, entry permits or residence documents such as temporary residence permits (yellow cards), non-resident worker's identification cards (blue cards), Hong Kong identity cards or passports have to be submitted;

*3. **Parent's foreign marriage certificates (except for those who have their marriage registration at the Macao Registry)**;*

4. Name of the baby;

5. Birth notification of the baby issued by the hospital.

Note:

- *Originals of the above documents have to be exhibited for verification.*

- *Upon signing on the birth record, the declarant will be issued a "birth report" (white card) for the application of "birth certificate" in the future.*

- *If the mother of the baby handles the birth registration in the Registry in person but refuses to disclose the identity of the father of the baby, she has to make a declaration and the Registry will not record the name of the*

father in the birth registration."

The requirement in Point 3 obviously does not comply with the relevant provisions. If the applicants (father and mother) claim that they divorced previously, but get back together later without making the remarriage registration, will the Registry request the applicant to present the marriage certificate or the divorce certificate? Or if the applicants (father and mother) claim that they are unmarried but live together, will the Registry request them to present their marriage certificate in order to handle the birth registration? These examples explain that **the documents required in Point 3 are not necessary documents and thus the statement has to be adjusted**.

7) Therefore, the CCAC suggests the Registry to improve the procedure and requirement regarding this aspect in order to prevent similar issues from happening. Not only does it affect service efficiency and quality, it is also an irrational requirement which will arouse applicants' dissatisfaction.

8) Finally, regarding the other two points of complaint, as this case originated with the Registry requesting the applicant to submit document which was not mandatory according to law, and the dialogue between the Head of the Registry and the applicant reflected that the applicant did not understand thoroughly the current civil affairs registration procedure of Macao whilst the frontline staff provided information worth considering. All these resulted in misunderstandings. As the problems have been solved, no follow-up has to be done at this stage. However, the Registry definitely has room for improvement in handling similar cases.

* * *

Part III: Conclusions and Recommendations

According to the aforementioned facts, **Paragraph 12[43], of Article 4 of the *Organic Law of the Commission Against Corruption* recommends the Civil Affairs Registry to take improvement measures for the problems aroused from this complaint and make adjustment on the documents to be submitted for**

[43] Law no. 10/2000 of 14th August, amended by Law no. 4/2012 of 26th March.

birth registration according to the law in force.

* * *

Notifying the Director of Legal Affairs Bureau and the Head of Civil Affairs Registry of the content of this report.

* * *

Notifying the complainant of the content of this report.

* * *

Archiving this case after execution.

* * *

Commission against Corruption, 20th November 2012.

Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of this case:

(1) Avoid requesting the interested party to provide unnecessary information during administrative procedure;

(2) If the interested party refuses to provide non-mandatory information, the supervisory authority should handle the case according to law instead of adopting normal steps;

(3) Information on authority's website should be comprehensive and accurate. Update it as soon as possible it if it is obsolete.

Case VII

A report (excerpt) on handling of complaint that local mobile phone users can only use 3G service from 9th July 2012 and suggested measures

Key points:

- The operation of 2G and (or) 3G telecommunications services within the Macao SAR have to be approved by the Chief Executive;
- The various problems caused by forbidding the operators to provide 2G telecommunications services to local consumers through administrative means, but at the same time "allowing" them to provide 2G services to roaming customers;
- Granting licences of 3G services only to telecommunications operators, but at the same time requesting them to provide 2G telecommunications services to roaming customers, which is obviously equivalent to "unlicensed operation";
- The external announcement of the decision of extending the 2G services licences without the consent and written approval of the Chief Executive also caused a number of problems;
- The legal issue of unfairness caused by treating local consumers and foreign consumers differently.

* * *

Part I: Cause

Ever since the Bureau of Telecommunications Regulation (hereafter the "DSRT") publicly announced that local mobile phone users can only use the 3G service starting from 9th July 2012, the Commission Against Corruption (CCAC) has received quite a few complaints about the new measure. Some believe that it is unfair to local users as they are forced to get new handsets due to the transition.

Due to time constraints and taking into account the specificity of the matter concerned, we will not reveal or analyse here in detail the content of those complaints but select some of the most relevant problems in the field of telecommunications policies implemented by the Government in order provide his Excellence, the Chief Executive over a benchmark that can serve as the basis for the application of appropriate interventional measures.

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Part II: Brief introduction of 2G and 3G

The 3rd generation of mobile telecommunications technology (third generation and collectively known as 3G) refers to the mobile communication technology that can support high-speed data transmission, is a set of standards used CDMA2000 and its reference standard. 3G technology can simultaneously transmit voice (call) and data information (e-mail, instant messaging, etc.). The characteristic of 3G is to provide high-speed data transmission services, the rate usually exceeds several hundred kbps (kilobyte).

