PART III
OMBUDSMAN

I. Introduction

In 2012, the CCAC continued to play its important role as the ombudsman by overseeing the legality and rationality of administrative procedures carried out by public departments; and enhancing their administrative efficiency and legality.

Last year, there were over 500 administrative complaints against government departments, of which a majority was about dissatisfaction of law-enforcement approaches or administrative decisions. The followings are the features of the complaints in 2012:

(1) Since the government launched the central recruitment system, many administrative departments recruited members on their own beforehand. However, inadequate considerations when handling the relevant problems led to large increase of complaints;

(2) The complaints over law-enforcement and management mainly involved health care, law-enforcement by police, traffic offences, municipal affairs, housing and public works.

To sum up the data, it is not difficult to find out where the "dissatisfaction-prone" areas lie:

(1) Administrative departments' acts and law-enforcement standard;

(2) Administrative departments' management approaches;

(3) Competent departments' inadequate understanding of their own duties and functions and their incapability to make a timely, accurate and effective decision.

To conclude the categories and contents of the complaints, law-enforcement by police, health care, traffic affairs, economical and social housing and municipal affairs were complained about the most, while the problems reflected by the cases still related to wrong handling procedures and approaches, inadequate understanding

of law, wrong and delayed administrative decisions, and public works management procedures and decisions that did not meet the demands brought by social development. In some cases wrong decisions were fatal.

The report mainly analyses and summarises the works in the area of ombudsmanship that the CCAC conducted in 2012 in the following aspects:

(1) Number and nature of requests for help and consultation;

(2) To reveal some common or inspiring cases to the general public in order to awake citizens' awareness of protecting their rights and interests and urge public departments to improve themselves.

II. Number and nature of requests for help and consultation

In 2012, the CCAC handled:

- Enquiries: 586
- Complaints: 929

[Note: In 2012, the CCAC opened files for investigation of 502 cases. In addition to 427 cases carried over from 2011, the CCAC had to handle a total of 929 cases throughout the year, while 563 of them were concluded.]

In 2012, the CCAC received 586 requests for help and consultation, a remarkable increase compared to 433 requests in 2011. The requests mainly involved legal system governing public services, traffic affairs, illegal constructions, municipal affairs and labour disputes. In particular, there is a slight increase of enquiries on traffic offences, illegal constructions and the competence of the Civic and Municipal Affairs Bureau.

The administrative complaints handled by the CCAC in 2012 were related to the following issues:

Issue	Caseload	
Legal system governing public service		111
▪ Personnel rights and interests	45	
▪ Discipline	33	
▪ Recruitment	33	
Public procurement	2	
Land and public works		68
▪ Illegal constructions	55	
▪ Regulation on usage of property	13	
Labour affairs		15
▪ Labour dispute	9	
▪ Non-resident labour	4	
▪ Illegal labour 2		
Traffic affairs		44
▪ Transportation/vehicles/driving licenses/violation	40	
▪ Supervision on taxis	4	
Municipal affairs		54
▪ Environmental hygiene	19	
▪ Rearrangement of streets	12	
▪ Occupation of public land	3	
▪ Animals	3	
▪ Vendors	13	
▪ Others	4	
Management and law-enforcement of disciplinary forces		86
Social housing/economical housing		25
Health care		62
Government subsidies		10

Supervision on public utilities		6
Issuance of banknotes		8
Noise		5
Education		30
Personal privacy		5
Property administration/seepage		5
Tax affairs		4
Administrative licenses		4
Birth/property registration		2
Right of abode		2
Consumer rights and interests		2
Provision of data		2
Telecommunication affairs		6
Others		5
Total		**563**

In 2012, the issues which the requests for help were related to included:

Issue		Caseload
Legal system governing public service		143
▪ Personnel rights and interests	42	
▪ Discipline	38	
▪ Public servant's obligations	24	
▪ Internal management	21	
▪ Recruitment	18	
Code of conduct		32
Public procurement		8
Traffic offences		55

Labour affairs/ Human resources		21
▪ Labour dispute	18	
▪ Illegal labour	2	
▪ Non-resident labour	1	
Land and public works		15
▪ Illegal constructions	13	
▪ Public works	2	
Municipal affairs		41
▪ Environmental hygiene	19	
▪ Administrative licenses	10	
▪ Vendors	8	
▪ Occupation of public land	3	
▪ Others	1	
Tax affairs		9
Traffic affairs		18
▪ Transportation/vehicles/driving licenses	17	
▪ Supervision on taxis	1	
Economical housing/social housing		11
Health care		9
Education		8
Government subsidies		7
Supervision on public utilities		5
Social Security Fund		5
Social assistance		3
Right of abode		2
Noise		2
Competence and function of the CCAC		24
Irregularities in other administrative procedures		34

Beyond the competence of the CCAC		
▪ Criminal cases	49	
▪ Judicial affairs	25	134
▪ Civil Law Issues	58	
▪ Personal disputes	2	
Total		586

When handling the complaints, the CCAC basically adopts various prompt and effective approaches, of which the most common is to examine related documents and bring up improvement measures directly in order to solve the problems as soon as possible. The public departments' attitude towards the analysis report, suggestions or recommendations made by the CCAC has changed as they have become more active and more likely to accept the suggestions. However, the real measures or solutions to the problems were not implemented immediately. In some cases, they even tried not to face the problems by making up excuses, thus worsening the conflicts. Sometimes the competent staff did not take up the responsibility for it.

