PART IV

OMBUDSMAN

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I. Introduction

In 2013, 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 legality** and efficiency.

Last year, there were over 600 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 2013:

(1) Matters about the central recruitment system of the public administration; There were inadequate considerations when handling the relevant problems which led to a large increase of complaints.

(2) The complaints over law-enforcement and management mainly involved 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' omission, procrastination, non-compliance with the law and loose standard of law enforcement;

(2) Administrative departments' outdated management;

(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, economic and social housing and municipal affairs were complained about the most, while the problems reflected by the cases still involved wrong procedures handling and approach, 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 2013 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 2013, the CCAC handled:

- Enquiries : 525
- Complaints : 959 (of which 604 were received in 2013)

[Note: In 2013, the CCAC opened files for investigation of 604 cases. In addition to 355 cases carried over from 2012, the CCAC had to handle a total of 959 cases throughout the year, while 510 of them were concluded.]

In 2013, the CCAC received 525 requests for help and consultation, a slight decrease compared to 586 requests in 2012. The requests mainly involved legal system governing public services, traffic offences, illegal constructions, municipal affairs and labour disputes. In particular, there was 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 2013 were related to the following issues:

Issue		Caseload
Legal system governing public service		104
▪ Personnel rights and interests	29	
▪ Discipline	25	
▪ Recruitment	23	
▪ Internal management	27	
Labour affairs/Human resources		10
▪ Labour dispute	9	
▪ Non-resident labour	1	
Land and public works		40
▪ Illegal constructions	30	
▪ Regulation on usage of property	4	
▪ Construction license and check	4	
▪ Land grant	2	

Municipal affairs ▪ Environmental hygiene ▪ Municipal licenses ▪ Vendors ▪ Occupation of public land ▪ Animals ▪ Public facilities ▪ Others	 11 8 8 4 2 8 3	44
Traffic affairs ▪ Traffic planning ▪ Public transportation ▪ Vehicles/Driving license	 20 11 4	35
Public Procurement		8
Management and law-enforcement of public security force		43
Education		17
Health care		17
Government subsidies		11
Supervision on public utilities		11
Legislative Assembly Election		28
Provision of data		8
Economic housing/social housing		10
Noise		7
Property administration		7
Sports		4
Issuance of banknotes		4
Social welfare		4
Fire safety		4

Personal privacy		3
Social Security Fund		3
Consumer rights and interests		2
Identification		2
Irregularities in other administrative procedures		20
Beyond the competence of the CCAC ▪ Criminal cases[5] ▪ Personal disputes	 21 43	64
Total		**510**

[5] It is found that the complaints also involve criminal case which goes beyond the competence of the CCAC, so the complaints were archived or handled by other appropriate means.

In 2013, the issues which the requests for help were related to included:

Issue		Caseload
Legal system governing public service		
▪ Personnel rights and interests	35	
▪ Public servant's obligations	31	
▪ Discipline	29	128
▪ Internal management	20	
▪ Recruitment	13	
Land and public works		
▪ Illegal constructions	9	12
▪ Public works	3	
Labour affairs/ Human Resources Office		
▪ Labour dispute	23	
▪ Non-resident labour	3	29
▪ Illegal labour	3	
Traffic affairs		
▪ Public transportation	4	
▪ Vehicles/driving license	4	11
▪ Traffic planning	3	
Municipal affairs		
▪ Environmental hygiene	11	
▪ Municipal licenses	8	
▪ Occupation of public land	2	27
▪ Vendors	2	
▪ Others	4	
Management and law-enforcement of public security force		33
Tax affairs		11
Code of conduct		33
Public procurement		13

Economic housing/social housing		13
Health care		12
Legislative Assembly Election		9
Social Security Fund		6
Personal privacy		6
Right of abode		5
Government subsidies		3
Education		3
Property management		4
Birth/property registration		4
Provision of data		3
Identification		3
Social welfare		4
Competence and function of the CCAC/ others		41
Irregularities in other administrative procedures		33
Beyond the competence of the CCAC ▪ Criminal cases ▪ Judicial affairs ▪ Civil Law Issues ▪ Personal disputes	 36 17 19 7	79
Total		**525**

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 are not implemented immediately. In some cases, they even tried not to face the problems by making up excuses, thus worsening the conflicts. Sometimes the relevant supervisory staff did not take up the responsibility for it.

The result of handling administrative complaints in 2013 is as follows:

Approach/Result	Caseload
Archived upon the CCAC's investigation and analysis	423
Archived after the relevant departments solved the problems on their own	23
Archived since the complaints were beyond the competence of the CCAC	64

III. Investigation file, analysis and recommendation

The complaints that the CCAC 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 for explanation, clarification or supplementary materials. 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 solve 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 committed by the 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 viewpoints 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 have been 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 — Staff quarters and housing allowance of university

In June 2013, the CCAC received a complaint about the following matters:

1. The University of Macau (UM) has violated the applicable law as it only publicized its rules on its website but not the *Official Gazette of Macao SAR* in order to evade the supervision by the CCAC or the Commission of Audit.

2. The housing policy of the UM is unlawful in the following aspects:

   a. Staff quarters:

      1) Holders of academic positions are given the priority based on their hierarchical ranks. As a result, other staff are in the bottom of the waiting list.

2) Single academic staffs of higher rank have been given 3-room flats, but some academic staffs of lower rank or administrative staffs who are married with three children have only been given 1-room flats.

3) Employees from overseas are not given any staff quarters in compliance with law. Instead, their salary indexes are slightly increased only.

4) Owning a property in Macao SAR does not rule out the possibility of being given a public flat in the new campus.

5) According to Decree Law no. 1/91/M, the rental shall be equal to 2% to 3% of salary depending on whether there is furniture in the flat. However, the rental determined by the UM is 5% of salary. At the same time, in order to protect the academic staff of higher rank, the upper limit is 5% of 900 points of salary index.

b. Housing allowance: UM does not offer housing allowance to its staff as provided by Law no. 2/2011 but gives more allowances to higher paid staff.

As to the first point, UM is a public legal person who has its own organs and assets and enjoys academic, disciplinary, administrative, financial and property autonomy. Also, it shall establish internal regulations to regulate its management and operation. If the relevant charter and regulation does not have any external effect, it is not necessary to publicize it on the *Official Gazette of Macao SAR* under the law. Information shows that the scheme of staff housing and the internal regulation of housing allowance have already been approved and passed by the University Council and the Rector of UM respectively. Therefore, as to the publication of the internal regulations in the intranet of the UM, no administrative illegality or irregularity has been found so far.

As to the second point, the UM explained that the staff housing scheme aims to encourage more quality and experienced teaching staff to stay in the campus to implement one of the key parts of its policy of "4-in-1 education" - peer and community education (The priority is based on the rank of position and directly proportional with the number of family members. In other words, number of family members is not

the only criteria for staff quarters allocation. In 2011, the upper limit of the rental of staff quarters was determined). At the same time, the UM considers that the staff housing scheme is established for the purpose of teaching and it is not a social welfare aiming to meet the demands for dwellings. Therefore, it does not rule out the possibility to accommodate those who own a property in the staff quarters so that both local and non-local teaching staff will be able to live in the quarters to get in touch with students in compliance with the UM's teaching policy of balanced development of local and diversified cultures. Moreover, in order to enhance UM's competitiveness in the human resource market, the UM has set three groups of the amounts of housing allowance and lessened the gap between the costs of accommodation of those not allocated to staff quarters and those do through adjustment of the amounts of housing allowance. After the adjustment, the rentals that non-local staff who are not allocated to staff quarters have to pay for their dwellings outside the campus are basically similar to that for staff quarters.

Based on the CCAC's analysis, there is no sign showing that the staff housing scheme and housing allowance contradict the direction of the university's development and teaching policy. Therefore, the case has been archived.

Case 2 — Staff's rights and interests shall be guaranteed under the law

In January 2011, the CCAC received a complaint over the administrative illegalities and irregularities committed by the Macao Polytechnic Institute (MPI) concerning its handling of the complainant's teaching schedule for the 1st semester in academic year 2010/2011 and the uploading of "report of students' questionnaire survey" to the MPI's website and the requirement that full-time academic staff shall submit the "declaration" of staying in Macao during the recess. The complainant brought up a total of 14 accusations.

Following investigation and analysis, the CCAC came up with the following conclusion:

1. Regarding the 12 accusations regarding the handling of teaching schedule, no evidence has been found in the investigation.

2. Regarding the accusation that uploading the "report of students' questionnaire survey" involved the issues about protection of personal data, the CCAC referred the case to the competent agency for follow-up. Eventually the agency considered that it did not violate the *Law of Protection of Personal Data*.

3. Regarding the "declaration of staying in Macao", the MPI explained that since no teaching activities are held during the summer and winter recess periods normally, full-time academic staff will be exempted from staying at the workplace based on their office schedules according to the actual situation. However, it does not mean that they are exempted from working. If needed, they have the responsibility to "go back" to work according to normal working schedule. In order to remind them of the responsibility, the MPI asks them to submit the "declaration" that they will stay in Macao to stand by during the relevant period. As to those who have applied for annual leave during the period, they do not have to submit the declaration. In other words, the full-time academic staff who do not submit the "declaration" have to "go back" to work according to normal office schedule during summer and winter recess periods.

   The CCAC considers that in a labour-capital relationship, even if the employer does not assign any task to the employee, that latter still has the responsibility to stand by at the designated place and time. Full-time academic staff have to go to work as usual during summer and winter recess periods except annual leave and public holidays. Since there is no class during the recess period, the MPI adopts a flexible method to handle the matter. That is, they do not have to fully stick to the normal office hours everyday, but only in case where it is necessary. This requirement is not unlawful.

   Nevertheless, the expression "will stay in Macao" in the "declaration" and the requirement that "*During the recess periods, if the teaching staff needs to leave Macao for personal reasons,... he/she shall submit annual leave application and the days will be considered as annual leave days*." under the Board of Management's resolution no. 11D/CG/2002 may be easily interpreted as "During the recess periods, the days on which they are not in Macao shall be considered as annual leave days".

In fact, the academic staff who are not on annual leave have the right to manage their non-working time. In such sense, the staff shall not leave Macao during non-working hours or they shall take annual leave - this method is unreasonable and unlawful.

Moreover, Article 33 of the *Basic Law* stipulates that Macao residents shall have freedom to travel and to enter or leave the Region. Under Article 43 of the *Basic Law*, persons in the Macao Special Administrative Region also enjoy such freedom. However, under the Board of Management's resolution no. 11D/CG/2002, the "declaration" indicates that the staff shall declare that he/she "will stay in Macao" during summer and winter recess period. Such content seems to constrict their rights.

Hence the CCAC stated its stance to the MPI. Later, the MPI replied that it has repealed the relevant regulation under the Board of Management's resolution no. 11D/CG/2002. Also, the content about staying in Macao in the "declaration" has also been deleted. The problems that the complainant concerns have been solved.

Meanwhile, in the course of handling the case, the CCAC also followed up the following matters:

1. Wrong legal basis for the interpretation of "legality of unilateral modification of teaching schedule by MPI"

According to the law, the MPI may unilaterally modify teaching schedule, but the legal basis stated by the MPI is doubtful. The MPI replied that half of the complainant's working time is not subject to normal office hours, saying that "his/her working hour is not fully subject to fixed working hours". Therefore, Article 34 of *Labour Relations Law* is not applicable. The MPI also considered that Article 35 of the same law, "*Exemption for the working time schedule*", is applicable to the complainant's working hours.

According to the CCAC's analysis, the complainant is an academic staff of the MPI and the employment contract between them states: The complainant agrees to stick to the working schedule planned by the MPI and fulfil the duties stipulated by Article 88 of the *Statutes of Macao Polytechnic Institute* (hereinafter "*Statutes of MPI*") and the rules applicable to the MPI.

Article 88 of *Statutes of MPI* states that "*The duty of obedience refers to accepting and executing the orders given by his/her legitimate hierarchical superior for work in a statutory way*." It shows that the complainant's work is not "*academic or research work not under the supervision of a superior*" as stipulated by Paragraph 1 of Article 35 of the *Labour Relations Law*.

Moreover, the contract does not state that the complainant is not subject to working time schedule in compliance with Paragraph 2 of Article 35 of *Labour Relations Law*, instead it states that the complainant agrees to follow the working time schedule set by MPI.

In fact, if the complainant's job nature is not subject to working time schedule, the MPI does not need to set up a teaching and office time table for the complainant. Moreover, according to the MPI's response, "*the complainant did not stick to the teaching timetable set by the MPI and even rescheduled his/her classes without approval. The MPI has already commenced disciplinary procedure*." These have proven that Article 35 about exemption from working time schedule is not applicable to the complainant's case.