The 3G specification can be considered the ultimate result of IMT-2000 standard defined by the International Telecommunication Union (ITU). The initial vision of specifying the 3G system was to promote the standardization of international communication system based on this standard, however, four standards are typically branded 3G at present: CDMA2000, WCDMA, TD-SCDMA and WIMAX.

3G refers to the 3rd generation of mobile digital technology. The first generation of analogue mobiles (1G) appeared in 1995 could make voice calls only; the second generation of digital mobiles (2G) such as GSM, TDMA that emerged in years 1996 to 1997, was facilitated with the function of data reception, for example, receiving

e-mail or webpage; the main difference between the third generation and the two previous generations is the upgrade of the speed in voice and data transmission. It can better facilitate seamless roaming across the world to process multimedia data such as images, music and videos and provide various information services including internet browsing, conducting conference calls and e-commerce, while taking into account the good compatibility of the existing 2G system. In order to provide this kind of service, the wireless networks must be able to support different data transmission speeds, for example, to provide transmission speeds that could support 2 Mbps (megabits/second), 384 kbps (kilobits/second) and 144 kbps for indoor, outdoor and vehicular environments respectively (but the rates may vary depending on the network environment).

3G stands for the 3rd generation mobile telecommunications. From a technical standpoint, 3G enables the high-speed transmission of data and information, supports multi-code multiple access way to encrypt data and voice transmission. Meanwhile, 3G also features with a signal covering technology that could provide signals to users evenly, thus, in aspects such as network coverage, quality network operation, environmental protection and security, intelligent applications, mobile internet services of the 3G system, these are things that 2G technology could not realize or accomplished.

According to the tests carried out on Wuhan-Guangzhou High-Speed Railway by China Telecom, when the speed reaches 400 kilometres per hour, the transmission of data or voice signal through the 3G network E-surfing is still very satisfactory. From the perspective of technical analysis, 2G technology has the below problems:

(1) Outdated network transmission technology that can only reach the speed of several tens of K, which is impossible to achieve high-speed data transmission.

(2) Outdated signal coverage technology, the coverage model of "close strong far weak" adopted by 2G makes it impossible to provide users with excellent communication reception.

(3) Outdated technology of sending and receiving signal, the transmission power is over a hundred times larger than the 3G which is not environmental as well.

(4) Outdated security technology in the transmission of signals, cannot match up to the level of security and safety of 3G.

(5) Outdated Mobile Internet technology, which cannot carry high-bandwidth data flow such as video.

(6) Outdated mobile phone technology. In aspects such as the smart features of the mobile phones, the operating systems or application software support, it cannot match up to the level of 3G mobile terminals. The elimination of 2G by 3G in the development of telecommunications technologies is inevitable.

The 3rd generation (3G) mobile phones focus mainly on the communication of data through broadband wireless communications, i.e., bringing mobile phones into the world of Internet. The most significant difference between 2G and 3G systems is that 3G mobile phones are defined with a minimum data transmission rate of 144 kbps data rate for situations of high mobility and 384 kbps data rate for indoor. The 3G system uses CDMA as its core technology standard, currently in 3GPP and 3GPP2, three sets of 3G technology standards were admitted, namely, the European standard WCDMA, the United States standard and Chinese standard TD-SCDMA.

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Part III: Actual Situation in Macao

1. Companies with licence to operate telecommunications services in Macao and their current status:

(1) **Macau Telecom Company, Ltd** – see the Order of the Chief Executive no. 399/2008 of 30th December (published in the *Official Gazette of the Macao Special Administrative Region* dated 12th January 2009);

(2) **Hutchison Telephone (Macau) Company Limited** – see the Order of the Chief Executive no. 400/2008 of 30th December (published in the *Official Gazette of the Macao Special Administrative Region* dated 12th January 2009);

(3) **Smartone – Mobile Communications SA** – see the Order of the Chief Executive no. 401/2008 of 30th December (published in the *Official Gazette of the Macao Special Administrative Region* dated 12th January 2009).

In addition, the SAR Government, through Administrative Order no. 10/2009, approved the "specific regulation for public tendering of the licence of operation of third generation public land mobile telecommunications network and provision of respective services of land mobile telecommunications of public use in the Macao Special Administrative Region of the People's Republic of China" in 2009. According to Item 11.1.1, it only stipulates: "*11.1.1 For the application of the provisions of Paragraph 11.1, the holder of public land mobile telecommunications services licence (GSM standard) shall abide by Item 2 of Paragraph 1 of Article 9 of Administrative Regulation no. 7/2002 and proceed with the application for amendment of its public land mobile communications services licence (GSM standard) within thirty days from the date of publication of the 3G licence, or else its 3G licence will be cancelled.*" [Note: It is different from what is stated by the DSRT in item 3) of point 2 of its official letter no. 1411/07.01.00-180: "*(3) (...), and according to the provisions stated in Paragraph 11.1 of the specific regulation, the licence holders themselves or members of consortium who have already held the public land mobile communications services licences (GSM standard) issued by the Macao SAR Government, shall surrender the licences previously held from 9th July 2012 onwards. (...)*".]