The result of handling administrative complaints in 2012 is as follows:

Approach/Result	Caseload
Archived upon the CCAC's investigation and analysis	482
Archived after the relevant departments solved the problems on their own	33
Archived since the complaints were beyond the competence of the CCAC	48[5]

[5] 16 of them are of criminal nature, while the remaining 32 cases are administrative complaints.

III. Investigation file, analysis and recommendation

The complaints that the CCAC has received are basically handled and analysed with simple and direct method – to handle the complaints as ombudsman cases or commence investigation under criminal law.

For the ombudsman cases, the CCAC always observes the principle of debate: to ensure that both the complainant and the department being complained about have the chance of pleading and explaining; and to request related parties to give explanation or clarification or submit supplementary materials to the CCAC according to the specialty of the case and the needs. Subsequently, the CCAC will conduct a comprehensive factual and legal analysis on the complaint. Finally, a conclusion will be made: if illegality exists, the CCAC will point them out clearly and request the relevant department to address the problems. Suggestion on improvement will also be made if needed.

Another possibility is that there is no sufficient basis and signs showing illegality and irregularity of administrative departments and the CCAC will archive the complaints.

Another situation is that in the complaint handling process, the relevant departments have solved the problems on their own and the complainants have agreed on and accepted the results. In this case, the CCAC will archive the complaints.

These are the approaches that the Commission always adopts to handle administrative complaints and the commonly seen results. Only in some special cases, the CCAC will adopt other approaches according to specific needs.

In the process of handling administrative complaints, the most important is to present clear and specific facts, relevant arguments with sufficient basis, clear and convincing legal viewpoint and accurate application of law. The ultimate purpose is to ensure legal administration and to protect citizens' legitimate rights and interests.

IV. Summary of some ombudsman cases

In order to enable the public to know how the complaints in the area of ombudsmanship were handled last year, a number of cases which are closely related to citizens' daily life and have aroused public attention were chosen to be analysed in this part, with the aim to enhance the public departments' sensitivity and law-enforcement standard, as well as to enable the public to know the defects in handling these cases by the departments, thus strengthening citizens' awareness of protecting their own rights and interests.

Case 1 – Raising objection in public bidding procedure

The complainant participated in the "Public Bidding for Taxi License" of the Transport Bureau (DAST) jointly with his/her relative in 2012 and filed a complaint to the CCAC in June 2012 due to dissatisfaction of the arrangements.

The complaint is about the followings:

1. About the bidding price stated in the bidding document, the rules stipulated that *"**'X' shall be put in the inapplicable part of the number**"* and that *"**bidding documents that do not meet the rules will not be accepted**"*. However, their bidding document was accepted by the DSAT although they put "/" to omit the inapplicable part. The complainant thought that the bidding document should have been rejected.

2. The rules did not indicate that 10% tax should be paid. In response to the complainant's enquiry, the DSAT staff failed to reveal the period of tax payment.

3. The complainant also stated that the bidding notification from the DSAT did not mention the period and approach of raising objection.

Following the investigation and analysis of the points above, the CCAC considers that:

1. The bidding document of the complainant and his/her relative has clearly stated their willingness to bid for the license and the bidding price.

2. The DSAT accepted the bidding document which still clearly presented the

bidding price of which the inapplicable part was not shown with "X". This was undoubtedly beneficial to the bidder and accorded with the "principle of moderation" under Article 5 of the *Code of Administrative Procedure*.

3. Under normal circumstances, bidder hopes to win the bid instead of hoping that his/her bidding application will be rejected.

4. The intention of not being accepted is illogical and contradicts the "principle of good faith" under Article 8 of the *Code of Administrative Procedure*, which should be observed by the individuals participating in administrative procedures.

5. Therefore, accepting the bidding document submitted by the complainant and his/her relative did not constitute any administrative illegality or misfeasance.

6. On the other hand, the DSAT has already pointed out in the announcement of public bidding, the bidding rules and the relevant briefing session that the winning bidders should pay a tax equal to 10% of the price of the license, while the period of tax payment will be specified in the notifications to be received by the winning bidders.

7. Finally, the rules stipulated that full presence at the bid opening meeting is bidder's obligation. In fact, the president of the bid opening committee did announce the way and time limit of raising objection before it started and ended. Therefore, the DSAT has already fulfiled the responsibility to notify the bidders of the information.

Meanwhile, the CCAC found in the case that the DSAT can improve the relevant public bidding procedure because:

1. The current regulations (including Law no. 3/90/M of 14th May that regulates public service outsourcing system and the Chief Executive's Order no. 35/2012) do not provide clear stipulations regarding the procedure of raising objection against bid opening.

2. The DSAT can refer to Paragraph 3 of Article 30 and Article 34[6] of Decree Law no. 63/85/M of 6th July. However, due to the "principle of good faith"and the "principle of cooperation between administrative authority and individual", the DSAT could have indicated in the bidding rules the way and time limit of raising objection would be announced during the bid opening meeting so that the bidders would make it clear: If they do not fulfil the obligation to be present at the meeting, they will lose not only the right to make verbal offer but also the chance to raise an objection.

The CCAC rendered the suggestions above to the DSAT. Finally, since there were not any other matters to follow up in the case, the CCAC decided to archive the case and responded to the complainant.

Case 2 – Problems caused by incomplete information of property registration

In June 2012, the complainant told the CCAC that the Real Estate Registry did not mention the sealing up of a parking space at Tjoi Long Sea View Park in the real estate registration certificate of the parking space. As a result, the complainant was misled into buying it. Later, the parking space was auctioned off publicly by the court, leading to loss of his/her ownership. The complainant has already filed a claim for compensation to the court.