Therefore, for the legality of the complainant's working time schedule, the legal basis adopted by the MPI is not applicable.

2. The formatted wording in the working time schedule provided by MPI for academic staff to "sign for authentication" causes unnecessary misunderstanding

In the copy of the teaching schedule which the MPI requested for the complainant's "signature for authentication" provided by the complainant, there is a printed phrase "*I, (the complainant's English name), agree with the above job assignment*".

The formatted word "agree" has been understood by the complainant as the MPI requests him/her to express his/her agreement by signing the timetable. Based on this understanding, it will be reasonable for the staff not to sign the schedule for the reason that it has conflict with his/her private life.

Since the purpose of the MPI's requests for teaching staff's signature on the teaching schedule is to tell them to teach and work according to the schedule instead of asking for their agreement, it is necessary for the MPI to revise the relevant wording.

The MPI accepted the CCAC's suggestion and hence it revised the relevant wording and promised to pay attention to the applicability of relevant laws.

3. The MPI allegedly adopted the wrong employment scheme as it hires part-time teachers under service provision contract. As a result, they receive no overtime pay for making up missed classes during public holidays and have to declare taxes on activities under the "freelance work regime" for their remuneration.

The MPI admitted that it did hire part-time teachers under service provision contract and they received no overtime pay for making up missed classes during public holidays because: 1) The remuneration is paid based on the workload and the number of teaching hours stated in the contract. 2) The *Statutes of MPI* is not applicable to part-time teachers because Article 30 states that the personnel of the MPI shall work under full-time scheme. Meanwhile, according to the MPI's understanding, Article 5 of the *Regulation of Occupation Tax* stipulates that teachers are in the 2nd group of taxpayers, who are engaged in freelance and technical jobs in Macao SAR.

Following analysis, the CCAC considered that whether the labour-capital relation exists does not depend on the nature or name of the contract but whether there is boss-subordinate relationship. In other words, regardless of the "service provision contract" entered into between the MPI and a part-time teacher, if boss-subordinate relationship exists between them, it is labour-capital relation, which is subject to the *Labour Relations Law* and the *Statutes of MPI*.

Article 34 of the *Regulations for Academic Staff of Macao Polytechnic Institute* (hereinafter "*Regulations for Academic Staff*") states, "*The relevant provisions under the Statutes of Macao Polytechnic Institute are applicable to the academic staff of MPI.*" Although Article 30 of the *Statutes of MPI* stipulates that the staff of the MPI shall fulfil their duties on full-time basis,

the *Regulations for Academic Staff* does not state that the "academic staff" only refer to full-time academic staff. Moreover, according to Article 21 of the Statutes, the Statutes shall also apply to part-time teachers who are subordinate to the MPI.

Therefore, the exclusion of the applicability of the *Statutes of MPI* to part-time teacher based on the provision of exclusiveness under Article 30 of the *Statutes of MPI* is doubtful.

Moreover, whether the academic staff shall declare their remuneration under the scheme of freelance and technical profession depends on whether they work on freelance basis or provide service for others as employees and work for others who are not considered as their employers at the same time. It cannot be merely defined by the type of their position - teacher.

According to some judicial viewpoints and theories, whether "boss-subordinate relationship" exists should be judged in six aspects, namely, whether the working time is decided by the employer, whether the workplace is designated by the employer, whether the tools are provided by the employer, whether the pay is calculated according to the working process, whether the employer has the leadership power and whether the employer has the disciplinary power.

Therefore, the CCAC sent a letter to the MPI to state the above stance and requested the MPI to point out the difference in practical works between part-time teachers and full-time academic staff employed under personal contract, the relevant facts and the legal basis.

In its reply, the MPI stated that there is no boss-subordinate relationship between part-time teachers and it because 1) the time of the classes is decided by them. 2) Their pay is calculated based on hours of teaching. 3) Due to the principle of academic freedom, the MPI does not intervene into their teaching methods. 4) The contract does not contain any provisions about discipline, so the MPI does not have the power to punish them. Moreover, the MPI also pointed out that the difference between academic staff and part-time teachers is that the former are also responsible for non-teaching duties and the MPI's leadership and management power is exercised in this aspect.

By comparing the sample of contract of academic staff with that of part-time teacher, the latter is only responsible for teaching specific subjects, while the former have non-teaching duties. Therefore, there is a difference in duties/responsibilities between them.

Part-time teachers work independently and are paid hourly. The MPI has no disciplinary power over them. Therefore, there is no evidence proving that hiring part-time teachers under service provision contract is illegal.

Therefore, for the fact that part-time teachers are not given overtime remuneration for making up missed classes during public holidays, according to the contract, the pay is calculated based on the hours of teaching. Therefore, the MPI's handling method is not illegal.

As to the fact that the part-time teachers have to declare taxes on activities under the "freelance work regime" for their remuneration, there is no information proving that this is a compulsory requirement by the MPI.

4. The MPI charges 10% of the earnings from part-time positions taken up by full-time staff with its approval as administration fee

The *Code of Administrative Procedure* stipulates that administrative procedure is gratuitous unless otherwise stipulated by law. Therefore, if the MPI asks for fee from its full-time staff who take up outside positions with its approval, there should be relevant legal basis.

Information shows that the legal bases are Paragraph 1 of Article 1 of the *Statutes of MPI*, Sub-paragraph j) and l) of Paragraph 1 of Article 14 and Paragraph 7 of Article 22 and Article 27 of the *Regulations for Academic Staff*.

According to the above provisions, full-time academic staff have to fulfil the duty of exclusiveness. Unless approved by the MPI or except in special cases as stipulated by the law, they "*shall not engage in any other jobs*". Moreover, full-time academic staff can only receive statutory pay under the law unless in exceptional cases as provided by law, such as the pay for doing part-time jobs recognised by the Technical and Scientific Committee as having academic and technical nature and not affecting the stability of their full-time work with approval by the Board of Management/

President. However, based on this provision, it is impossible to jump to the conclusion that "*the MPI allows full-time teachers to do paid works for organisations other than MPI and will charge 10% of the pay as administrative fee...*"

In fact, the reason why some full-time academic staff provide service for the institutions other than the MPI may be the agreement or contract between the MPI and the institution or may be personal matters. As to the former case, it is arranged by the MPI. That means the MPI has already approved it. In this sense, it is not necessary for the staff to apply for the approval. Therefore, it is reasonable to believe that the case where a statement of agreeing to pay the administration fee is required for the application is the latter case.

The MPI stated that one of the reasons for charging the administration fee is that the MPI has to provide service for the applicants, such as filling in the form required by the Commission of Audit for them. Indeed, according to Commission of Audit's Order no. 5/2007 and its appendix, the institutions that enjoy administrative or financial autonomy shall submit the "list of personnel holding concurrent post" to the Commission of Audit during a designated period every year. However, under the said order, both full-time and part-time academic staff shall declare the information of their outside jobs to the MPI. In this sense, charging fees from the full-time academic staff for "providing service of filling in the form" is unfair.

Moreover, according to Paragraph 2 of Article 1 of the *Statutes of MPI*, the MPI shall follow the statutory principles in the aspect of income. If the paid service provided by a full-time academic staff for an institution other than the MPI is not under an agreement or contract between the MPI and the institution, it is an outside activity and the MPI will charge 10% of the pay for the service, which will not be considered as "earning from activities or the MPI's income" under Sub-paragraph a) of Article 7 of Decree Law no. 49/91/M.

Although the MPI intents to, through charging fees, "prevent full-time teachers from paying too much attention to the matters other than their duties so that the normal teaching works will not be affected and the principle of exclusiveness of full-time academic staff will be complied with", charging fees from them does not have necessary connection with

whether the relevant staff will pay too much attention on their part-time jobs or not. In fact, the charge has enlarged their burdens and affected their rights and interests, but not merely an issue about internal administrative management of the MPI. It has gone beyond the competence of the Board of Management provided by Sub-paragraph 1) of Paragraph 1 of Article 14 of the *Statute of MPI*.

Therefore, charging administration fee from full-time academic staff who provide paid service for institutions other than the MPI and calculating it in direct proportion with the amount of the remuneration of the service are unlawful.

However, when the CCAC was still following up the case, the MPI, in response to a lawmaker's written query in March 2012, clearly stated that this practice was already suspended in November 2011.

To conclude, since the MPI has already adopted measures to redress the illegalities and irregularities found by the CCAC and there is no other matters that are needed to be further followed up, the case is archived.

Case 3 — To Meet the Limitation for Imposing Punishment

In November 2012, the CCAC received a complaint alleging that the Tobacco Prevention and Control Office of the Health Bureau (hereinafter the "Office") did not compulsorily levy fine from the citizens and tourists who did not pay the fine for breaking the smokefree law. Thus the complainant suspected that the Office's handling approach is unfair to the citizens and tourists who observe the law and pay the fine.

In the investigation, the CCAC found that the Health Bureau did not refer the cases of not paying the fine on time to the Coercive Collection Bureau of the Financial Services Bureau for compulsory collection.

The Health Bureau replied that the Office shall strictly follow the law when handling the procedures of illegal administration in order to prevent procedural defects and that the bureau was actively following it up and relevant notifications of decision on punishment and compulsory fining have been sent out.

Indeed, as the *Regime of Tobacco Prevention and Control* has been in force for almost two years and Paragraph 1 of Article 7 of Decree Law no. 52/99/M of 4th October (*General Regime and Procedure of Illegal Administrative Acts*) stipulates that "*the procedure for imposing punishment shall expire two years from the date the offence is committed*", the CCAC considered that the Health Bureau may lead to extinction of the right to pursue the fines if it fails to make the decision to impose fines in the cases occurred right after the *Regime of Tobacco Prevention and Control* was implemented due to the expiration of the time limit. Therefore, the CCAC wrote to the Health Bureau to call for its attention to the time limit for imposing the fine.

Later, the CCAC realized that the Health Bureau has already made decision on punishment and referred the cases of fine in arrears to the Coercive Collection Bureau. Also, there is no case of unsuccessful levy of fine due to expiry of the limitation. Therefore, the CCAC archived the case.

Case 4 — The authority shall ensure normal operation of public facilities

In November 2012, a complainant told the CCAC that his wife and their baby were trapped inside a lift at the Barrier Gate checkpoint at around 15:00 one day in the same month when they were going to leave Macao. At that time, his wife pressed the alarm bell button to seek help, but the volume was too low that no one noticed them. Moreover, as there was no intercom inside the lift, they were trapped for 45 minutes. The complainant was dissatisfied of the situation and hoped that the authority would properly maintain the facilities to prevent the similar cases from happening again.

The law does not provide any requirements about the emergency devices (e.g. installation of intercom, volume of alarm bell) in lifts. However, since the lift is in a public facility - the Barrier Gate checkpoint - to be used by the general public, the emergency devices which are inadequate or unable to exert their function may endanger users. Therefore, the CCAC followed up the case.

In the investigation, the CCAC realised that at 15:30, a police officer got the help-seeking message and immediately went to the site to follow up the situation. At the same time, he/she informed the ambulance staff and asked the relevant lift maintenance company to dispatch staff for assistance and they arrived at the site in 15 minutes after receiving the call.

Although the police had the spare key of the lift, they were afraid that "worse outcome might be caused by opening the lift without thorough considerations". Opening the lift might be dangerous without knowing the reason for the sudden break down, so it is believed that having the case handled by technical personnel would be better. In this sense, it was reasonable for the police not to open the lift immediately at that time. Moreover, for maintenance of relevant facilities, the authority adopts certain handling mechanism - weekly check and maintenance are done by technical staff of the responsible company and surveillance system is installed in lifts.

Since the main reason for late rescue is the excessive low volume of the alarm bell and given that the police was not able to immediately discovered the situation from the surveillance system due to shortage of manpower, the authority stated to the CCAC that it would keep a close eye on the CCTV in the lifts and the alarms in all of the lifts in the Barrier Gate checkpoint have already been connected to the duty office of the police. Also, flash alarms and alarm bells have been installed at the doorways of the lifts so that the police can be aware of emergencies immediately and provide rescue timely. It is believed that these measures will be able to prevent the same case from happening again.

Since the authority has already adopted measures for improvement, the CCAC archived the case.

Case 5 — Overtime compensation shall be given according to law

In May 2012, the CCAC received a complaint alleging that the maximum of hours of overtime by the doctors working for the Hospital Conde de S. Januário (CHCSJ) are 72 hours per month. However, they were not paid any compensation for extra overtime hours when their monthly overtime hours exceeded the maximum. In the past, the complainant always worked overtime for more than the maximum hours. Considering that it was due to shortage of manpower at his/her department, the complainant agreed to the arrangement. However, recently the head of the department still instructed him/her to work overtime for more than the maximum despite sufficient manpower and he/she complained to the head but in vain. Therefore, he/she requested the CCAC to intervene into the case.