In the same year, the Macao SAR Government granted the 3G licence to Smartone – Mobile Communications SA through the Order of the Chief Executive no. 350/2009; subsequently, by the Order of the Chief Executive no. 423/2009, amended the licence attached to the Order of the Chief Executive no. 159/2002 licence of "Public land mobile telecommunications services", the period of validity is until 8th July 2012.

2. The DSRT announced earlier that the reasons for mobile phones of Macao can only use 3G starting from 9th July 2012 could be seen in the proposal (no. 172/07-01.00-180) dated 13th May 2011, which has obtained the order of "I agree" of the Secretary for Transport and Public Works on 23rd May 2011.

3. Below is part of the proposal:

"*1. The MSAR Government, in 2006 and 2009, has initiated the public tendering of the licence of operation of third generation public land mobile telecommunications network (hereafter 3G) and provision of respective services of land mobile telecommunications of public use in the Macao Special Administrative Region through Administrative Order no. 15/2006 and Administrative Order no. 10/2009 respectively. The Macau Telecom Company, Ltd (hereafter CTM), Hutchison Telephone (Macau) Company Limited (hereafter Hutchison) and China Telecom (Macau) Limited (hereafter referred to as China Telecom) were granted the licence in 2007, where Smartone – Mobile Communication, SA (hereafter Smartone) was granted the 3G licence in 2009. According to the provision stated in Paragraph 11.1 of the regulation of specific tender approved by the above mentioned Administrative Orders, if the winning bidder holds licence of Mobile Telecommunications Service for Public Land Use (2G), the renewal of such licence shall be subject to specific restrictions to ensure the healthy development of the mobile telecommunications market.*

*2. **Therefore, in accordance with the stipulation of Paragraph 1 of Order of Chief Executive no. 399/2008, Paragraph 1 of Order of Chief Executive no. 400/2008 and Paragraph 1 of Order of Chief Executive no. 423/2009, the 2G licences that were granted to CTM, Hutchison and Smartone were renewed to 8th July 2012. This means that after this date, there will no longer be any 2G licence and service***. (The emphasis is added by the CCAC)

3. The existence and renewal of telecommunications licence should comply with the relevant provisions at the time of issue of the licence. Given the special features of the dynamic development of the telecommunications industry itself, including the rapid evolution of technology and market changes, all relevant factors must be carefully weighed in the evaluation process for renewal. All the licences referred to in Point 2 adopt the Global System for Mobile Communications (GSM) standard, to analyse from the technical level, GSM system could use its core network to establish the Wideband Code Division Multiple Access (WCDMA) system to provide

3G mobile telecommunications services to the users. This model is widely adopted throughout the world and the GSM operators in Macao to launch their services and is accepted by the market. Thus, the development plan on the technical level is well defined; the GSM network will eventually be replaced by WCDMA network. With regard to the market situation, the number of users and its growth trend are the most representative indications, and the government's attitude also has a certain impact. In view of the development of the tourism industry of Macao, coupled with the determination of the Government to transform Macao into a centre of tourism and leisure in the world, therefore, when speaking GSM users in Macao, in addition to the local residents, it is necessary to take into account the tourists visiting Macao. Below is the evaluation of the development of GSM services in Macao and the analysis of the respective market situation through the study of the number of GSM subscribers in Macao, the pace of growth and the number of GSM subscribers in the major origins of the tourists visiting Macao, the pace of growth, as well as the position of foreign governments.

(1) The development of the GSM service in Macao and its trend

Since the opening of the market of mobile telecommunications services and the issuing of the respective 2G licences in Macao in 2001, the number of users of mobile services has been in a rising state. Even in a period of time after the successive launch of 3G mobile services from mid-2007 by CTM, Hutchison and China Telecom, the number of 2G users (mostly users of GSM) has continued to grow.

Until end of April 2008, the number of 2G (GSM and CDMA20001X) users reached a historical high of 763,000. After that, because of the users switching to 3G services, the number of 2G users began to decrease. As of the end of March this year, the number of GSM users was 266,000; ***a decrease of 497,000 compared to the peak number, that is, an average monthly decrease of 142,000. If the number of average monthly decrease remain unchanged, there will no longer be any local 2G users by September 2012****.*

However, the above prediction is subject to certain variables. First, the number of decline of future GSM users may not follow the same rhythm of the past trend; the fall may accelerate or slow down. Second, the

existing WCDMA users may continue to use their GSM mobile phones, thus, it may cause the number of hidden users of GSM to increase. Third, when a general product enters the final stage of its life cycle, without any particular policy to be implemented for this purpose, there will usually be a quite long period of very little demand but have not yet reached the stage of absolutely no demand. For example, Packet Switching network services had dropped from the peak of 256 in 1996 to 108 in 2001, but the number of users ultimately dropped to zero in this year. Fourth, the market is flooded with GSM mobile phones at low price which will attract users who do not intend to spend more money on telecommunications to continue to use the GSM services.