The complaint is mainly about the followings:

1. Chaotic and wrong registration made by the Real Estate Registry.

2. The Legal Affairs Bureau (DSAJ), the Real Estate Registry and the Notary Office were buck-passing.

3. The court only ruled the complainant's situation returned to the original status, i.e., to repay to the complainant the money paid for the purchase. However, it is impossible to purchase the same parking space at the same price, so the complainant considered that the Real Estate Registry should be

[6] The content: "Article 34 (Resolution made by the committee) 1. Resolution made by the committee is based on the votes of the majority. In case of a tie, the president's vote prevails. 2. The committee can suspend the bid opening activity and have a closed-door meeting whenever it deems necessary, so as to make resolution to the objection raised. 3. The decision on objection shall be recorded in the minutes. 4. If any of the members is unsuccessful in making the resolution, it shall be recorded in the minute. They can express the reasons for the disagreement so as to have them recorded in the minutes."

held responsible. Especially the Secretary for Administration and Justice, Florinda da Rosa Silva Chan, who is the superior of the Registry, shall be held responsible for the mistake because it will directly affect citizens' interests regarding property.

For the first point, the failure to show the relevant record of sealing up in the registration of the parking space in 2002 is related to not only negligence and violation of discipline but also the defective computer system of the Registry in early stage. For the defects, the Registry already upgraded its computer system in 2006. Therefore, the risk of making mistake caused by the defective system has already been lowered or prevented. Moreover, the DSAJ commenced disciplinary procedure and took respective procedures against the staff who allegedly violated the disciplines after the case came to its knowledge. However, the staff has already been relieved from the responsibility since the prescription has expired. Therefore, the CCAC is not able to follow up the issue about disciplinary liability.

For the second point, the Real Estate Registry and the Notary Office reported the case to the DSAJ immediately after they knew it, while the DSAJ also notified the Secretary for Administration and Justice of the case and suggested various feasible measures, including studying on the feasibility of offering compensation by the Macao SAR Government to the owner of the relevant parking space directly. There is no sign of buck-passing so far. Nevertheless, since the case involved several interest parties (such as the selling party, the lawyer who handled the purchase agreement and the staff of the Registry who provided the property registration certificate with incomplete information), it is necessary to confirm the proportion of the compensation that the respective part shall pay in order to guarantee proper use of public fund. After obtaining opinions from her advisers, the Secretary chose to solve it by judicial means, i.e. to let the court judge the proportion of the compensation that the government should take up. Due to respect of the autonomy of management enjoyed by the responsible departments, the CCAC would not interfere into this point.

As to the third point, according to the current law, especially Article 2 of Decree Law no. 28/91/M of 22nd April, the entire public administration (not only the Secretary for Administration and Justice) shall take up the non-contractual civil responsibility for the loss caused by mistaken purchase of the sealed up parking case due to incomplete information shown in the property registration certificate. In fact, after hearing the case, the court ruled the amount of compensation that the public administration shall pay. If the complainant is not willing to accept the judgment, he/

she can file an appeal to the court. The CCAC does not have the right to interfere in it.

Therefore, the CCAC archived the case.

Case 3 – Internal promotion of public servant

According to a complaint filed in September 2011, the complainant, who was employed as assistant officer of 2nd class, 1st rank, under temporary contract in October 2008, was promoted to 2nd rank later. His/Her performance grades for 2008 to 2010 were 4, 4, and 5 respectively, but he/she was not promoted to a higher class.

The CCAC realised that the relevant authority considered that before Administrative By-law no. 23/2011 of 8th August, *Recruitment, Selection and Training for Promotion of Public Personnel,* entered into effect, even if the staff has met the requirements for promotion, the law did not stipulate that promotion of class shall necessarily be given. Therefore, the authority only renewed the complainant's contract without giving him/her promotion of class.

The CCAC considered that although Paragraph 3 of Article 25 of the *Statute of Personnel of the Public Administration of Macao* stipulates that the promotion of staff employed on temporary contract shall meet the general requirements for promotion of staff on permanent contract, the provision neither requires the staff on temporary contract to follow the requirements and rules regarding examination for promotion nor further defines the rules for promotion of staff on temporary contract. In reality, a procedure of standard promotion of those who meet the requirements for promotion is not compulsory for the staff on temporary contract, whose promotion is done through adding a note on the employment contract signed by both sides. Therefore, whether they are promoted depends on the decision made by the departments they serve.

After Law no. 14/2009 of 3rd August, *System Governing Ranks and Classes of Public Personnel*, entered into force, public department shall hold examination of promotion for the personnel who have filled the requirements for promotion regardless of whether they are employed on permanent or temporary contracts. Nevertheless, the supplementary regulation on examination and training for promotion - Administrative By-law no. 23/2011 of 8th August, *Recruitment, Selection and Training for Promotion of Public Personnel* – did not enter into force at the same

time. This means that in the period after Law no. 14/2009 became effective but before Administrative By-law no. 23/2011 entered into force, there were no regulations on examination and training for public personnel on temporary contract.

Under the above circumstances, it is necessary to make it clear: For the staff employed on temporary contract, can the authority decide whether to promote them based on their situations under the old legal system? Or shall they promote them once they have met the requirements for promotion?

The stance of the Public Administration and Civil Service Bureau (SAFP) on this issue is: Before Administrative By-law no. 23/2011 entered into effect, promotion of staff on temporary contract shall accord with the promotion system under the *Statute of Personnel of the Public Administration of Macao*. Those who have met the requirements for duration of service and performance grading will be qualified for promotion. What the SAFP said does not come to a conclusion that the department shall promote the complainant.