In 2009, the CCAC handled a similar complaint: Staff of the medical imaging department of CHCSJ were requested to work overtime to conduct body scan for pupils who had joined the "milk plan" and thus was possibly affected by the melamine contamination, but the Health Bureau did not pay for their overtime work for the reason that there was a maximum of overtime hours. The CCAC agrees on the interpretation by the Public Administration and Civil Service Bureau (SAFP): The purpose of providing a maximum of public servant's overtime hours is to forbid public departments instructing their staff to work overtime for more than the maximum hours, but this does not mean that the law provides a maximum of the overtime pay. Therefore, if public servants have worked overtime for more than the maximum hours as instructed by their departments, they have the right to receive compensation under the law. The CCAC intervened into the case and finally the Health Bureau offered compensation to the relevant staff.

As said by the complainant, it seems the Health Bureau has made the same mistake again. Since the CCAC shall comply with the principle of debate when processing cases in order to ensure that both the complainant and the complainee had the chance of giving statement, the CCAC wrote to the Health Bureau, but it did not give any reply.

Later, the complainant contacted the CCAC again and stated that he/she noted down his/her request for compensatory time-off for the six hours of extra overtime on the report on overtime working record for claiming compensation, but the Personnel Division returned the document to the complainant and told him/her that the note should not be made. Then the complainant queried the Personnel Division and the chief of the division insisted that "there is no compensation for extra overtime hours" and requested him/her to remove the note.

The CCAC found that in the past, the hospital and its doctors reached an agreement: no compensation is paid for extra overtime hours. After the complainant's case occurred, the hospital gave an instruction, which is to decrease overtime work, so that the situation of exceeding the statutory maximum of overtime hours no longer exists. However, if needed, compensatory time-off will be given. Moreover, the hospital has already made arrangement for compensatory time-off for the complainant.

In response to the CCAC's request, the Health Bureau pointed out in its reply letter that the leadership of the hospital has already instructed the heads of the relevant departments to make reasonable arrangements for shifts, overtime and day-offs in order to ensure normal operation. Moreover, the Health Bureau will closely oversee the arrangements to ensure that the overtime hours will not exceed the statutory maximum. Even when manpower shortage occurs due to emergency, the arrangements for extra overtime will only be made with the relevant staff's consent and compensation will be given.

Since the Health Bureau has already adopted measures to redress the illegal handling of the case of "no compensation for extra overtime when the overtime hours exceeds the statutory maximum" and the matters being complained over have been solved, the CCAC archived the case.

Case 6 — The responsibility to maintain economic housing

In May 2013, the CCAC received a complaint alleging that the owners of the flats at Edifício do Lago shall pay for the maintenance of the property during the warranty period and that the Transport Bureau (DSAT) did not publicize the details about the utilisation of the reserved parking spaces at the parking lot of the building.

The Housing Bureau stated that Edifício do Lago is economic housing built by the Macao SAR Government under the public construction contracting scheme. The contractor shall be responsible for the maintenance if there are flaws in the materials or construction within the 2-year warranty period. According to the Public Construction Contracting Regime provided by Decree Law no. 74/99/M of 8th November, the contractor shall be responsible for removal of the deficiencies in the project within a designated period, which is the warranty period pointed out by the Housing Bureau. However, according to the *Civil Code* and Decree Law no. 79/85/M of 21st August (General Regulation on Urban Construction), owners of condominium shall be responsible for routine management of the building, especially the maintenance, in order to ensure normal utilisation of the building. The maintenance mentioned here is different from the maintenance by the contractor.

As to the maintenance fee required mentioned by the complainant, the Housing Bureau pointed out that under the *Civil Law*, the management company

shall take 10% off the monthly management fee as common reserve fund in case there is any unforeseeable large spending in the future.

Meanwhile, the DSAT stated that it intended to post up the notice after the assessment of the applications for reserved parking space were completed by the relevant organisations, but in the meantime, the notice has already been posted at the entrance of the parking lot and the payment counter.

Since there is no sign showing maladministration by the Housing Bureau and the DSAT and the latter has already posted up the notice, the CCAC archived the case.

Case 7 — Enrolment mechanism and reservation of places of courses organised by educational institution

In November 2012, the CCAC received a complaint from a citizen, who said that in an early morning, he/she went to the Institute for Tourism Studies (IFT) to queue up for signing up for course A, for which the registration period started at 9am that day. However, when the first four people in the queue finished the registration procedure, the staff announced that the 18 vacancies of the course have already been filled. Later, at the request by the complainant, the IFT explained that online registration was quicker because it was only for those who did not use the government subsidy under the Continuing Education Scheme. The complainant was dissatisfied because he/her could not sign up for the course although he/she "devoted" more than those who signed up on the internet. Then the complainant sent a letter about his/her grievance against IFT's registration method to the Secretary for Social Affairs and Culture.

According to a reply letter received by the complainant subsequently from the IFT, for popular courses, the IFT adopted a method of "sign up first, ballot second, enrolment finally". However, according to its experience, course A would not be full immediately. Therefore, both online and in-person registrations were accepted. Also the IFT stated that it would regularly review the registration methods. However, the complainant was dissatisfied with its reply and requested for the CCAC's intervention.

At the same time, the CCAC received another complaint alleging that the IFT reserved two places of every course for its staff so that they could study the

courses at half price and such practice was inappropriate and unfair.

Since the IFT required the people who intended to use the subsidy under the Continuing Education Scheme to sign up for the courses in person, but the procedure was time-consuming since a staff could only serve one person at a time. Meanwhile, online registration did not involve the Continuing Education Scheme and more than one person could do it at the same time, thus it was less time consuming. In such sense, the success rate of in-person registration was lower than that of online registration.

The CCAC considered that handling both online and in-person registrations of courses which were not popular at the same time might greatly decrease the chance of those who intended to use the subsidy under the Continuing Education Scheme to be enrolled successfully in the course (as they had to sign up in person) and the chance would be lower than those who paid on their own (as they can register online), thus hindering the implementation and contradicting the aim of the Continuing Education Scheme.

Later, IFT changed the starting time of online registration to 1pm starting from 2nd January 2013. However, the CCAC considered that although this measure did not affect the implementation of the Continuing Education Scheme, based on the principle of first come first serve, it encouraged people to sign up in person instead of doing it online, contradicting the government's policy of advocating e-service for citizens' convenience and boosting administrative efficiency implemented over many years.

Moreover, adopting the measure of "sign up first, ballot second, enrolment finally" for popular courses based on its experience is also inappropriate because it is also possible that some unpopular courses will be full immediately like course A in the case. It will finally cause grievance of those who are not able to get enrolled in the course despite they have gone to the IFT early for registration in person.

The CCAC considered that applying the measure of "sign up first, ballot second, enrolment finally" to all courses - to accept both in-person and online registration within a certain period and let the citizens choose the way they prefer - is convenient to the citizens and does not hinder the implementation of the e-service policy. After the ballot, the successful applicants can enrol in the courses in person or online within a designated period. For those who intend to

use the subsidy under the Continuing Education Scheme, they still have to do it in person as required by the IFT, while the others can chose the way they prefer. Such practice will not affect the implementation of the Continuing Education Scheme.

The CCAC stated its stance to the IFT and received a positive feedback. The IFT has applied the method of "sign up first, ballot second, enrolment finally" to all the courses that do not require enrolment exam.

As to the complaint over discount of course fees and reservation of places for staff, after collecting data from the IFT, the CCAC realised that before the handover, the President issued an internal document which entitled all staff to exemption from course fees. After the handover, the IFT formulated an "internal regulation" about the exemption, which was approved by the Secretary for Social Affairs and Culture. Later, the regulation was revised and a new stipulation "in general, there are two places reserved for the staff for each course" has been added. The revision was also approved by the Secretary.

It should be noted that according to the law, the former president was not empowered to formulate the provision of staff's exemption from course fees. Although the Secretary has the power to "approve the internal regulations of educational, training and internship institutions", since the "internal regulation" involving exemption from course fees is applicable to all full-time staff of the IFT, that is beyond "educational, training and internship institutions", the regulation should not be defined as "internal regulations of educational, training and internship institutions". In fact, the law only empowers the staff of the IFT to receive subsidies for training. Therefore, if the IFT intends to apply the measure of exemption from course fees to its staff other than teaching staff, it should, at least, be introduced through documents such as "personnel regulation" which shall be published on the *Official Gazette of Macao SAR* or provided by the organic law of the IFT.

Moreover, reserving places for its staff will surely lead to decrease of the quotas for external applicants, affecting the scopes of rights and duties of its staffs as well as other individuals. Therefore, it should not be regulated by internal regulation. Moreover, training for public servants should aim at implementation of policies and be suitable for their job natures and career development. The courses organised by the IFT, especially the continuing education courses, also include vocational training for other jobs such as tour guides, transferists,

waiters and housekeepers and other courses such as creative arts, health care, beauty care and beauty treatments, which are hardly associated with IFT staff's job and career paths.

Therefore, although the IFT can arrange training activities for its staff, the reservation of two places in every course for its staffs is not appropriate and groundless.

After the CCAC stated its stance to the IFT, it immediately stopped doing so and only offered discount of course fees to teaching staffs under the law. Since the matters being complained over have been solved, the CCAC archived the case.

Case 8 — Overcharging by private schools that have joined the free education scheme

In May 2013, the CCAC received a complaint alleging that some private school which had joined the government's free education subsidy scheme to provide free education overcharged school fees by using the excuse of collecting material fee or procedure fee in violation of the law in academic year 2012/2013, but the Education and Youth Affairs Bureau (DSEJ) failed to carry out its duty of supervision to urge the school to return the overcharged fees and only told the complainant to contact the school on his/her own. The complainant worried that such practice suggested by the DSEJ might enable the schools to realize who he/she was and thus causing troubles concerning his/her child's enrolment in the relevant school.

Following analysis, the CCAC considered that the administration shall follow the principle of good will, the principle of non-bureaucracy and the principle of efficiency. Once the overcharging of registration fees with the excuse of collecting material or procedure fee in the academic year 2012/2013 were proven factual, the DSEJ, as the supervisory agency, shall intervene into the case timely to redress the illegal acts committed by the school and adopt measures to follow up the arrangements and progress of the return of overcharged fees, in order to carry out its duties in a practical way.

However, in the course of handling the complaint, the DESJ proved that this was not the only case ever occurred. The school has illegally overcharged

all parents for fees related to registration and the complainant was not the only victim. However, the DSEJ did not adopt any measures to follow up the cases and the arrangements and progress of return of the fees. It only suggested the complainant to contact the school on his/her own for the details of the return of money. There are administrative illegalities and irregularities existing in such practice.

Moreover, although the DSEJ did not reveal the complainant's personal data to the school, the school has, at least, realised that the parent of some applicant had filed the complaint. In fact, the DSEJ never openly told all parents involved in the overcharging to contact the school to discuss the return of money and the school also did not notify them of the return. However, the DSEJ only made the suggestion without considering the issues about confidentiality of the complainant's personal data, which made it easy for the school to guess who he/she was. Such doing is not appropriate.

Since there are administrative illegalities and irregularities existing in the DSEJ's approach of handling the case, the CCAC recommended the DSEJ to review and improve the mechanism and procedure of complaint handling, probe into the case of charging material and procedure fees by the school in academic year 2012/2013, urge the school to return the overcharged fees to all parents and adopt measures to follow up the arrangements and progress of the return and supervise whether the illegal behaviours have been redressed.

The DSEJ replied that it would follow the CCAC's recommendation and promised to adopt measures to follow up the case. Since the matters being complained over have been solved, the CCAC archived the case.

Case 9 — Cooking fume and noise emission from restaurant

In October 2012, the CCAC received a complaint alleging that the Civic and Municipal Affairs Bureau (IACM) and the Environmental Protection Bureau (DSPA) failed to solve the problem concerning emission of cooking fume and noise from a restaurant located downstairs of the residential building where the complainant lived, so he/she requested the CCAC to intervene into the case.

There are the CCAC's findings:

1. For the emission of cooking fume, the DSPA stated that it had dispatched staff members to carry out site inspection and subsequently given guidelines to the owner of the restaurant and requested him/her to solve the problem. The IACM also said that it had imposed punishment on the owner and the cooking fume emission device had been repaired and upgraded and now it has met the standard of cooking fume emission.