Given the above factors, the DSRT has already taken strategic measures, such as the orderly reduction and suspension of launching promotion plans of GSM services in the market in order to reduce the increase of new GSM users. Later on, promotion plans for 3G services could be loosen appropriately depending on the circumstances, so as to accelerate the transition from GSM to 3G services. In addition, publicity of the expiry of GSM licences to the public could be carried out in a timely manner, so that they can understand and accept the Government's policy, thus to reduce the negative impact brought by the termination of GSM licences.

(2) Situation and development trend of GSM services in the major origins of tourists visiting Macao

According to data released by the Statistics and Census Bureau in Issue no. 4, Tourism Statistics Indicators 2011, the visitor arrivals reached a record of 25 million. The majority of the tourists were from Mainland China, Hong Kong, Taiwan and Japan, accounting for 53%, 30%, 5% and 2% respectively. The following is the analysis of the situation of GSM services available in the above locations (excluding Japan) in order to assess the future needs of visitors to Macao in relation to GSM services.

(...)

4. Proposals

In accordance with the provisions in Point 1 of the aforementioned Administrative Order, there will be no 2G licence and service after 8th

***July 2012**, coupled with the analysis in Point 3 (1), it is expected that in line with the implementation of relevant policies, the local demand for GSM services in the second half of 2012 will drop to very low or even null. Thus, **in principle, 2G licence is no longer necessary.** However, taking into account the analysis in Point 3 (2), the demand for GSM services by visitors to Macao remains strong, in order to match up with the policy on the development of Macao as a world centre of tourism and leisure, it is necessary to meet the needs of its visitors. **For this reason, it is proposed to make amendments to the 3G licences granted to CTM, Hutchison and Smartone, so that after the expiration date of the 2G licences, they could still provide roaming services to visitors from places that have not upgraded to 3G network so that their needs could be met.** If we could obtain the consent of His Excellency, the Secretary, the DSRT will contact the operators and commence the relevant procedures as soon as possible in relation to the amendment of licences.*

For the consideration of His Excellency, the Secretary."

4. **With regard to what is claimed in Point 2 of the aforementioned proposal: after the expiration date of the licences, there will be no 2G service in Macao, we hold major reservations towards such remarks. In fact, this is not the case, the 2G services were not eliminated, but rather a restriction is imposed on the object of service**.

5. Let us first quote the words said by the Director of the DSRT in response to the queries of the Members of the Legislative Assembly:

*"(...) to this regard, Tou Veng Keong expressed in his response that from 9th July 2012 onwards, the local mobile telecommunications services of Macao will be operated on 3G technology entirely. **However, considering that Macao is a tourist city with a significant number of visitors, many of them will purchase 2G handsets in Macao and use them when they return to their places of residence, coupled with the long-existing trading activity of 2G handsets as merchandise for resale purpose, therefore, it is not planned to impose restrictions on the trade of 2G mobile phones in Macao**.*

In order to ensure the smooth transition of 2G users to 3G network, the DSRT has already sent official letters requesting mobile phones retailers to remind potential handset buyers to pay attention to the respective arrangement, so

as to reduce the chance of mispurchase. In addition, the DSRT will continue to enhance the dissemination of the relevant information through radio, newspapers, television, the Internet and promotional brochures, etc. Meanwhile, with regard to those specific social groups such as the elderly, the DSRT plans to collaborate with the relevant departments and civil associations, after obtaining the solid information, they could take the initiative to contact them and arrange the telecommunications operators to conduct explanation sessions for them and complete the necessary formalities in a more convenient way.

He stated that the DSRT and the operators understand that certain users, particularly the elderly; their only requirement for the mobile phone is to make phone calls. For this reason, "tailor-made" mobile phones were ordered and respective promotion plans were launched for this group of users. Besides, if the users think that services such as mobile data or roaming are not necessary, they may request the operators to terminate the respective services. Therefore, there would be no extra fees for those users to switch from 2G to 3G and the 3G mobile phones that are provided are almost free of charge. Nevertheless, he admitted that although the transition from 2G to 3G services was already stated in the contract at the time of issuance of the licence in 2010, the relevant information was not disclosed to society in a timely manner. Thus, it is hoped that any shortcomings could be addressed through the usage of various channels for the dissemination of relevant information.