Later, due to the implementation of Administrative By-law no. 23/2011, the Health Bureau promoted the complainant together with some other staffs on 1st October 2011.

As the case has been resolved, the CCAC archived the case.

Case 4 – Complementary measures for temporary prohibition of parking

In June 2012, a complainant told the CCAC that he/she had been fined by the police for illegal parking, but for the other two cars parked on metered parking spaces which were temporarily closed, the police did not lay any charges, raising doubts of double standard in law-enforcement. Moreover, the complainant received another fine notification after he/she had received one for accusation of "no paying the parking fee", so he/she also doubted that the police treated him/her unfairly and wasted public money.

The CCAC realised that the Civic and Municipal Affairs Bureau (IACM) had to carry out construction at the relevant road and thus requested the Transport Bureau (DSAT) to close the two metered parking spaces by blocking the relevant section and covering the logo of "parking available" with black plastic bags. On that day, after receiving a complaint, the police dispatched officers to the site to follow up and

verify the situation mentioned in the complaint. However, the police stated that those cars did not obstruct the traffic and therefore there was no ground for prosecution. Finally no charge was laid.

The CCAC considered that although there are stipulations that clearly define the locations and situations that allow and disallow parking, in fact, there were no other measures to ban parking at the site apart from blocking the road and covering the logo of "parking available", making it no ground for the police to lay charge against the drivers who parked those cars. Therefore, it is difficult to consider that the handling was administratively illegal.

On the other hand, the CCAC found that when requesting for temporary close of the metered parking space, the DSAT did not clearly request the IACM to place the label of "parking prohibited". As the purpose of this request was undoubted for banning parking in order not to obstruct the construction nearby, the CCAC sent a letter to the DSAT to urge it to adopt measures to avoid the same case from happening. Hence, the DSAT promised that it would request the relevant department to place the signal of "parking prohibited" at the relevant roads so that the police would be able to enforce the law.

For the repeated sending of fining notice, the police explained that malfunction of the computer system when identifying the relevant data resulted in sending two fining notifications to the complainant in a short time. The police has requested technical department to follow up and reminded its staff to pay attention to the operation of the computer system in order to prevent the same from reoccurring.

Therefore, the CCAC archived the case.

Case 5 – Certificate issuance by government department

In November 2011, a complainant told the CCAC that a nurse of the vaccination room of the Health Care Centre of Fai Chi Kei did not tell him/her that doctor's reference was required for rubella vaccination. Moreover, the Centre refused to issue any "certificate for the complainant's presence to seek service at the Centre" since the complainant did not receive any health care treatment. Therefore, the complaint considered that the Centre mishandled the case.

Following investigation and analysis, there was no information proving that the nurse had given wrong instruction to the complainant, but in view of the incident, the Health Bureau stated that it would keep the replies of enquiries about vaccination in record in order to prevent misunderstandings of the relevant issue.

Meanwhile, the fact that the complainant requested the Centre to issue the certificate of seeking service reflected that the complainant must be a public servant. The certificate would be used for the purpose of justifying his/her absence from work.

According to Article 108 of the *Statute of Personnel of the Public Administration of Macao*, statement of medical consultation serves as the proof for justifying public servant's absence for medical reasons. Public servants only have to submit statements of medical consultation and there is no need to make any other explanation. The complainant, in fact, did not receive any medical consultation and health care services. Therefore, the Centre did not issue any statement of medical consultation.

In this case, the complainant has to make an explanation to the department he/she serves according to Paragraph 1 of Article 90 of the *Statue*. If the department accepted it, the absence will be justified. In other words, the complainant can explain the reason for his/her absence to the department through self declaration. If the department has doubts about the explanation and needs to consult the Health Bureau for verification, then the latter will be obliged to provide the information about the complainant's request for medical service at the centre.

To conclude, the CCAC considered that issuing the certificate for the complainant's presence to seek service at the Centre was not the only way to justify his/her absence. Moreover, the complaint letter did not mention that his/her absence was considered by the department as unreasonable due to this reason.

Therefore, the CCAC archived the case.

Case 6 – Duties of supervisory authority

In August 2011, a citizen made the following complaint:

1. The Education and Youth Affairs Bureau (DSEJ) did not immediate open a file to follow up the case after the complainant filed a complaint over a tutorial centre that had left little children alone at the lobby of the building and ignored their safety;

2. The reception staff of the DSEJ refused to reveal the complaint file number and his/her name;

3. The DSEJ only admonished the tutorial centre by sending a warning letter but did not impose any severer punishment and reveal its name to the public. The complainant thought that the DSEJ neglected its duty.

As to the first point, the DSEJ replied that after receiving the complaint by phone, the DSEJ recorded it in the complaint system and dispatched staff members to follow up the case. Later, the complainant was invited by the DSEJ to give testimony. Although the complainant did not sign the testimony for the reason that he/she had already reported it to the police, the DSEJ did not stop following up the case. Due to improper care of children, the DSEJ sent a warning letter to the tutorial centre. Based on analysis, there is no information proving that the DSEJ did not follow up or handle the case after receiving the complaint.

In response to the second point, the DSEJ stated that it had already provided the complaint record number to the complainant and the relevant staff also had given his/her name and name card. There is no objective information proving the mishandling.