2. For the noise, the DSPA stated that after its staff members provided guidelines and suggestion for the owner, the sound and shock isolation devices for the elevator that made noise have been installed and a notice that calls for the staff members' attention of avoiding noise has been posted in the restaurant. The IACM stated that it had already requested the owner to make improvement and conducted acoustic measurement during the period when the noise being complained about was made and the noise level did not exceed the standard provided by Decree Law no. 54/94/M of 14th November.

In the course of analysis, the CCAC found that the cooking fume emission standards and the measurement methods adopted by the DSPA and the IACM were different. In order to avoid confusion and misunderstanding that if one of the standards is met, that of another department will also be met, the CCAC suggested the two authorities to agree on a unified standard. Later, DSPA and IACM communicated with each other and gave a reply to the CCAC. The former stated that it would consult the public and the catering sector and formulate the relevant standards and supervisory system in line with the licensing system, while the later stated that there is no conflict between the standards adopted by the two authorities and the restaurant should meet both. Moreover, the IACM would carry out its supervisory duties based on the standards related to environmental protection determined by the DSPA.

Since the problems have been solved, the CCAC archived the case.

Case 10 — Refusal to contract renewal without proper reason

In February 2013, the CCAC received a complaint from a staff hired under short-term employment contract by the Supporting Office to the Secretariat of China and Portuguese-Speaking Countries Economic Cooperation Forum (Macao) (hereinafter "the Secretariat") alleging that the Secretariat did not renew his/her contract during his/her absence from work when he/she got a medical proof that he/she had not yet recovered from injury caused by traffic accident when he/she was sent by his/her superior to work outside.

After preliminary analysis of the CCAC, particularly upon consideration of Paragraph 1 of Article 23 of Law no. 8/2006, *The Provident Fund Scheme for Workers in the Public Services*, the case of the complainant involving traffic accident during work shall be handled according to the *Statute of Personnel of Public Administration of Macao* (hereinafter “the Statute”).

After confirming the applied law to the problem, the CCAC conducted investigation and analysis. It discovered that apart from the problem pointed out by the complainant, the following problems also lied in the Secretary's application of the regime of "absence due to accident in performance of duty" provided by the Statute:

1. The timing of verification of accident in performance of duty and the application of the regime of "absence due to accident in performance of duty";

2. The Secretary did not keep a record of accident in performance of duty.

3. The Secretary applied the regime of absence due to illness provided by Article 104 of the Statute instead of Article 116 to the complainant's absence after accident in performance of duty.

According to the information provided by the Secretariat, it still did not verify the accident as one in performance of duty described in the Statute over eight months after it occurred and the reason was that criminal investigation was still ongoing. This shows that the reason for not applying the regime of "absence due to accident in performance of duty" provided by the Statute to the case was that the Secretariat had not determined it as an "accident in performance of duty".

The CCAC studied the provision of verification of accident in performance of duty under Article 111 of the Statute based on the comprehensiveness of the relevant regime, the background of the formulation of the law and the specific situations that the law is applicable to. If the case accords with Sub-paragraphs a, b or c of Paragraph 1 of Article 111 of the Statute, the authority should define it as an "accident in performance of duty", take a record of accident under Article 113 of the Statute and then handle it under the provisions about "absence due to accident in performance of duty" under Articles 110-120 of the Statute. When the situations that required inspection by the Board of Health Inspection as stipulated by Article 116 occur, this provision should be applied to the case.

If proved to be an exceptional case as described in Paragraph 3 of Article 111 of the Statute, the case should be handled as fraud under Article 112.

As to the three problems concerning the Secretariat's application of the regime of "absence due to accident in performance of duty" provided by the Statute, the CCAC urged it to pay attention when handling the related matters in the future.

The core of the complaint is whether the Secretariat offended the law when it did not renew the complainant's contract during his/her absence from work when he/she got a medical proof that he/she had not yet recovered from injury caused by traffic accident when he/she was sent by his/her superior to work outside.

The CCAC analysed the complaint and considered that in general, the authority can decide whether to renew short-term employment contract. However, this is not the case as the matter concerning "accident in performance of duty" has not yet been made clear.

The Secretariat did not handle the case under the regime of "absence due to accident in performance of duty" provided by the Statute. In particular, it did not protect the complainant's rights and interests under Article 117 due to wrong interpretation of law.

The Secretariat's decision not to renew the complainant's contract before he/she recovered from the injury and the Board of Health Inspection issued a statement of inability to work under Paragraph 1 of Article 44 of the Statute has violated the provision to protect the complainant's rights and interest under

Paragraph 1 of Article 117 of the Statute since the complainant has been deprived of the rights and interests provided for his/her position by the law, especially the rights related to health care due to termination of employment.

The CCAC urged the Secretariat to redress the said illegalities under the law and the latter accepted the recommendation. Since the problem has been solved, the CCAC archived the case.

Case 11 — Failure to supervise the issuance of "copy of trainee's certificate"

In September 2013, a complainant told the CCAC that he/she had filed a complaint to the Transport Bureau (DSAT) over XX Driving School that did not give him/her a "copy of trainee's certificate", but he/she was dissatisfied with how the DSAT handled the case. Therefore, the complainant requested for the CCAC's intervention.

The CCAC followed up the case. According to the information provided by the DSAT, the complainant had clearly told the DSAT that the XX Driving School would not give him/her the copy unless he/she paid MOP500 as "administrative procedure fee".

The CCAC considered that the charging of "administrative procedure fee" was purely a commercial behaviour. Therefore, the CCAC has no power to interfere in how much the driving school requested the complainant to pay unless there is exceptional situation.

However, according to Paragraph 2 of Article 112 of the *Regulation of Road Traffic* approved by Decree Law no. 17/93/M of 28th April, the head of the driving school shall issue a copy of trainee's certificate to the trainee within two working days after the request is made. Otherwise, the driving school will be fined MOP500-2500.

This shows that issuing copy of trainee's certificate is an obligation and the driving school shall not set any conditions for it. XX Driving School did not issue the copy within two days following the complainant's request and thus it has violated the law. The DSAT, which is entitled to the relevant jurisdiction, shall initiate punishment procedure under the law.

However, facing the complaint, the DSAT considered that XX Driving School did not violate the regulations of driving tuition and told the complainant to negotiate with the driving school to solve the problem. In this sense, the DSAT failed to fulfil its responsibility as the supervisor under the law.

Therefore, the CCAC urged the DSAT to handle the complaint in accordance with law as soon as possible. The DSAT accepted the CCAC's suggestion and handled the case under the law. Meanwhile, the DSAT also sent a notice to the guilds of driving tuition and all driving schools to urge them to issue copy of trainee's certification within the designated period at trainees' request.

Since the problem has been solved, the CCAC archived the case.

Case 12 — Dispute caused by sub-contracting of construction project

In March 2013, the CCAC received a complaint alleging that the contractor of the Mong Ha Social Housing Construction Project defaulted in payment to the subcontractor. The complainant hoped that the CCAC would investigate whether the earmarked fund had been used for the right purpose in order not to delay the progress of the project.

The CCAC found that the Infrastructure Development Office (GDI) called for public bids for the Phase 2 of Mong Ha Social Housing Construction Project and Reconstruction of Mong Ha Sports Pavilion (Structure of Basement) in June 2011. Following the evaluation of the bids, the said contractor won the bid and sub-contracted the projects of building the foundations and the basement to the said subcontractor. When the construction was ongoing, there was a dispute about the cost between them. In early January 2013, the GDI intervened into the case and met with both sides in order to mediate the dispute.

The CCAC considered that as to contracting of public construction projects, the GDI is only entitled to preparation of the contract, supervision and testing of the infrastructure construction. For this public project, the GDI has already carried out the open bidding and contracting procedures, dispatched representatives of the supervision company to the construction site to conduct tests and monitor the quality of construction, and paid the contractor on time according to the progress of the project and the contract terms. Whether the contractor had subcontracted the project to other companies and the agreement

on payment between the contractor and the subcontractor are ordinary commercial activities which are not directly related to "whether the earmarked fund had been used for the right purpose". In fact, after realising the dispute, the GDI has taken the initiative to follow up and mediate it. However, both sides failed to reach an agreement. Therefore, the dispute can only be resolved by legal means. There are no signs of administrative illegalities or irregularities existing in the GDI's follow-up of the case.

Therefore, the CCAC archived the case.

Case 13 — Punishment for illegal parking and regulation on operation of garage

In August 2012, the CCAC received a complaint alleging that a garage had been parking cars illegally in front of its gate and the noise and harsh light caused by its operation disturbed the inhabitants nearby, but the police never went there to enforce the law and prosecuted for the illegal acts.

1. About the illegal parking in front of the garage

The Public Security Police Force (PSP) stated that it has already dispatched officers to inspect the site and prosecuted the people who had illegally parked their cars at the site, including the operator of the garage. The PSP has also instructed its officers to inspect the site more frequently.

In its reply, the PSP also mentioned that it has also referred the complaints to the IACM for follow-up concerning the complainant's claiming that the garage had allegedly operated car maintenance business without a license and that the iron railings on the pavement were so scarce and thus making it possible for cars to be parked on the pavement.

2. About the noise and light nuisance

The IACM stated that it did not find any record of illegalities related to the complaints, but it would continue to keep a close eye on the operation of the garage. Once illegal situation is found, prosecution will be laid against it. As to the iron railings, the IACM did not mention in its reply that more railings would be built at the relevant location, but it pointed out that it had already laid

three prosecutions against the garage for illegal parking by the road. Given that the IACM has the power to decide how to set up the facilities and has already followed up the illegalities committed by the garage, the CCAC did not further follow up the case.

3. About the operation license of the garage

The IACM replied that the garage has a domestic establishment registration certificate issued by the Economic Service in 1987. According to the relevant regulation in force at that time, people who intended to operate garage as a domestic establishment should register at the Economic Service first and the domestic establishment registration certificate would be issued after the establishment passed the inspection of the business nature and the evaluation of its conditions. This shows that the garage is not running without a license.

It is noteworthy that since there is no supplementary regulation of issuance of garage license and operation, the IACM does not require new operators to apply for a license before running a garage. As a result, the relevant licensing system is not able to exert its supervisory function. Moreover, the current law only regulates the operation time but not the standard of equipments and facilities, usage ways and sewage treatment. In this sense, lack of unified standard of establishment and operation of garage hampers the protection of citizens' rights and interests and positive development of the profession. Therefore, the IACM should formulate the supplementary regulation as soon as possible.

For this issue, the IACM replied that it has been consulting the industry and relevant organisations and has evaluated the necessity of the legislation and carried out some studies on it. However, it is not easy to strike a balance between the industry and the citizens in the aspect of interests. In October 2012, the IACM submitted the bill again to the supervisory entity for deliberation and would subsequently carry out public consultation. Before that, the IACM partnered with the Fire Services Bureau to carry out inspection of all garages and issued technical guidelines in order to regulate the industry.

These show that the relevant supplementary regulation is in the stage of deliberation and the IACM has taken measures to supervise garages.

Given that the matters mentioned by the complainant have been followed up by the relevant departments and the competent authority is working on the

formulation of the supplementary regulation, the CCAC does not need to further follow up the case and thus the case has been archived.

Case 14 — Assessment and approval of "temporary license of real estate salesman" shall accord with law

In August 2013, a complainant told the CCAC that he/she, an individual entrepreneur, was found guilty of an offence by the Court of First Instance in June 2012. The complainant subsequently filed an appeal, which was still being heard by the Intermediate Court for the time being. In May 2013, the complainant applied for "temporary license of real estate salesman" and "temporary license of real estate agent" to the Housing Bureau, but his/her application was suspended for the reason that the judgement in his/her criminal case had not yet been made.

The Housing Bureau suspended the procedure of assessing the complainant's application for "temporary license of real estate salesman" because he/she was found guilty of an offence in June 2012 and the Intermediate Court was still hearing his/her appeal. In this sense, the bureau was not able to clearly confirm whether the complainant met the requirement under Sub-paragraph 1) of Paragraph 1 of Article 6 of *Law of Real Estate Agent Industry*. Therefore, under Article 33 of the *Code of Administrative Procedure*, the bureau suspended the administrative procedure until the judgment of the complainant's criminal appeal was made as it was considered as a condition.

According to Paragraph 2 of Article 41 of Law no. 16/2012, *Law of Real Estate Agent Industry*, one of the conditions for issuance of "temporary license of real estate agent" is that the applicant should be holder of "temporary license of real estate salesman". Since the complainant was not granted the "temporary license of real estate salesman", the bureau did not issue the "temporary license of real estate agent" to him/her.