Furthermore, he also explained that the 2G network has been in use in Macao for a long time and judging by this stable service, most operators will not be willing to invest in the development of 3G networks. However, due to the popularity of smart phones in recent years, in view of such development needs, therefore, it is necessary for 2G networks to step down in order to enhance the quality of 3G spectrum. ***Concerning the blind spots of 3G, he said that operators were asked to seek improvement with their best efforts. He also believes that with the ceasing of 2G, it will facilitate the optimisation of the coverage, penetration and usability of the 3G networks***.[44] *(...)"*

Hence, it appears that 2G services will still be maintained but with different target of service. Moreover, certain measures adopted are also subject to question – we will analyse this part later on.

[44] See *Macao Daily News* dated 23rd March 2012.

* * *

Part IV: Current situation of the use of 2G and 3G telecommunications networks

1. Base on the analysis of the data obtained by the CCAC from the operators of telecommunications services in Macao, basically the 2G and 3G telecommunications systems coexist and in use. When the signal of the 3G network is too weak, or comes across blind spots, the mobile phones will automatically be switched to 2G systems to ensure normal communications.

2. If what was said by DSRT becomes reality, i.e., the local mobile phone users will not be able to use 2G while the operators are prohibited from providing 2G telecommunications services to them, then failure of telecommunications services may occur in locations where 3G network signals are weak or where there are blind spots.

3. According to information provided to the CCAC by one of the operators, currently the broadcast stations of 2G network covers virtually most areas of Macao, thus ensuring the fluency of telephone communications. In order to implement 3G services, although operators have been improving the new 3G transmission stations, taking into account the time constraints and the fact that the 3G technology itself still needs improvement in certain areas, resulting in the following question: why the Government cannot extend the time of coexistence of 2G and 3G? At a minimum, the operators are willing to get and expecting the extension of this transitional arrangement.

4. If only the 3G system will be retained for local mobile phone users from 9th July 2012, once any mechanical failure or other network problems happens; **there will be a possibility of another overall or large-scale break down of mobile telecommunications service in Macao. Has the department in-charge given any in-depth consideration of this situation?**

5. Even the situation is not as serious as the above example, if the operator needs to carry out maintenance or inspection of the transmission stations due to technical problems, it might affect or even interrupt the telecommunications services. However, if the operators are allowed to provide telecommunications services through 2G network under such circumstances that the 3G system is expected to be affected temporarily, it could greatly avoid the risk of large range

of telecommunications services being affected and would also be favourable for the exploitation and operation of the operators. However, we have never seen any official document allowing operators to adopt this compromise measure.

6. Let us consider the issue from another perspective: the perspective of the rights and interests of the mobile phone users, that is, considering the issue from the point of view of the rights and interests of consumer.

   1. Any government, when regulating the operators of telecommunications services, under the prerequisite of not prejudicing to the rights of the operators assigned by the concession contract, shall consider the rights and reasonable interests of local consumers, one of which is not allowing the operators to interrupt the services at their will and make arbitrary collection of fees.

   2. According to the notice of the DSRT, from 9th July 2012 onwards, only foreign mobile phone users, that is, those roaming customers, can use 2G services (i.e., only the mobile phone numbers that are not registered in Macao can use the 2G network). The local phone numbers have no access to the 2G system and cannot use the respective services - clearly a discrimination against local residents and a detriment of their legitimate rights and interests since it deprives their right to choose. Contrarily, only users who are holders of non-local mobile phone numbers can choose between 2G or 3G services and this seems to contradict the stand that the Government ought to possess: the principle to protect the rights and interests of local consumers.

* * *

7. After looking up the relevant records, it is not difficult to find that most of the countries and regions of the world are implementing the coexistence of 2G and 3G systems. It is the consumers who decide on their own the type of service they use, rather than forcing consumers to use a certain system only by administrative means (the key is at present both systems co-exist, but the Government eliminates one of them coercively through administrative means, rather than leaving it to the decision of the market and the operators).

8. **We do not oppose the full implementation and usage of 3G system**. We also believe that the full replacement by 3G is inevitable since 4G will be launched in the near future. However, our point of view is that: in a situation where there is no additional burden, considering the current conditions of 2G and 3G systems already in operation, coupled with the technical conditions that are still under observation, why not extend reasonably the period of coexistence of 2G and 3G systems? For instance, an extension of 1 or 2 years? Or let the market make its own adjustment? It is because from the point of view of the government, when resorting to use of administrative means to intervene coercively in a particular area, several requirements must be taken into consideration:

   (1) The intervention is justifiable;

   (2) The intervention will not lead to any other more serious problems;

   (3) The intervention is the only means and is able to solve immediately certain pressing issues that are existing;

   (4) The intervention will not prejudice the legitimate rights and interests of either party;

   (5) The intervention is necessary and cannot be delayed.