For the third point, in fact, under the contract of tutorial service, tutorial centre is obliged to ensure students' safety. If their safety is endangered or threatened, it shall bear civil or even criminal responsibilities. However, since there is no administrative rules regarding punishment for neglect of child caring committed by tutorial centre defined by the law, the DSEJ has no power to impose administrative punishment on the tutorial centre except giving warning. According to the reply from DSEJ and the information it provided to the CCAC, the DSEJ is drafting a bill to introduce punishment for physical and mental damages to students committed by tutorial centres.

Based on analysis, although the aforementioned measure will facilitate the improvement of regulation on tutorial centres, it still takes time to finalise the bill. During this period, as the supervisory department, the DSEJ has to implement transitional measures such as formulating guidelines on protection of students' safety, enhancing promotion and education, and reminding tutorial centres the outcome of neglect of care, in order to urge them to ensure protecting for children's safety and avoid similar case from occurring.

Moreover, the warning letter sent by the DSEJ only generally pointed out that the tutorial centre should ensure students' safety, but it did not clearly indicate the legal responsibility for neglect of care. The contents were inadequate.

Therefore, the CCAC rendered the above suggestions to the DSEJ through a letter. Subsequently, the DSEJ replied that it would accept the suggestions and send relevant guidelines to tutorial centres in order to make them understand the obligations and duties to take care of students and the legal liabilities for neglect of care.

Case 7 – Measures against discrimination

In April 2012, a complainant told the CCAC that the Institute for Tourism Studies (IFT) disallowed people with Hepatitis B to enrol in the bachelor degree programmes in culinary arts management, hotel management and tourism event management in the academic year 2012/2013.

The complainant stated that on 7th July 2011, the Health Bureau issued guideline aiming at eliminating discrimination against of people with Hepatitis B. Therefore, he/she considered that the ban contradicted the aim and hoped the CCAC to intervene into the case.

According to analysis, Article 26 of Law no. 2/2004 of 8th March, *Prevention and Cure of Infectious Disease*, states that people shall not be discriminated in the aspects of education, employment, selection of residence and acquisition of service for the reason that they have infected, are suspected to have infected, or are at risk of infecting any infectious disease. The relevant guideline issued by the Health Bureau indicates that engaging in service sector and receiving education are not the factors in increasing the risk of infecting Hepatitis B and stressed that infection with Hepatitis B cannot be the reason for refusal of employment or admission to schools.

Following the CCAC's intervention, the IFT resolved to cancel the relevant restriction and the resolution took effect immediately after referring to the written suggestion by the Health Bureau in early 2012.

Since the IFT had already adopted measures to handle the relevant matters, the CCAC archived the case.

Case 8 – Wrong and inappropriate tax recovery

In January 2012, a complainant told the CCAC that he/she worked for a local hair salon on full-time basis in 1991 and 1992 and did not take up any part-time job, but the Coercive Collection Bureau of the Financial Services Bureau (DSF) requested him/her to repay the occupation tax in default on his/her jobs in five different companies during the said period and blocked the refund of occupation tax and cash he/she was supposed to receive under the Wealth Partaking Scheme.

The complainant sent a statement to the Director of the DSF to request for repealing the decision on the recovery of the said tax, but was subsequently rejected.

The CCAC discovered in an investigation that the Chinese and Portuguese versions of the name of the street written in the column of address in the occupation tax registration form of class 1 (M/2) were inconsistent and seemed not to have been filled in by the same person. There might be human negligence. Therefore, the CCAC notified the DSF of the problem and requested it to follow up the complainant's case. Later the DSF replied that the said the Portuguese address should have been filled in by its staff, but the inconsistency was caused by inaccurate translation.

In fact, in the past, tax recovery notice issued by the DSF was sent based on the address in Portuguese. As a result, the complainant did not receive the relevant notice on time. Therefore, the Director of DSF issued an order to approve the repeal of the decision of tax recovery. Moreover, as occupation tax for 1991 and 1992 is beyond the time limit for accounting, the accounting procedure will not be re-commenced.

Since the case was solved finally, the CCAC archived the case.

Case 9 – Grievance caused by administrative omission

In July 2012, a complainant stated that between 2010 and 2012, there were cars illegally entered and were parked at Largo do Lilau, affecting surrounding residents' relaxation. In 2010 and 2012, the complainant made suggestions to the Civic and Municipal Affairs Bureau (IACM) of building fence to avoid entry of car, but did not see any follow-up measures ever taken, doubting that there was administrative misfeasance. The complainant hoped the CCAC to intervene into the case.

The CCAC realised that the IACM adjusted and made changes in the adjustable fences in early August 2012 in order to prevent entry of car.

Since the IACM has already adopted appropriate measures to handle the relevant matters, the CCAC archived the case.

Case 10 – Problem concerning distribution of commercial name cards

In May 2011, the CCAC received a report indicating that X, a staff member of a disciplinary force, was suspected of taking up outside job illegally, as he distributed name cards of company A, which contained X's name and contact number.

According to one of the name cards enclosed with the report, X might be engaging in private business. If it had not been approved by the competent authority, X might violate the stipulation of exclusiveness under Paragraph b) of Article 16 of the *Statute of Militarised Personnel of the Public Security Forces of Macao*. As the security force that X worked under had the disciplinary power and was more able to judge whether X had violated the discipline, the CCAC referred the case to the authority and requested for the handling result.

Later, the CCAC received a response from the Public Security Police Force (PSP), which indicated that the PSP proved that the company was owned by X's wife, but X was not involved in the business, nor had he taken up any position. The name cards were to promote his wife's company, so it considered that X did not illegally take up outside job.