Paragraph 1 of Article 33 of the *Code of Administrative Procedure* states, "*If the final decision depends on the decision on a certain issue which comes under the jurisdiction of another administrative body or the court, the body entitled to make the final decision shall suspend the administrative procedure before the administrative body or the court makes the decision except the cases where immediate solution is needed or serious damage will be caused*."

According to Sub-paragraph (4) of Paragraph 1 of Article 12 and Sub-paragraph (1) of Paragraph 1 of Article 6 of the *Law of Real Estate Agent Industry*, if the applicant is not sentenced for more than three years in jail and has met the remaining statutory requirements, he/she can be granted a "temporary license of real estate salesman".

Although the complainant was sentenced to a jail-term of more than three years for an offence in June 2012, the Intermediate Court was hearing the appeal. Therefore, the judgment has not yet been duly confirmed. In this sense, as the complainant had not been sentenced for more than three years in jail for the time being, he/she met the requirements for "temporary license of real estate salesman" provided by Sub-paragraph (4) of Paragraph 1 of Article 12 and Sub-paragraph (1) of Paragraph 1 of Article 6 of the *Law of Real Estate Agent Industry*.

The ruling made by the Intermediate Court may only make him/her unqualified for the said license in the future. Whether the complainant can be granted the license for the time being did not depend on this judgement but on the fact that he/she was not sentenced to a jail-term of over three years as stipulated by the said provisions.

Therefore, the Housing Bureau shall not have suspended the administrative procedure of the application for the license based on Article 33 of the *Code of Administrative Procedure*.

In fact, the lawmaker already anticipated the situation that the applicant will become unqualified for the license due to some reasons after he/she has been granted the license and thus has formulated clear provision about it. According to Sub-paragraph (2) of Paragraph 1 of Article 23 of the *Law of Real Estate Agent Industry*, if there are any changes in the situation of compliance with the requirements provided by Article 12, it is the salesman's responsibility to notify the real estate agent he/she works for within ten days since the change takes places. According to Sub-paragraph (2) of Paragraph 1 of Article 22, the real estate agent shall notify the Housing Bureau within ten days since it has come to his/her knowledge. After receiving the notification, the Housing Bureau can revoke the salesman's license under Sub-paragraph (2) of Paragraph 1 of Article 15.

According to Paragraph 3 of Article 31 and Article 29 of the *Law of Real Estate Agent Industry*, if the real estate salesman or agent does not fulfil the said responsibility of notification, the Housing Bureau may fine him/her.

To conclude, on the condition that the statutory requirements are met, the Housing Bureau should issue the "temporary license of real estate salesman" to the complainant (unless there are any other reasons). If the Intermediate Court sentences the complainant to an imprisonment of more than three years in the future and the judgement is duly confirmed, the Housing Bureau may revoke the license.

Therefore, the CCAC sent a letter to the Housing Bureau to urge it to issue the license to the complainant.

Case 15 — The responsibility to pay salary in full and on time

In June 2012, the CCAC received a complaint alleging that in June 2011, two non-resident workers filed a complaint to the Labour Affairs Bureau (DSAL) over company C's default in salary for 40 months amounting to a total of MOP20,000. Later, C settled the payment but was still considered to be in default on the salary by the DSAL and the record was still kept. Later, when C applying for renewal of permit for employment of non-resident workers to the Human Resources Office (GRH), C requested the DSAL to cancel the record for the reason of "mistaken report" of the relevant amount to the GRH, but the DSAL rejected the request. Therefore, C suspected that there was administrative illegality in DSAL's handling of the case.

It was found in the investigation that in December 2006, C applied for permit of employing non-resident workers for whom a monthly salary of MOP8,500 would be paid and the application was approved. However, in November 2007, November 2008 and November 2009 when the company applied for renewal to the GRH respectively, the amount of salary filled in the application document was MOP9,000 and last application was approved in January 2010 and the expiry was February 2011.

For labour-capital relations, Law no. 7/2008, *Labour Relations Law*, was implemented on 1st January 2009. Before that, Decree Law no. 24/89/M, *Legal*

Regime of Labour-Capital Relations, was applied. Therefore, both of them were applicable to the relations between C and the two non-resident employees accordingly in different periods. According to both of the laws, the employer is responsible for paying the employee salary/remuneration in full and on time or he/she will be fined.

Moreover, according to the *Law for the Employment of Non-Resident Workers* in force at that time and relevant regulations, the remuneration given to non-resident workers is one of the factors considered by the authority when assessing the applications of permit and renewal, aiming to ensure that the salary ranges of local and non-local workers for the same post are the same and thus prevent decrease of job opportunities for locals and influence on their rights and interests. The amount of salary declared by the employer is his/her promise to the authority. If the application is approved, he/she shall offer the non-resident employee a pay not lower than the amount. Otherwise, he/she will violate the order of the approval.

Information shows that the application form for employment of non-resident worker clearly indicates: the amount of salary filled in shall be equivalent to that indicated in the employment contract in the future and the data filled in shall be true and the latest. Therefore, applicants shall fill in the form carefully. If there are any mistakes in the data filled in, the applicant shall apply for "correction" to the GRH and it will reassess the application. Otherwise, the applicant shall be liable for the outcome.

Since C did not go through the procedure of "correction" in order to correct the "mistake" it said, no matter what kind of adequate reasons they have, those reasons cannot be considered to be the legal or reasonable basis of not keeping the promise made to the authority.

Therefore, it was not unlawful for the DSAL to judge whether C had paid the employees in full based on the amount of monthly salary it had promised the GRH.

The employer is responsible for paying the employee salary/remuneration in full and on time and C promised to the GRH that the monthly pay would be MOP9,000. However, it was not until the DSAL intervened into the case after the two non-resident workers had resigned for almost four months that C

paid the difference (MOP20,000) between the amount promised and that the company had actually paid to them (MOP9,000 and MOP8,000). This shows that the company failed to fulfil the relevant obligation.

For default in salary in violation of the *Legal Regime of Labour-Capital Relations/Labour Relations Law*, once the offender redresses the behaviour within the time limit (paying the salary in default), the authority needs not to initiate punishment procedure and shall archive the case since the problem has been solved.

Therefore, it is not illegal and unreasonable for the DSAL to consider that company C was in default on salary and keep the record. Finally, the CCAC archived the case.

Case 16 — Complaint shall be handled in time

In October 2012, a complainant told the CCAC that one night in September when driving to the Guia Hill, he/she drove in the wrong way and thus drove against the traffic. When he/she approached Rua do Miradouro de Santa Sancha, an officer of the special police force signalled his/her car to stop aside and the complainant did so. However, the police officer subsequently pointed a gun to him/her. Therefore, the complainant phoned the Public Security Forces and the Disciplinary Inspection Committee of Public Security Forces (CFD) to complain over the case, hoping the CFD would complete the handling of the complaint as soon as possible. At the same time, the complainant requested for the CCAC's intervention.

Following analysis on the complaint, the CCAC referred the case to the Public Security Police Force (PSP) and the CFD and requested the former for documentary information or video record.

Information shows that the PSP has already reported the details of the incident to the CFD and explained to the complainant why the police officer took out a gun. In fact, it is Sub-paragraph a) of Paragraph 1 Article 21 (Use of firearm) of Decree Law no. 66/94/M that empowers police to take out a gun. Moreover, since the residences of principal government officials are located at the area, the security measure is stricter.

Following deliberation, the CFD considered that the video record basically tallied with the result of the PSP's investigation. The PSP stressed that the police officer just followed the normal procedure and no irregular situation was found, but it pledged to continue to strictly supervise police officers' conduct. Subsequently, the CFD sent the result to the complainant.

Article 21 of the *Statute of the Macao Militarized Security Forces* approved by Decree Law no. 66/94/M of 30th December clearly states the conditions for use of firearm, including, "*1. In addition to use for the purpose of training in a proper place, the use of firearm is only allowed as a measure for facing extreme duress or self-defense in a proper situation, especially: a) Imminent or ongoing aggression, or attempted aggression, against the law-enforcement officer himself/herself, his/her duty station or third parties;...*"

The CCAC reviewed the video record and found that when the complainant's car had not approached the site, the police officer already signalled the car to stop, but the complainant did not follow the instruction and approached with a faster pace. It was not until the officer stepped back on alert and took out a gun for a few seconds that the complainant stopped his/her car. At that moment, there was only a short distance between the car and the police officer. Therefore, the officer took out a gun as he/she considered that his/her behaviour might cause danger immediately. Moreover, as the residences of principal government officials were located in the area, the police had to adopt stricter security standard. Objectively speaking, what the complainant described was different from the video record and the police officer's judgment and behaviour are reasonable.

To conclude, no signs of administrative illegality or irregularity committed by PSP or CFD are found and the latter has already sent the result to the complainant. Therefore, the CCAC archived the case.

Case 17 — Labour-capital dispute

In September 2013, a person filed a complaint against the Labour Affairs Bureau (DSAL) over the following matters:

1) DSAL handled his/her case unfairly and only protected the rights and interests of the capital.

2) The act of the capital to directly deposit the payment in default into the complainant's account without his/her knowledge and the DSAL's notification in advance is inappropriate.

3) The DSAL's staff's statement about the regulation on bonus was inconsistent.

4) The complainant considered that the DSAL's statement that the fact that he/she did not file a complaint against the capital over not keeping attendance record made the bureau unable to punish the capital was unreasonable.

For (1), based on the information provided by the DSAL and the complainant's statement, the complainant received a phone call from the DSAL in late April 2013 telling him/her that the capital was willing to settle the payment in default. However, two to three days later, he/she was told on the phone that the capital denied the promise. Therefore, in early May, the complainant went to the DSAL to give a statement. During the arbitration hearing on 15th May, the amount of the overtime compensation was confirmed and the complainant signed and received the payment. The said handling procedure shows that after the capital notified the DSAL of its denial, the DSAL immediately arranged the complainant to give a statement in order to commence the investigative procedure for preparation of referral to the court. The DSAL only followed normal procedure to handle the complainant's case and there is no sign of unfairness.

For points (3) and (4), DSAL replied to the CCAC that the inspector who followed up the case neither told the complainant that the documents provided by the capital did not state that he/she could receive the bonus nor did he/she state the opposite thing later. Therefore, the statement was untrue. The DSAL added that according to the information related to the case, since the complainant stated that the amount of the overtime compensation paid by the capital was correct and requested to cancel the complaint over this matter and the attendance record, the DSAL archived this part. As there is a difference between what the complainant said and the DSAL's reply, the CCAC is not able to make any judgment without any other proofs.

For point (2), the DSAL's staff told the complainant in advance that the capital had already agreed to pay the sum in default without knowing the capital's will to directly deposit the sum. However, after the DSAL notified the complainant of the will and obtained his/her consent, the capital denied its promise. In this situation, since it was the capital that made the promise to save the sum directly into the complainant's account, the situation that the capital denied its promise whenever it wished would possibly occur. In this case, the labour would be in a passive position. Therefore, the DSAL stated in its reply to the CCAC that appropriate measures would be taken for improvement in order to prevent similar cases. Therefore, the CCAC had no need to further follow up the case.

To conclude, since there is no information showing that administrative illegality or irregularity existed in the procedure of handling the complainant's case by the DSAL, the CCAC archived the case.

Case 18 — Guideline of reception procedure shall be clear

In November 2012, the CCAC received a complaint alleging that at the Government Service Centre at Areia Preta, a lady always directly handed documents to the staff members of the Financial Services Bureau (DSF) without queuing up. The complainant suspected that the DSF connived unfair practice.

The DSF responded to the CCAC that in order to handle the visitor flow during peak hours, for the services which are not covered in the performance pledge but which are time consuming (e.g. processing a large amount of M/2 occupational tax registration), documents will be collected first and the applications will be processed when the staff members have time. Upon completion, they will contact the applicants. Such practice can avoid lengthening the time for queuing up. In most cases, the back office personnel are responsible for the collection of the documents. The DSF considered that the practice may cause misunderstanding. Therefore, it has asked its staff to pay more attention and explain to the citizens on the queue when necessary.

However, the complainant was still doubtful of the DSF's approach. If citizens who go to submit M/2 occupational tax application form do not need

to obtain number tag, why does he/she still have to obtain a number tag for the same service? Also, he/she did not see any staff member giving the relevant instruction. Therefore, the complainant considered that the guideline is unclear.

The CCAC dispatched officers to have a site visit and discovered that there is no sign board indicating whether citizens' who want to submit M/2 form have to obtain a number tag first or not. In fact, since there is no clear guideline, it is easy to lead to doubt about unfair practice.

Therefore, after the CCAC stated its stance to the DSF, it subsequently took measures, including rearrangement for the service counters - setting up a special counter for services not covered in the performance pledge, and requiring all citizens to obtain number tag regardless of the number of forms they submit, prominently displaying notices listing the services that the counters are for and dispatching staff members to give guidelines to citizens at the number tag collection area.