   However, after considering all the factors, we believe that the intervention by the DSRT does not meet the above requirements; therefore, it is necessary to postpone the execution of the measure.

9. In terms of long-term plan, the next objective of the government is possibly the "triple play". However, according to the information gathered by the CCAC, the Government does not have a concrete plan and timetable so far for the implementation. Therefore, when and how will the "triple play" be fully implemented? These are questions still undetermined. In this context, it is not suitable to forcibly eliminate 2G telecommunications services system.

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Part V: Legal issues

1. According to the stipulation of the "*Operation of Public Land Mobile Telecommunications Network and Provision of Respective Services of Land Mobile Telecommunications of Public Use*" (see Paragraph 5 of Article 5 of Administrative Regulation no. 7/2002 of 15th April), the licences granted to the three local telecommunications companies to operate 2G and 3G telecommunications services are approved by the Chief Executive with the various conditions for granting being set out, **it is apparently referring to the absence of permit to operate 2G service from 9th July 2012**.

2. And now, the DSRT claimed to allow the three companies mentioned above to provide 2G services to roaming mobile phone customers from 9th July 1012 onwards, apparently it is without any legal document as basis since the Chief Executive has never signed any approval documents. However, the DSRT has already taken the lead and disclosed this measure to the public.

3. Communication bands apparently are "public properties", the usage is undoubtedly to seek public interest, and especially the public interest is mainly of the region. For example, for security reasons, a country or region may close certain bands or reserve them for specific purposes, such as military or diplomatic purposes. However, this decision has to correspond to their own benefits and not the benefits of others or other countries. If restrictions are set in this context, its purpose must be protection of higher level of public interest.

4. In this case, we cannot understand why only the interests of roaming customers are being taken care of and the interests of the local long-term service users is neglected. How to ensure the change of mobile phones of citizens? How to set policy of incentives? How to call for collaboration with operators? These are remedy measures, but not where the problem lies. The crux of the matter is: whether the government has sufficient legal basis to force telecom operators to provide 2G and 3G services to foreign mobile phone users, while the local users can only use the 3G services. By doing this, what kind of higher level public interest it is seeking?

5. Article 2 of the *Code of Administrative Procedure* of Macao stipulates:

*"**Article 2***
(Scope of application)

1. The provisions of this Code shall apply to all organs of public administration authorities that establish relations with individuals in the performance of administrative activity, as well as to the administrative acts carried out by organs of the Territory that are non-public administration bodies when exercising their administrative duties.

2. The provisions of this Code shall also apply to acts conducted by concessionaries in the exercise of the powers of the public administration authorities.

3. By law, the provisions of this Code may also apply to the activities carried out by private institutions seeking public interests.

*4. The general principles of administrative activities as defined in this Code apply to all activities of the administration authorities, **even if the activities implemented are merely technical or management of private law**.*

5. The provisions of this Code relating to administrative organisations and administrative activities are applicable to all activities of the Administration in the field of public management.

6. The provisions of the Code are also supplementarily applicable to specific procedure, provided that they will not diminish the protection of individuals."

It is worth paying special attention to the contents of Paragraph 4, which states that even technical management is also required to comply with the relevant provisions in the *Code of Administrative Procedure*.

In this sense, the competent authorities should be fully aware that the purpose of cancelling 2G and retaining only the 3G telecommunications services must be to pursue better public interest. Besides, the measures and the procedures to be taken must be legal and conform to the basic principles and rules of the *Code*

of Administrative Procedure.

6. We consider the action of the DSRT violates the "principle of moderation" and the "principle of good faith", that is, a violation of the provisions of Articles 5 and 8 of the *Code of Administrative Procedure*.

7. Regarding the "principle of moderation", Article 5 of the *Code of Administrative Procedure* stipulates:

*"**Article 5***
(Principle of equality and principle of moderation)

1. In the relations with individuals, Public Administration shall abide by the principle of equality and may not favour, benefit, harm, deprive of any of their rights or waive away any of their obligations on the basis of ancestry, sex, race, language, place of birth, religion, political beliefs, ideological beliefs, education, economic situation or social status.

2. When the decision of the Public Administration is in conflict with the rights or legally protected interests of individuals, such rights or interests could be affected under the condition that it is appropriate and proportionate to the objectives pursued."

(1) In this case, **in terms of technical level**, we may ask: Is the cancellation of 2G systems the premise of the provision of 3G telecommunications services? **The answer is naturally negative**. There is no exclusive relationship between the two; on the contrary, **the two are still playing the complementary role within a certain period of time**. Because of this, we understand why the majority of the world's countries and regions are still implementing 2G and 3G systems simultaneously.

(2) **From the point of view of public services management**, after the compelling launch of the 3G telecommunications services, does it mean that all mobile phone users in Macao will inevitably use the services under the 3G system? Or is there still a part of citizens who continue to use only traditional telephone communications services, and for them, is it sufficient to use 2G network? Obviously, the answer is that 2G is adequate for this group of citizens.