However, the CCAC considered that promotion of shop or company aims to seek business opportunities and profits. Exchange of name cards with name, position, organisation, company and contact methods is generally considered as activity of

business connection. Although the name cards distributed by X did not indicate his position in company A, the receivers might perceive that it was possible to contact X through the contact methods shown by the name card in order to discuss the business related to company A directly or indirectly. In other words, printing and distributing name cards are ways of engaging in business activities, so it shall be considered as engagement in private business. Therefore, X shall be deemed as engaging in outside job illegally. At least it has affected public servant's image of neutrality.

The CCAC declared its stance to the PSP and requested it to adopt follow-up measures. Finally, it commenced disciplinary procedure against X and considered his/her behaviour as engagement in private business. Since prior approval by competent authority was not granted, he/she has violated the provision regarding the obligation of exclusiveness. Following scrutiny of the facts, X was given a warning letter.

As the PSP has already handled the problem according to the law, the CCAC archived the case.

Case 11 – Wrong prosecution for illegal parking

In July 2012, a citizen complained to the CCAC that he/she had been wrongly prosecuted for illegal parking, causing waste of time to collect registered ticket, request for the CCTV record of relevant parking lot to prove the error and submit a plea to the Traffic Department. Finally the charge was revoked.

However, after a period of time, the citizen was wrongly charged again.

The citizen was very dissatisfied with the police's repeated errors and considered that it had wasted the prosecuted people's time as they were forced to go through every step of relevant procedures to protect their own rights and interests. If there is no CCTV system installed in the parking lot, the prosecuted will find it difficult to prove his/her innocence. Therefore, the complainant requested the CCAC to intervene into the case in order to urge the authority to improve the prosecution procedure, for example, taking photos of illegally parked cars to keep the record of the plate number and the date and time of the violation in order to keep innocent people from unnecessary troubles caused by police officers' mistakes.

Information shows that since October 2009, some of the traffic police officers

have been using 10 electronic ticket issuing devices introduced by the Traffic Department. As street names, relevant laws, record of lost cars and information about cars (such as brand, model, colour) are saved in the computer terminal, the information of car will be displayed by inputting the plate number. Then the ticket will be printed out by a mobile printer carried by the police officer, aiming to decrease the mistakes caused by writing tickets by hand and inputting the data into computer system afterwards.

As many of the police officers responsible for prosecuting still do not use the device, i.e. handwritten tickets are still common; the CCAC referred the complainant's suggestion to the PSP.

The PSP replied that the Traffic Department would calculate, monitor and review the errors in prosecution and replace the traditional way by gradual utilisation of the electronic device. Moreover, as the PSP found that the ticket issuing device introduced at the beginning was not good enough, it has been replaced by a newly developed electronic device which has the functions including identifying the information of cars through 2D barcode, GPS system, photo taking (to verify the violation), transmitting the information of violation to the computer database immediately and uploading the tickets to the internet payment system.

As the new electronic device is used more commonly, such errors are likely to decrease. Therefore, the CCAC archived the case but will continue to pay attention to the use of the device.

Case 12 – Handling of labour dispute

In November 2012, X, a person-in-charge of a company, complained to CCAC against the Labour Affairs Bureau (DSAL) for the approach and result of handling a labour dispute.

After being dismissed, a non-local employee of the company, Y, filed a complaint to the DSAL against company A for default in payment of salary and compensation for over-time work and weekly day-off when he/she was working for the company (between September 2009 and June 2011) and suspension of payment of salary after he/she stopped working.

The DSAL proved the illegal behaviour following investigation and considered

that those illegalities committed before Law no. 21/2009, *Law on Employment of Non-resident Workers*, entered into effect on 26th April 2010 only involved civil responsibilities, so company A was responsible for compensation but not subject to punishment. The DSAL only issued a "notification of voluntary correction" to the company. If the company failed to do so, the DSAL would refer the case to the Public Prosecutions Office for handling.

The illegal behaviours committed after the said law entered into effect constituted slight violation and were punishable. Therefore, the DSAL sent company A a "notification of payment of fine and remuneration in default to non-resident employee", which indicated that the company should deposit the fine and payment in default into a designated bank account and submit the payment invoice within the following five days to the DSAL. Otherwise, the case would be referred to the judiciary. However, if the payment in default was deposited in the designated bank account before the case was referred to the judiciary, company A would be exempt from fine.

In August 2012, A received the said two notifications from the DSAL and filed two appeals to the DSAL in early September. According to the appeals, A denied having requested Y to stop working; Y was absent from work on the relevant days without justified reason and taking leave and the way to calculate Y's weekly day-off adopted by the DSAL was wrong, but A agreed on the amount of compensation for over-time work listed by the DSAL.

In late October and early November, the DSAL made responses to the said appeals respectively, pointing out that the company did not present any proof for Y's unjustified absence but admitted the suspension of work during the mediation meeting. Moreover, the compensation for weekly day-off was calculated based on the terms that "Y will enjoy the weekly day-off on the seventh day of a week following six consecutive days of work" under the employment contract. The calculation was correct and therefore the DSAL rejected the appeals.

X was dissatisfied with the DSAL's handling approach because:

1. The basis for the rejection was unconvincing and unclear. The DSAL believed that the arrangement of having Y stopped working was true but did not clearly point out who made the arrangement and when and where it was made;

2. Although the reasons including "raining" and "compensatory time off" were

recorded on the attendance record, the DSAL still insisted that the days off were due to suspension of work. Moreover, the standards of calculating the compensation for weekly day-off adopted by the DSAL were inconsistent;

3. The complainant received the notification of attending to the hearing on slight violation of labour laws from the court in mid-October. This reflected that the DSAL referred the case to the court during the period for voluntary correction or handling appeal;

4. The DSAL handled the matters about voluntary correction in an "inclusive" way. As a result, A was not able to make the voluntary correction on the parts agreed by all in the table of calculations done by the DSAL and handle the controversial ones separately.