Since the DSF has taken measures in response to the complaint, the CCAC archived the case.

Case 19 — Promotion procedure shall be carried out in time in compliance with the law

In May 2012, a group of assistant officers of 2nd class who started working for the Health Bureau in April 2009 complained that they had been rated as "very good" in performance appraisal for two consecutive years, but the Health Bureau did not commence the procedure of promotion within the statutory period.

The CCAC found in the investigation that there was a group of assistant officers of 2nd class "started working for the Health Bureau in April 2009 under a 6-month short-term employment contract for probation." After the probationary period, they were appointed under non-permanent contract. On 13th June and 4th July 2012, the Health Bureau published announcements of promotion exam on the *Official Gazette of Macao SAR* respectively to commence the relevant promotion procedures.

According to Article 6 of Order no. 2/2001 issued by the Secretary for Administration and Justice, the period of the first six months of service on the basis of short-term employment contract serves as apprenticeship, so it is not included as a part of the period of service. Meanwhile, according to Article 7 of the same Order and Paragraph 4 of Article 7 of Law no. 14/2009, *Regime of Ranks and Titles of Public Servants*, the performance appraisal for the probationary period aims to evaluate the performance in the apprenticeship and there are another mechanism and purpose for it. Therefore, the appraisal for the probationary period is not the "performance appraisal" referred to in Article 14 of the *Regime of Ranks and Titles of Public Servants*.

Information shows that the Public Administration and Civil Service Bureau (SAFP)'s reply to the Health Bureau's query and the homepage of "Recruitment, Selection and Promotional Training of Public Servants" points out that according to Article 14 of the *Regime of Ranks and Titles of Public Servants*, the length of period of service required for promotion only covers that of the period subject to "performance appraisal". Therefore, "probationary period is not counted for the effect of promotion".

Since the complainants started working in April 2009, their service period counted for the promotion should be two years up to October 2011. If the grade of performance appraisal for this period of service was "very good", they would be qualified for promotion.

Moreover, Paragraph 2 of Article 14 of the *Regime of Ranks and Titles of Public Servants* states, "*Notwithstanding the central management of promotion procedure, in the case where the positions of which the number is determined based on overall allocation or there is vacancy, when there are staff who meet the requirement for promotion, the authority shall conduct a promotional exam within 90 days*." Therefore, the Health Bureau should have conducted a promotional exam for the complainants by February 2012 (within 90 days since October 2011).

Given that there is no information showing that there were no vacancies of the relevant posts, although the bureau published the relevant announce as early as in June 2012, it commenced the procedure four months after the statutory time limit expired.

The Health Bureau admitted that there were a group of assistant officers of 2nd class who met the requirements for promotion in October 2011, but it was unable to conduct the promotional exam for them within the statutory time limit because there were staff members of different ranks and positions who met the requirement for the promotion to the next rank every month. In order to save the manpower and simplify the relevant administration procedures, the bureau will combine the exams together.

Given that Paragraph 2 of Article 14 of the *Regime of Ranks and Titles of Public Servants* is a compulsory provision set up by the lawmaker for the reason that "a time limit for conducting promotional exam compulsorily shall be set up", the public department has the responsibility to follow it. Moreover, for promotion, the lawmaker has set up different grades of performance appraisal and different requirements regarding seniority for the purpose of encouraging those who have good performance and motivate the staff. If the public department does not conduct the promotional exam by the statutory time limit, it will be difficult to fulfil the purpose. Moreover, it will also impair the staff's right to be promoted further in the future.

Due to the entry into force of *Recruitment, Selection and Promotional Training of Public Servants*, in order to enforce the relevant regulations, it is able to expect that the department responsible for human resources had a lot of works to do right after the law was implemented. The Health Bureau mentioned in its reply that there were 11 promotional exams conducted concurrently, reflecting that the workload was not light probably. In this sense, it is believed that the Health Bureau did not deliberately delay the promotional exams for the staff who became qualified for promotion right after the law was implemented. However, since the bureau delayed for over four months, the doubts about its administrative efficiency will be raised easily.

In fact, not conducting promotional exam within statutory period is contrary to the principles of legality and goodwill under the *Code of Administrative Procedure*. Since the authority did not fulfil its statutory obligation, when the parties suffering the loss dun for compensation, the authority may bear the civil liabilities.

The CCAC stated its stance to the Health Bureau and it replied that "we have prepared for the promotional exam within the statutory period provided by Paragraph 2 of Article 14 of Law no. 14/2009."

Following investigation, it is found that there is no information showing that the Health Bureau deliberately delayed the promotional exam in the case and there is information showing that the bureau has adopted measures to improve the situations of conducting promotional exams after the time limit expires. Therefore, it is believed that similar cases will be prevented.

Since the problem has been solved, the CCAC archived the case.

Case 20 — Regulations of entry requirements for special posts

In August 2013, the CCAC received a complaint alleging that the entry requirements in the announcement of recruitment of principal translator-interpreters of 1st rank for Chinese-English and Chinese-Portuguese published by the Office of Government Policy Studies on the *Official Gazette of Macao SAR* dated 7th August had violated the law.

The said requirements for entry include: college degree in Chinese-English/Chinese-Portuguese translation or English/Portuguese or Chinese language and six years of professional working experience in Chinese-English/Chinese-Portuguese translation and interpretation; or bachelor degree in Chinese-English/Chinese-Portuguese translation or language (English/Portuguese or Chinese) and four years of professional working experience in Chinese-English/Chinese-Portuguese translation and interpretation; or holder of another appropriate bachelor degree in addition to college or bachelor degree in Chinese-English/Chinese-Portuguese translation or English/Portuguese language and two years of professional working experience in Chinese-English/Chinese-Portuguese translation and interpretation.

The complainant considered that Law no. 14/2009, *Regime of Ranks and Titles of Public Servants* stipulates that the minimum requirement for entry to the 3rd level is that the applicant should hold another appropriate bachelor degree mentioned in the notice in addition to holding either college or bachelor degrees. The post of principal translator-interpreter is the 4th level of the post of translator-interpreter. Therefore, the entry requirement should not be lower than that of the 3rd level.

However, according to the first two situations mentioned in the said notice, if the candidate has the working experience as required, it will be possible for

him/her to enter the position of 4th level even though he/she is not a holder of another appropriate bachelor degree. The complainant considered that this is against the *Regime of Ranks and Titles of Public Servants*.

The CCAC considered that according to Article 26 of the *Regime of Ranks and Titles of Public Servants*, translator-interpreter is under a special position scheme. Although Articles 8 and 12 of the law regulate working experience and entry, but the law provides special requirements for the entry of the post of translator-interpreter. Since special law prevails over general law, only Paragraph 2 of Article 27 shall be applied to the entry of the post of translator-interpreter and the general regulations in the *Regime of Ranks and Titles of Public Servants* are not applicable to the case.

According to Table 7 in the *Regime of Ranks and Titles of Public Servants*, principal translator-interpreter is equivalent to the 4th level. Under Paragraph 2 of Article 27, general entry (*ingresso*) is only applicable to the 1st to the 3rd levels, reflecting that the law does not allow exterior recruitment of positions of the 4th level. In order to reach this level, one can only do it through promotion.

The CCAC sent the result of the analysis to the complainant and the research institution. The latter decided to cancel the recruitment since it found defects existing in the procedure. Since the problem has been solved, the CCAC archived the case.

Case 21 — The law-enforcement standard of ticketing illegal parking

In January 2013, a complainant told the CCAC that he/she reported to the PSP that two cars parking at metered parking spaces had illegally occupied the spaces due to unpaid meter fee and a police officer subsequently went to issue tickets. Later, the complainant found that the meter fees still had not been paid over one hour after the tickets were issued. Then he/she reported the case to the PSP. However, the staff of PSP replied that the police officer had already gone off duty at that time but wheel lock procedure should only be followed up by the same officer. Finally, another police officer went to the site to issue tickets again instead of locking the wheels. Therefore, the complainant considered that the standard that the PSP adopts against illegal occupation of metered parking space is questionable.

The PSP explained that it was because the data of the tickets for the first time was not input in time. As a result, the second police officer who went to follow up the case did not know that it was done one hour before and thus he/she issued other tickets.

However, according to the details described by the complainant, the tickets issued by the first officer were still placed on the windscreens of the cars. Therefore, the CCAC considered that the PSP's explanation that the second police officer issued other tickets because he/she did not know the cars had already been ticketed was inadequate.

Given that the focus on the complaint is the overall mechanism of law enforcement, the CCAC pays attention to whether there is signs showing that the PSP handles similar cases as what the complainant described (law-enforcement standard) and whether the standard is inappropriate or not.

Based on publicized information, the CCAC realised that the PSP has adopted a new law-enforcement measure for relevant illegal situations. Punishment for illegal occupation of parking space for long time will be strengthened. If the car has been ticketed for unpaid meter fee for over one hour, the PSP will notify the responsible towing service entity and the latter will dispatch staff to lock the wheel or tow the car away. In other words, this is different from the handling method in the case.

According to relevant information, due to limited spaces for towed cars, the service supplier cannot tow the locked cars away in a short time. In this sense, if the locked cars cannot be towed away in time, it will be unable to fulfil the aim of increasing the availability of metered parking spaces through such punishing measure. In the past, the PSP might not implement the measure strictly and handled such illegal situations timely due to limited law enforcement resources.

The CCAC considered that no matter what the reason was, now the PSP has fortified law enforcement, increased the frequency of patrol and spaces for towed cars and allocated manpower to tow the locked cars away as soon as possible. Such measures have shown that the situation of illegal occupation of parking spaces for a long time should be improved.

Meanwhile, the complainant was dissatisfied with the staff's response about wheel locking and considered the statement that "wheel lock procedure should only be followed up by the same officer" was problematic. The PSP did not give any response to this issue. However, according to publicised information, the PSP will dispatch police officers to patrol the same area repeatedly in a short time and station near metered parking spaces in order to eyewitness illegal parking. This reflects that the PSP tends to substantiate the cases of illegal parking based on what the police officers have seen and the time the tickets for unpaid meter fee were issued did not serve as the only proof of continuing illegal parking for over one hour after the cars are ticketed.

The CCAC considered that although the time when the cars were illegally parked and unpaid could be confirmed after the tickets were issued, if the cars were driven away and were later parked at the same metered spaces, the status of illegal parking would be broken off; also the length of time of illegal parking that could be measured starting from the time the tickets were issued are questionable. Therefore, the tickets placed on the windscreen are not sufficient to prove that the cars had never been driven away and had been illegally parked for over one hour.

Currently, the PSP requires police officers to observe the situations of illegal parking in person as the eyewitness of illegal parking. This should be a measure for strengthening the effect of the evidence for prosecution of illegal situations. The CCAC understands the PSP's stance.

Since the PSP has taken the initiative to redress the problems that concern the complainant, the CCAC archived the case.

Case 22 — Public department shall respond to citizen' request under the law

In February 2013, a complainant told the CCAC that since his/her father was unable to meet with the Medical Board for body-check on the scheduled date, the complainant made a phone call to the Social Security Fund (FSS) to request for a change of the meeting date. However, the staff of the FSS replied that the date could not be changed and if his/her father could not make it, a letter of explanation should be sent to the FSS.

The complainant was dissatisfied with the fact that his/her request was not met by the FSS. Then he/she complained to the FSS and insisted that the FSS should explain why the appointment could not be rescheduled. Later, the FSS explained that it was because the dates had already been fully reserved. The complainant was discontented with the fact that the FSS did not give any explanation until he/she filed a complaint and the handling approach adopted by the FSS.

The CCAC considered that according to Law no. 4/2010 of 23rd August, *Social Security System*, and the *Internal Regulation of the Medical Board of the Social Security Fund* approved by Chief Executive's Order no. 259/2011, the Medical Board is an investigative organ responsible for proving whether the applicants meet the requirements (e.g. premature decrepitude or disability) for the benefits granted by the FSS.

According to Articles 85 and 88 of the *Code of Administrative Procedure*, requiring the applicant to undergo body check by the Medical Board is one part of the investigative stage in the procedure. The FSS plays the predominant role in the investigation and thus it has the power to require the applicant to cooperate in the investigation and follow its provisions. Therefore, since the one who plays the leading role is the FSS but not the applicant, when the latter cannot go to the designated place for check on the scheduled date, he/she shall follow the provisions of the FSS to explain the reason and make a request and the decision will be up to the FSS.

Moreover, in response to the complainant's repeated requests, the FSS has already given explanation to him/her and no improper handling was found. Therefore, the CCAC archived the case.