In other words, the implementation of 3G system is not the only way or the best

way to pursue the public interest.

(3) **From the perspective of market and operation autonomy**, the compulsive launch of 3G system services and cancellation of 2G system services of the DSRT has resulted in forcing a portion of citizens in Macao to replace their phones with 3G mobile phones. Apparently it is an excessive intervention in the operating conditions of the market. On the one hand, it will affect the right to choose of Macao citizens as consumers and on the other hand, the operation of the telecommunications market is intervened under the condition of unjustifiable reason.

(4) **From the perspective of the rights and interests of Macao citizens**: this technical solution has also produced an unfair result: the Macao citizens are without options in their consumption, on the contrary, foreign mobile phone users are allowed to choose, which is unfair for the citizens of Macao.

(5) **To consider from the perspective of operation technique**, even if 2G service is only provided to roaming customers, thus expecting a decrease in the number of users, that does mean that operators could remove the existing transmission stations, instead, the transmission stations must be kept and this batch of transmission machine needs to be in good operational condition. In other words, for the operators, whether the 2G service is cancelled or not, they still need to retain the 2G system, but the objects of the services they provided are restricted by administrative means which failed to couple with a sound reason of seeking a more significant public interest. Therefore, this "decision of partial cancellation of 2G services" constitutes a breach of the "principle of moderation".

* * *

Moreover, the decision also violated the "principle of good faith".

Article 8 of the current *Code of Administrative Procedure* stipulates:

*"**Article 8***
(Principle of good faith)

1. In the exercise of administrative activity, and in any phases of the administrative activity, the Public Administration Authority and individuals should act and relate according to the rules of good faith.

2. *In compliance with the provisions of the preceding paragraph, should consider in the specific circumstances the legal basic values that need to pay attention to, and in particular:*

a) The confidence produced in the counterparty from the related activity;

b) The intended objective to be achieved with the action taken."

(1) In terms of telecom operators, they are requested to retain 2G system and at the same time, the objects of their services are restricted — they can only provide these services to roaming customers while there is no guarantee that all local mobile phone users will use the services of 3G systems. This is undoubtedly an inappropriate measure for the operators.

(2) In terms of mobile phone users, whether they use the 3G services or not, they have to be equipped with the devices operating on 3G system and 2G devices can no longer be used. This is also considered an inappropriate measure for consumers.

Furthermore, Article 7 of Law no. 14/2001 (*Telecommunications Basic Law*) of 20th August also stipulates that consumers should not be treated discriminately:

"***Article 7***
Users' Rights

To the telecommunications services users, the following rights are guaranteed:

1) Of the inviolable and secret communications in terms of law;

2) Of the privacy respected in the charge documents and in the use of their personal data by the service provider;

3) Of the access and use of public telecommunications services, with due quality, availability and constancy in the whole area of the Special Administrative Region of Macao;

4) Of the liberty of selecting a provider of public telecommunications services, as well as of the respective number portability of customer;

5) ***Of the non-discrimination as to the conditions of accessing and enjoying the services****;*

6) *Of being informed of the tariffs, prices and conditions of the services rendered;*

7) *Of the non-suspension of public telecommunications services, except for the occasions of non-fulfilment of the respective contractual conditions and of unavoidable circumstances;*

8) *Of knowing previously the conditions of suspension and cancellation of the service;*

9) *Of receiving responses, in valid time, to their claims from the service provider."*

* * *

Part VI: Conclusion

Given the above, the CCAC considers that the decision of the DSRT contains the following defects:

1. Up till now, the Chief Executive has never granted any formal authorisation to the three operators on the supply of 2G mobile services for roaming customers.

2. It is the competence of the Chief Executive to grant the licences since it must be published by way of Order of the Chief Executive (see Paragraph 5 of Article 5 of Administrative Regulation no. 7/2002).

3. The "announcement" that local mobile phone users can only use 3G services starting from 9th July contradicts the provisions of the *Code of Administrative Procedure* – particularly with regard to the "principle of moderation" and the "principle of good faith".

4. The "announcement of cancellation of 2G services" also contradicts the "principle of equality" in Article 4 of the same *Code*, as it deprives the local consumers' right to choose and violates their right of equal treatment.

5. The "announcement of cancellation of 2G services" does not conform to the public interests and the fundamental interests of local mobile phone users.