For point 3, since Law no. 7/2008, *Labour Relations Law*, which is applicable to Law no. 21/2009, *Law on Employment of Non-resident Workers*, entered into effect on 1st January 2009 and defined the period of "voluntary correction" of the administrative illegal acts recognised by the latter, "voluntary correction" is not applicable to case of slight violation. However, the employer will be exempt from fine if he/she voluntarily repays the remuneration in default to the employee within the designated period. Otherwise, the DSAL shall refer the case to the judiciary immediately under Paragraph 4 of Article 11 of Administrative By-law no. 26/2008, *Rules of Operation of Labour Inspection*.

Since the "notification of payment of fine and remuneration in default to non-resident employee" sent by the DSAL to A indicated this provision, referring the case to the judiciary was not inappropriate.

For point 4, since all the illegal behaviours in the case constituted slight violation, according to the provision mentioned above, the DSAL shall only refer the case to the judiciary if it did not receive the proof of repayment from the employer after sending out the notification. The law does not provide any other approach to handle such case. Moreover, A did attend the mediation meeting on the labour dispute held by the DSAL. Therefore, A should have realised the fact that it had violated labour laws. In other words, it had the chance to make correction promptly on its own. However, it did not take the chance.

For points 1 and 2, for the illegal behaviours committed after the *Law on Employment of Non-resident Workers* entered into effect, the DSAL has referred

them to the judiciary and the latter has already commenced proceedings of slight violation of labour laws. Therefore, the judgment shall be made by the judge and the court ruling shall prevail over any decision made by any other authority. The CCAC shall not intervene into the case. Meanwhile, since those committed before the law entered into force only involved civil responsibilities and are not related to administrative illegalities or misfeasance, the CCAC did not need to intervene into them and thus archived the case.

Case 13 – Grievance against score of examination of recruitment of public service post

In January 2012, a complainant told the CCAC that he/she participated in the recruitment of a post of officer of public department A in mid-2011 but was eliminated in the stage of written exam.

The complainant, who considered that he/she should have passed the exam, requested for a meeting with the chairman of the panel and review of his/her exam paper. Then he/she found that he/she did not get any point from the question that required for quoting laws, though he/she had already cited laws in the answer.

The complainant suspected that the grade was given unfairly and requested the CCAC to intervene into the case in order to request A for relevant information and viewing his/her exam paper.

In fact, citing laws in the answer does not guarantee score, which depends on whether the laws are cited correctly or not. Moreover, personal judgment without proof and basis is not sufficient to constitute the ground for unfair grading. Therefore, the CCAC archived the case. Apart from explaining its stance to the complainant, the CCAC told him/her that if there was any proof of unfair grading, he/she could file an appeal to protect his/her rights and interests.

The complainant was dissatisfied with the CCAC's decision and thought that this would make it impossible to seek the truth. He/She pointed out that the chairman of the panel "looked guilty and prevaricated" in the meeting and reiterated that the score was given unfairly and the CCAC was the authority of the "statutory system of complaining".

The CCAC is conferred upon by its organic law the duty as ombudsman – to

ensure legal administration and fair and correct procedure, and to enhance public department's effectiveness.

For the reports and complainants in this aspect, the CCAC has to conduct preliminary analysis first. If any signs of illegality or irregularity are found, CCAC will commence preliminary investigation, and will request for relevant information and response from the department being complained about or invite relevant staff to the CCAC to give testimony. Then the case will be either handled based on the results of the investigation or archived. This case was archived since no signs of illegality or irregularity were found in the analysis by the CCAC.

The second statement made by the complainant to the CCAC was only about subjective descriptions which were not backed by any objective facts. Following in-depth investigation, no signs of illegality or irregularity were found. Therefore, the CCAC insisted in the conclusion of archiving the case.

The "statutory system of complaining" adopted in the recruitment examination refers to Article 68 of the *Statute of Personnel of the Public Administration of Macao* also applicable to the recruitment, which stipulates that interest party is entitled to file an appeal within 10 days upon the announcement of the final results.

The CCAC explained to the complainant again and told him/her that if he/she still failed to submit any supplementary information that could proved the illegality and irregularity in A's handling, the CCAC would archive the case again.

Since the complainant did not contact the CCAC within the 10 days, the CCAC archived the case finally.

Case 14 – Problems caused by distribution of gift bags

[Although this is a first-of-a-kind case which has been archived finally, there are some similar cases being analysed for the time being and many problems have been discovered in the analysis. Therefore, we will conduct a thorough analysis in other cases being followed up.]

In January 2012, a citizen reported to the CCAC that among the civil associations that cooperated with the Macao Foundation in the activity of distribution of gift bags to the elderly living alone, a certain number of them only distributed gift bags to those

who were willing to flatter them, while those who were unwilling to do so, those who did not have any relatives and those who did not receive household assistance were not given the gift bags. Therefore, the citizen suspected that the distribution by those associations was arbitrary and inconsistent and therefore requested the CCAC to investigate into the case. Moreover, the citizen also complained that it was too difficult to meet the requirements for the household assistance offered by civil associations.