Case 23 — Storage of fuel container shall accord with the law

In February 2013, a complainant told the CCAC that he/she had already set up safety basin for storage of fuel containers at his/her restaurant under the requirement of the Civic and Municipal Affairs Bureau (IACM). However, the IACM's inspectors failed to make an accurate record due to the angle of the photographs. As a result, the complainant was punished. Therefore, the CCAC was requested to intervene in the case.

In October 2011, the IACM's inspectors found in the site inspection that too much fuel was stored in the complainant's restaurant and that there was no safety basin for storage and subsequently imposed punishment on the person-in-charge of the restaurant under the law. Then the complainant said that the problem concerning storing too much fuel was solved and a safety basin was built in the same month.

In September 2012, the inspectors went there to have another inspection and found that no safety basin had been set up and took photos as record and subsequently imposed punishment on the person-in-charge of the restaurant under the law.

Although the complainant thought that the angle of the photos taken by the inspectors did not reflect that the safety basin had already been installed and he/she provided the blueprint of the safety basin ordered from a company in October 2011 to the CCAC as the evidence, according to the information above, it is difficult for the CCAC to come to the conclusion that the record was incorrect. At the same time, the CCAC is also unable to judge whether safety basin had already been set up at that time and whether the fuel containers had already been stored in the safety basin mentioned by the complainant.

Therefore, the CCAC archived the case.

Case 24 — Prosecution for unlicensed restaurant operation

In February 2013, a complainant told the CCAC that he/she lodged a complaint to the Civic and Municipal Affairs Bureau (IACM) over unlicensed operation of a noodle house half a year ago. Although the IACM replied to the complainant that it had requested the restaurant to apply for a license and had commenced prosecution procedure, the unlicensed operation still went on. Therefore, the complainant was dissatisfied with the IACM as it tolerated the unlicensed operation for a long time.

The IACM stated that it did dispatch inspectors to the site for inspection and discovered the unlicensed operation. Subsequently, on-site record was taken. However, the case was archived due to insufficient evidence. Later, IACM's inspectors found that there were signs of unlicensed operation of the restaurant again and took another on-site record. The IACM sent a letter to the

offender to request him/her to attend the preliminary hearing and the relevant administrative disciplinary procedure was ongoing under the law. Moreover, the IACM added that the restaurant has been granted a license.

The CCAC considered that although the reason why there was "insufficient evidence" for the first prosecution is unknown, the IACM already placed another charge, obtained certain evidence and handled the matters under the law. Therefore, it is meaningless to pay attention to the situation of "insufficient evidence".

Moreover, according to the IACM, since the restaurant has already been granted a restaurant license, the unlicensed operation that concerns the complainant no longer exists. In addition, the IACM stated that it would continue to follow up the unlicensed operation of the restaurant beforehand. Therefore, the CCAC has no need to further follow up the case.

Information shows that after receiving the report, the IACM did follow up the matter. However, since notification procedure was time consuming and it was necessary to give the owner of the restaurant certain time to attend the preliminary hearing. As a result, the IACM was not able to handle the case quickly. Meanwhile, the law does not allow the authority to adopt any measure of "temporary closure of the establishment" before the decision of punishment is made. Therefore, the IACM could not seal up the unlicensed restaurant before the relevant administrative procedure was completed and the disciplinary decision of "immediate closure" was made.

Since there is no need to follow up the case, the CCAC archived the case.

Case 25 — Overdue medical report

In March 2013, a complainant told the CCAC that in early January 2013, he/she requested the Hospital Conde de S. Januário (CHCSJ) for two medical reports and the CHCSJ replied that the reports could be issued within 25 working days since the application was made. Around two weeks later, only one of them was issued and another one had not yet been issued by the time the complaint was filed. The complainant was dissatisfied with the fact that the report had not yet been issued after the deadline.

According to the Health Bureau's guidelines of procedure of application for medical report, it takes around 25 working days to complete the procedure. Therefore, the CHCSJ did not issue the medical report to the complainant by the deadline set up by the authority.

The Health Bureau stated that the doctor completed the relevant report and informed the applicant in April 2013. In the same month, the applicant went to collect the report. Since the hospital did not complete the medical report on time, the Health Bureau will make improvement and call for the relevant department's attention.

Since the complainant has already collected the report and the Health Bureau has said that it would take measures for improvement, the problem has already been solved and the CCAC archived the case.

Case 26 — Reason for administrative acts shall be adequately explained

In April 2013, a complainant told the CCAC that in 2011, he/she married a resident of Mainland China, A, in Mainland China. Then A travelled to Macao frequently in order to take care of the complainant. The couple were requested by the Identification Bureau (DSI) for statement of details of daily life when A was applying for the right of abode in Macao. However the DSI considered that they were suspected to have a sham marriage and thus referred the case to the Public Security Police Force (PSP). Eventually, they were convicted of criminal offence and A was deported and banned from entering Macao in three years. The complainant requested for the CCAC's intervention.

Information shows that in 2011, the complainant and A registered their marriage at the Marriage Registry of the Municipal Affairs Bureau of a place in Guangdong Province and obtained a marriage certificate. In 2012 when the DSI handled A's application for the right to abode, it found that there were conflicts and discrepancies between the statements of details of daily life provided by the couple and thus referred the case to the PSP. In early 2013, the PSP dispatched police officers to have a surprise visit to the complainant's residence in Macao and requested the couple to go to police station to give statement of details of daily life. The police considered that they had committed the offence of

"forgery of civil status" under Paragraph b of Article 240 of the *Penal Code* and referred the case to the Public Prosecution Office. Eventually, A was deported to Mainland China and blacklisted as unwanted people.

In 2013, the duo wrote to the PSP respectively to request for repeal of the entry ban, but the PSP remained the entry banning measure against A for the reason that "*since A has committed a crime of forgery of civil status under Paragraph b of Article 240 of the Penal Code, his/her entry to Macao will endanger the public order and social security of Macao and for the purpose of safeguarding public interests and fulfilling the PSP's duties...*" The PSP also sent a written notification to A, who was in Mainland China. Later, A filed an appeal and eventually the PSP repealled the entry ban "*following analysis on the interest party's statement and case file*".

According to the *Penal Code*, anyone who usurping, altering, fabricating or covering up marital status or kinship so as to hinder official inspection on it shall be liable for the "crime of forgery of civil status" under Paragraph b of Article 240 of the *Penal Code*. As A made an application for the right of abode in Macao for the reason of family reunion, the DSI should examine the certification documents (e.g. marriage certificate) submitted by A under the law when assessing the application. However, according to the law, the DSI is not the public department entitled to inspect marital status. Therefore, the DSI did not conduct the "official inspection" on the marital status or kinship but merely handled A's application for the right of abode in Macao.

From another perspective, although A's marriage was fake, his/her behaviour was only deceiving the official department of Mainland China in order to obtain a marriage certificate that is real in form but untrue in terms of meaning and attempted to obtain the right of abode granted by the authority of Macao through the document. Hence the duo have violated Paragraph 2 of Article 18 of Law no. 6/2004 and constituted an offence of document forgery provided by Sub-paragraph b of Paragraph 1 of Article 244 of the *Penal Code* (having important legal facts untruly shown on documents) instead of "forgery of civil status".

According to the law, the entry ban against a non-local person due to strong signs showing that the person has already committed or is going to commit crime shall be based on the existence of actual danger (*perigo efectivo*) to public

safety or order and the period of prohibition shall be proportional to the severity, danger or reprehensibility of the act that has led to the ban[6] . Therefore, the police shall clearly point out how the act the person has already carried out or is going to carry out (crime) which has caused or will cause actual danger to public safety or order.

According to the PSP's report, the opinion given by the staff who made the report is "*The report is submitted to the superior for deliberation*". The superior, who was the department chief, commented "*I suggest implementing entry ban and submit the report to the Director for review.*" The decision made by the Director of PSP was "*I agree. Implement the measure suggested.*" (*Concordo, procede-se em conformidade*) Therefore, the writer and the superior's suggestion and the Director's decision have reflected that the police only vaguely suspected that A had committed a crime of "forgery of civil status" and decided to implement the entry ban merely based on this reason without any explanation of the association between the suspected "forgery of civil status" and danger to public safety and security, violating the law and leading to a defect - lack of adequate reason. According to the *Code of Administrative Procedure*, inadequate reason for administrative act is equivalent to absence of reason and makes the act revocable.

Since the PSP has already repealled the entry ban which was not backed by adequate reason and the Public Prosecutions Office is conducting other criminal investigative procedures, the CCAC archived the case.

Case 27 — Reasonable work arrangements

In May 2013, the CCAC received a complaint alleging that the Health Bureau arranged for some clerks or auxiliary staff members to carry out surveillance work at the checkpoints for avian flu prevention. The complainant thought that since expertise is required for the work but auxiliary staff members are only responsible for delivering documents and have never received any professional medical training, the arrangement was unfair to the staff and caused danger to the general public.

The CCAC considered that the auxiliary staff mentioned by the complainant

6 Paragraph 3 of Article 12 of Law no. 6/2004 and Sub-paragraph 3 of Paragraph 2 of Article 4 of Law no. 4/2003

refer to service assistants, whose duties include "accompanying and transport of patients" and "transport of hospital waste". Therefore, the arrangement for them to measure traveller's body temperature at the checkpoints was not administratively illegal. However, since clerks are not responsible for and do not have any experience in handling secretion, excrement and medical waste, assigning the task to them seemed inappropriate.

The Health Bureau replied that it had already recruited new members to measure traveller's temperature. However, before the new recruits started working, it temporarily arranged some office staff to do the job. The bureau pointed out that the staff mainly screened out people with elevated body temperature by using device. Since the device automatically detects those suspected of having fever and gives the alarm if it detects one, the staff only have to follow the instruction shown on the screen and measure travellers' temperature with ordinary ear thermometer. If a person is found to have fever and comes from an avian flu affected place, the staff will request the Fire Services Bureau to take the person to the Hospital Conde de S. Januário for further check.

The CCAC considered that since the office staff of the Health Bureau are able to find out the travellers who have fever only through the automatic screening device, the work does not require any professional knowledge. Moreover, even if suspected case of avian flu affection is found, they only have to request the Fire Service Bureau to follow up the case. Therefore, they do not have to carry out the high-risk duties such as clinical care and handling secretion and excrement.

Since the Health Bureau's practice was not found inappropriate, the CCAC archived the case.

Case 28 — Improper internal instruction

In July 2013, a complainant told the CCAC that he/she was dissatisfied with the provision of "extra working time to making up for absence shall not be less than 30 minutes" provided by the *Guideline and System of Attendance and Monitoring of Personnel of Social Welfare Bureau* (2nd version) effective from 1st October 2012 as he/she thought that the following problems would be caused:

1. Those who are absent for less than 30 minutes also have to work overtime for no less than 30 minutes.

2. In order to avoid impairment of interest, the staff may be deliberately absent again (e.g. coming to working late or leaving early) in order to accumulate 30 minutes of absence time.

The Social Welfare Bureau (SWB) replied to the CCAC that according to the system in force, there is no stipulation that requires those who have been absent (e.g. for personal reason or consulting a doctor) for less than 30 minutes to make up for the absence by working overtime for no less than 30 minutes. If the staff has been absent for less than 30 minutes, he/she can make up for the absence when he/she has accumulated 30 minutes of absence time, or, with the superior's approval, work overtime for less than 30 minutes.

The CCAC considered that according to the SWB's response, the situation mentioned in point 1 is impossible. As to point 2, according to the Guideline, evading the obligation to go to work on time by absence for personal reason is prohibited. If a staff has accumulated 30 minutes of absence time by late coming or early leaving, he/she will violate the Guideline. Moreover, the Guideline also prohibits absence for personal reason without the superior's prior approval but notification afterwards. Therefore, the staff shall not, as they wish, accumulate 30 minutes of absence time by late coming or early leaving, otherwise they will violate the provision.

However, although the SWB stated that if the staff has been absent for less than 30 minutes, he/she can make up for the absence when he/she has accumulated 30 minutes of absence time, the CCAC considered that the time limit for making up the absence shall not exceed the one stipulated by the Guideline, i.e. the same week or the next week.

To conclude, no improper points existing in the system of overtime making up for absence set up by the SWB is found. Therefore, the CCAC archived the case.

Case 29 — Compensation for shift work shall accord with the law

In September 2012, the CCAC received a complaint from an assistant

officer of the Health Bureau, who works on the following three shifts:

1. 08:30 to 15:45 (without break/lunch break in between)

2. 08:30 to 13:00, 14:30 to 17:15 (1.5-hour break/lunch break in between)

3. 08:30 to 17:45 (without break/lunch break in between but with compensation for 2-hour overtime)

The complainant pointed out that the first and the third shifts consist of seven to eight consecutive hours respectively without lunch break and shift work allowance and being away without approval is not allowed. Moreover, no overtime compensation is given for working on the first shift.