* * *

Part VII: Recommendations

For these reasons, in order to prevent problems of telecommunications services from happening and hampering the rights and interests of the local mobile phone users, **the CCAC proposes to his Excellency, the Chief Executive to consider the following buffering measures**:

1. **Consider extending the period of coexistence of 2G and 3G mobile phone systems for one or two years**, without prejudice to require the operators to accelerate the process of improving the quality of the 3G system within this period;

   〔If the proposal is accepted, the DSRT should be instructed to prepare the relevant orders and documents as soon as possible, so as to allow the three operators to continue to provide services to all 2G mobile phone users (including local users).〕

2. Whether or not the proposal referred to in Point 1 is accepted, the following measure should be adopted: **to allow transient replacement of 3G services with 2G services by telecom operators under certain special conditions**, for example, during maintenance of broadcast stations, or because of failure of 3G system that could not be immediately repaired, or other special circumstances. In these cases, it is necessary for operators to notify the DSRT before or after the occurrence of these situations and timely release relevant information to the public.

* * *

Commission Against Corruption, 11th May 2012.

Commissioner Against Corruption
Fong Man Chong

* * *

Conclusion:

Inspiration of the case:

(1) Up till the date of the publication of this report, the Chief Executive has never granted approval to the three operators to provide 2G telecommunications services to roaming customers (it is the Chief Executive's competence to grant licence since it needs to be published in form of an Order of the Chief Executive – see Paragraph 5 of Article 5 of Administrative Regulation no. 7/2002).

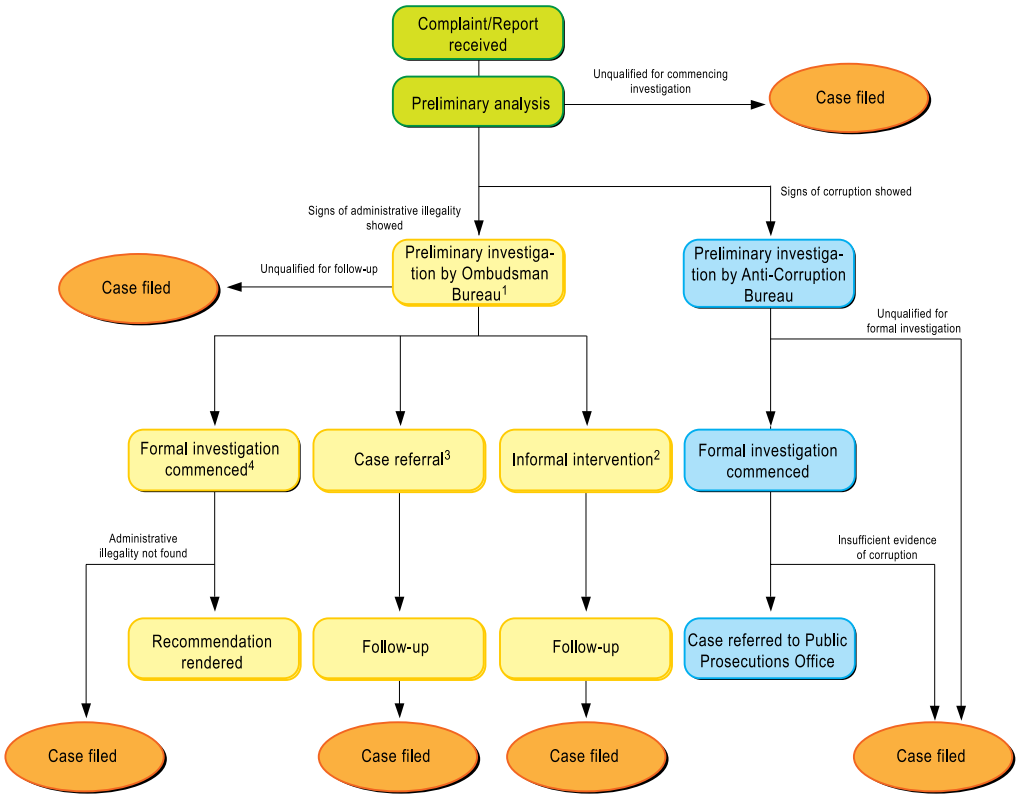
(2) The "announcement" of local users could only use 3G services starting from 9th July 2012 violets the stipulations of the *Code of Administrative Procedure* – especially the "principle of moderation" and the "principle of good faith".

(3) This "announcement of cancellation of 2G services" also violates Article 4 "principle of equality" of the same *Code*, depriving the right to choose and the right to equal treatment of local consumers.

(4) The "announcement of the cancellation of 2G services" does not conform to the public interest and the fundamental interests of the local mobile phone users.

Appendix III

THE CCAC'S COMPLAINT HANDLING PROCEDURE



Notes:

1	Preliminary investigation by Ombudsman Bureau	It is conducted under the stipulation of the *Organic Law of the CCAC* and the *Code of Administrative Procedure*. 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 Paragraph 12 of Article 4 of the *Organic Law of the CCAC*, 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 *Organic Law of the CCAC*, 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.

Appendix IV

Organisational Structure of the Commission Against Corruption