According to local press, during the Chinese New Year, the Macao Foundation co-organised a gift giving activity with 20 civil associations which have been providing service and assistance to the grass-root and disadvantaged for a long time. The associations distributed festive gift bags to over 10,000 people, including elderly living alone, chronic patients, disabled, orphans, widows and those who suffered from severe difficulties in living, aiming to provide extra care for them for the festival.

The different requirements for receiving gift bags adopted by different associations might cause problems concerning unfairness. Moreover, there were opinions that those who had joined more than one association received more than one pack of gifts, while those who did not join any associations received nothing.

Since it involved use of public resources, the CCAC sent a letter to the Macao Foundation to ask whether it had issued any guidelines for the associations and conducted any supervision.

The Macao Foundation replied that the activity aimed at giving small gifts to the disadvantaged through civil associations' service networks in order to extend seasonal greetings to them. The qualifications depended on the associations' experiences, so there were differences. The Macao Foundation issued "General Guidelines on Distribution of Gift Bags 2012" and held meetings to explain the relevant arrangements to the associations that participated in the activity. The rules included: The activity should target the disadvantaged people that have been receiving services and those who most in need. The associations should guarantee that the receivers were not the beneficiaries of the same activity held by another association and that one beneficiary should be given one gift bag only. The value of each gift bag was MOP500. The administrative expense shall not exceed 10% of the value. Each association shall submit the evaluation of effectiveness of the activity, the financial report and the acknowledgement of receipt forms.

The CCAC also requested the Macao Foundation for the documents mentioned above, the detail about the Macao Foundation's spending on the activity, and final report and other relevant information.

After analysing the information provided by the Macao Foundation, the CCAC considered that: Since the authority does not have specific registration data of disadvantaged people, if the authority wants to distribute gift bags to every one of them, it has to clearly define the details including requirements and qualifications, application procedures, assessment and approval. Doing this will cost the authority a lot of manpower and resources. For distributing gift bags valued MOP500 for each, such doing seems to violate the principle of moderation.

In reality, the Macao Foundation cooperated with some civil associations. The former sponsored the activity, while the latter was responsible for the planning and operation. The associations listed the beneficiaries according to their experiences and then gave them the gift bags. The administrative costs involved were under controlled, thus saving the resources. Therefore, despite of the shortcomings (the possible difference in defining the disadvantaged which cause inconsistent standard of the distribution), the activity accorded with the principle of moderation and was therefore acceptable.

Based on the final report of the Macao Foundation, the CCAC realised that the cases of one person's receiving gift bags from more than one association had already come to its attention. Therefore, the Foundation plans to request the associations to enclose a soft copy of the list of beneficiaries, which should include their names and identification card numbers, with the application documents when co-organising similar activities in the future, so that the Foundation can solve the problem. In fact, this measure was implemented for the gift-giving activity for mid-autumn festival later. Therefore, the problem has been solved.

As to the problem concerning the disadvantaged people who cannot be benefited from such activities since they are not connected with any associations, the Macao Foundation did request the Social Welfare Bureau for relevant name lists, but the latter refused to do so due to protection for personal data. Therefore, the Macao Foundation has come up with the idea "to encourage the disadvantaged people who do not join any associations to request for gift bag from any of the associations".

Among the associations that co-organised the activity, many serve their members only, while some of them also provide service to non-members. A few

associations purely provide assistance to the people in need, such as Macau Tung Sin Tong Charitable Society and Caritas Macau. Therefore, the saying that the disadvantaged people who did not connect with any association would lose the chance to receive gift bag is not absolutely correct, despite the fact that there are less chances and ways for them to receive gift bag. The aforementioned idea of the Macao Foundation can increase the chances and ways. However, if the applicants are not the target beneficiaries of the associations, it will be difficult for the latter to judge whether they are disadvantaged people. Therefore, the CCAC suggested the Macao Foundation setting practical criteria in advance in order to facilitate the works of the associations and prevent unnecessary doubts.

The CCAC discovered in the financial documents provided by the Macao Foundation that the value of gift bags from some associations exceeded the designated amount, while some gift bags contained one or two items that were "specifically for somebody" (such as a correction pen, a deodorant spray, a box of Lingzhi mushroom, a box of plastic wrap, three boxes of Cattle Gallstone Pills). Although this doing was not prohibited, the items contained in gift bags were not indicated in the acknowledgement of receipt forms, therefore, it was difficult for the Macao Foundation to conduct supervision and would raise doubts that such special gifts were given to some particular recipients.

Later, the Macao Foundation requested the association that co-organised the gift-giving activity for mid-autumn festival to submit the lists and photos of the items contained in the gift bags in advance in order to ensure the value and quality of the gifts. This measure enabled the Macao Foundation to follow up the suspicious cases or alleged violations. Therefore, the CCAC did not intervene into this issue.

Moreover, the CCAC also found that some associations did not enclose the invoices of purchase of gifts with the activity reports submitted to the Macao Foundation. Some of them submitted the receipts issued by the shops instead. Since invoice indicates the name of the shop, description of items, quantity and unit price, while receipt only indicates the names of the payer and the recipient and amount without any information of the items which hinders the supervision. Therefore, the CCAC declared its stance to the Macao Foundation and suggest requesting the relevant associations for invoice. The suggestion was accepted.

For the qualification for household assistance provided by associations, Article 3 of Law no. 2/99/M, *Regulation of Rights of Association*, the relevant associations can define the qualification on their own and the authority shall not intervene into it. Therefore, the CCAC did not intervene into this issue.

The CCAC archived the case but will continue to pay attention to the implementation of the measures "to encourage the disadvantaged people who do not join any associations to request for gift bag from anyone of the association" in such activities in the future.