The CCAC analysed the content of Paragraph 1 of Article 201 of *Statute of Personnel of the Public Administration of Macao*, which states, "For shifting, at least two shifts shall be arranged consecutively every day." In other words, there shall be at least two consecutive shifts in each day, one shift immediately following the other.

The three shifts mentioned by the complainant do not follow one by one. Moreover, changing of the shift does not affect one's daily routines or stamina and thus consuming more energy in his/her duties (e.g. unlike police officers or medical staff who need to adjust their daily routine in order to concentrate on their duties because they have to work different shifts). Therefore the situation does not accord with Article 199 and Paragraph 1 of Article 201 of *Statute of Personnel of the Public Administration of Macao* and not giving "shift work allowance" to the complainant was not illegal.

As to the situation of over seven consecutive working hours without break/lunch break every day, the legal regime of public personnel does not provide any regulation on it. However, according to the *Labour Relations Law*, in order to protect employee's right to take a rest, the employer shall give a break of no less than 30 consecutive minutes every five working hours. If the employer does not allow the employee to leave the workplace freely during the said break, the break shall be included in the normal working hours.

Therefore, if the department considers that the relevant staff shall work for over seven consecutive hours and shall not leave the workplace freely in order

to guarantee normal operation of the department and/or provision of service, there should be at least a 30-minute break which should be included in the normal working hours.

The Health Bureau replied that "*due to the special demand for medical services, the medical assistants and office staff of the Health Centres under the bureau are required to work during '8:30 to 15:45' and '8:30 to 17:45 (with compensation for 2-hour overtime)' in order to ensure sufficient manpower to provide appropriate service and deal with emergency. As for the relevant arrangements for working time, the Health Centres will arrange for the staff to take turns having break and the time of the break will be included in the working time*."

This shows that the complainant and the Health Bureau stuck to different versions and arguments of the situation about "non-stop 7 to 9 working hours without a break/lunch break". Since it was an anonymous complaint and the complainant did not indicate any contact ways, the CCAC was unable to seek more details from him/her. Since there is no sufficient evidence to proof the accusation following investigation, the CCAC has no need to further follow up the case.

Moreover, according to the complainant, the shift that is "non-stop without any overtime compensation" is 8:30 to 15:45. As there are five working days every week, the length of working time is 36 hours and 15 minutes weekly. That means there is 3-minute overtime everyday (According to Article 77 of the *Statute of Personnel of the Public Administration of Macao*, staff of the Public Administration shall work for 36 hours every week). According to Paragraph 2 of Article 197, "Overtime compensation is calculated on hourly basis. The excess overtime shall only be counted as one hour if it is not less than 30 minutes."

Therefore, it was not illegal for the Health Bureau not to pay for 3-minute overtime of the shift everyday.

Finally, the CCAC archived the case.

Case 30 — Relocation of vendor stall

In October 2012, the CCAC received a complaint over the following matters:

1. The complainant's vendor stall within a small wooden hut was located in the area to be developed as public road. For this reason, in 2011, the Civic and Municipal Affairs Bureau (IACM) informed the complainant that his/her vendor's license could not be renewed with that address for public interest. However, the two vendor stalls adjoining the complainant's in the same area were granted fixed-pitch vendor's licenses. Therefore, the complainant suspected that the IACM's handling approach was unfair.

2. The Land, Public Works and Transport Bureau (DSSOPT) has issued a guideline which requires the developer to disassemble the existing temporary houses, but the developer was granted the construction license although it had not properly disassembled of all wooden huts and the construction started in June 2012. The complainant considered that the construction was hazardous to the surrounding buildings (including the complainant's wooden hut) and hence he/she suspected that the DSSOPT's failure to conduct the supervision.

The CCAC followed up the case. For the first matter, the IACM replied that since the complainant's stall was located at the entrance and exit of the construction site. Due to safety, there was an urgent need to move the stall away first. As to the remaining vendor stalls (including the two adjoining the complainant's), the IACM would arrange for gradual resiting according to the progress of the construction. Given that the IACM also took account into the relevant vendors' needs apart from public interests, the CCAC did not find any administrative illegalities or irregularities in the IACM's handling approach.

For the second matter, the DSSOPT replied that the official track plan it issued stipulates that the landowners of the relevant lot shall be responsible for demolition of the existing buildings, including the roads and public pavements in the plan. Before the license of use of property is issued, the landowners shall complete the extra projects required according to the said official track plan, i.e. to remove the existing buildings in the outer circle of the lot.

In fact, before applying for approval of construction plan, it is necessary to apply for the official track plan for the relevant area, which indicates the boundary between the front of the building and the accessing road to the building or public roads set up by the DSSOPT so as to clarify the urban planning requirements for the relevant lot set up by authority, including the special projects required (e.g.: infrastructure surrounding the project). As assessed by the DSSOPT, if the construction project has met the requirements under the official track plan and other relevant regulations, the DSSOPT will grant the construction license. After the construction is completed, the license of use of property will not be granted until it passes the examination conducted by the Building Inspection Board and meets the requirements (including the requirements under the official track plan issued by the DSSOPT). Currently, the DSSOPT has already approved the commencement of the projects to be done by the landowners and the latter will build public roads and remove the buildings gradually according to the authority's plan. There is no signs of administrative illegality and irregularity found in the DSSOPT's handling procedure.

As to the problems about the danger caused by the project to the complainant's vendor stall, since it is located at the entrance and exit of the construction site, in view of the construction and the safety of the complainant, in 2011, the IACM informed the complainant, in written form, that his/her vendor's license could not be renewed with that address and discussed with the complainant the arrangements for a transfer.

As to the issue concerning compensation for removal of the complainant's stall, it is a civil case. The complainant may solve it by negotiation with the landowners/owner of the project or by judicial means. The CCAC has no power to intervene into the case.

Therefore, the CCAC archived the case.

Case 31 — Errors in the statement of travel records

In mid-October 2012, a complainant, a holder of Exit-Entry Permit for Travelling to and from Hong Kong and Macao, told the CCAC that he/she applied for a statement of his/her travel records in 2004 to 2012 to the Immigration Department in late August 2012 and found some errors in the statement. Subsequently, he/she told the department about the errors but the

staff replied that it was impossible to correct the errors and refused to print another statement. The staff added that the errors might be caused by the customs officers who had forgotten to change the status or failure of the device to sense the barcode of his/her permit when the complainant was crossing the border. The complainant was dissatisfied with this and filed a complaint to the Immigration Department in September, but there was still no reply.

The CCAC followed up the case. The information provided by the Public Security Police Force (PSP) shows that before the CCAC intervened into the case, the PSP already handled the complaint and in mid-October 2012, it replied to the complainant, admitting that the situation mentioned by him/her really existed.

For the errors in the statement, the PSP explained that one of the reason was that the errors caused by old-style optical barcode readers when it was scanning the permit barcode. In June 2008, the PSP started to change the devices gradually and there have been improvements. Another reason was that the staff members of the checkpoints made mistakes when inputting travel records. For this problem, the PSP will continuously upgrade the computer system and strengthen the training for the staff in order to minimize the chance of making mistakes.

As to correction of the errors, due to technological and legal reasons, the PSP will not make any correction to the errors in past travelling records, but it will give a clarification in written form.

Since the PSP has already adopted appropriate measures to handle the complaint and make improvements, the CCAC archived the case.

Case 32 — Insufficient public medical service

In September 2013, the CCAC received a complaint over the following matters:

1. It takes a too long time to wait for emergency treatment at Hospital Conde de S. Januário (CHCSJ).

2. The response given by the Director of the Health Bureau to the public, "Some

citizens seek emergency treatment for dropping of hair when shampooing their hair and even injuries caused by nail cutting. This is abuse of the service" is confusing and misleading.

3. The Health Bureau already started expanding the emergency department in late 2010. However, it has not yet been put into operation when this complaint was filed. The Health Bureau turns a blind eye to citizens' needs.

4. It takes a very long time for those who need to be hospitalized following emergency treatment to wait for hospitalization and the environment of the emergency room/observation room fails to meet the requirements for privacy and convalescing.

5. The extension of service hours of the Health Centres at Fai Chi Kei and Areia Preta to 10:00pm is not effective since the authority did not train the relevant medical staff, triggering manpower shortage.

The CCAC subsequently carried out investigation and analysis. The fact that it takes a very long time to wait for emergency treatment is known by the general public. The response given by the Director of the Health Bureau was to point out that unreasonable use of emergency medical services is one of the reasons.

For the situations of unreasonable use of emergency medical services, the Health Bureau has adopted a triage measure. By determining the severity of the injuries and diseases, the patients will receive care timely. At the same time, in order to shorten the time to wait for emergency treatment, the Health Bureau has increased manpower and is going to recruit more staff and launch 24-hour medical service.

Meanwhile, due to increasing demand for medical services during nighttime and holidays, starting from 2008, the service hour of the Health Centre at Fai Chi Kei extended to 8:00pm. Since November 2012, the service hour of the Health Centres at Fai Chi Kei and Areia Preta has even extended to 10:00pm. Moreover, the Health Bureau is cooperating with same non-profit medical organisations. Starting from 2013, the service hour of the outpatient service departments of those organisations has extended. On 23rd October 2013, the new emergency facility of the CHCSJ was put into operation.

The measures including triage arrangements, expansion of emergency facility, extension of service hour of Health Centres, expansion of outpatient services during nighttime and holidays and increasing frontline medical staff show that the authority does not turn a blind eye to citizens' demand for medical services. The new emergency facility is three times larger than the old one and there are 71 new beds. It is believed that the environment will be improved and will meet the requirements for privacy and convalescing after the new facility is put into operation.

The reason why it takes a long time for the patients who need to be hospitalized to wait for beds is the shortage of beds. In this case, even the authority requires that the patients should be hospitalised after staying at the emergency department for a certain time as mentioned by the complainant, such practice is not viable. The only way to solve the problem is to increase the beds for patients.

Information shows that according to the "Plan of perfecting medical system" launched by the authority in 2011, MOP100 billion will be spent in ten years to upgrade the medical system of Macao. Apart from expanding existing facilities, a medical complex for Taipa and Coloane will be built in order to provide different types of wards. In order to achieve the goal quicker, the authority established a "Committee of Medical System Development" in the same year to follow up and coordinate cross-departmental works. It is believed that the completion and inauguration of the projects in the plan will gradually solve the problem concerning shortage of wards.

Extending the service hours of the Health Centres at Fai Chi Kei and Areia Preta to 10:00pm is to meet citizens' demand for nighttime medical service and one of the measures to deal with the heavy patient load at the emergency department of CHCSJ. In fact, the authority also admits that there are only several tens of patients who seek emergency service during nighttime after the service hour was extended and therefore it is not effective. However, there is no information showing that the ineffectiveness is caused by shortage of manpower, while the authority has stated that it will have a review to see if it is caused by inadequate publicity.

Since no signs of administrative illegality or irregularity has been found, the CCAC archived the case.

Case 33 — Clinical laboratory services shall be provided by people with medical license

In November 2011, the CCAC received a complaint alleging that since late September 2011, there had been no doctors providing services at a clinical laboratory, but it still operated as usual and sent all X-ray and body-check reports to hospital C, while some of the reports were not signed and issued by people with medical license.

The CCAC subsequently followed up the case and found that the Health Bureau also received a complaint over the same matter in November 2011 and it had already opened a case file to follow it up.

In December 2011, the Health Bureau dispatched staff members to the clinical laboratory to conduct a random inspection on its medical reports and found that the person who signed the reports was A, who had a medical license. However, there was no doctor at the laboratory. The staff of the laboratory explained that A had to take a professional training course in the morning and he/she would be back immediately after the class, while another doctor, B, was off for sick leave. The staff added that X-ray tests would be done by technical staff without medical license. Subsequently, the staff of the Health Bureau pointed out that health care services should not be provided without the presence of any licensed medical personnel.

Since then, the clinical laboratory realized the shortage of manpower and hence hired one more doctor in order to prevent the situation of operating without any doctors. Moreover, the technical staff of the laboratory have applied for medical care assistant licenses and the applications have already been approved. Given that the clinical laboratory has already adopted measures to redress the irregularities, the Health Bureau sent it a warning letter under the law.

Moreover, the clinical laboratory submitted to the Health Bureau a cooperation agreement signed with hospital C on 1st March 2013, which indicated that all medical tests will be referred to the laboratory of C and conducted by medical care personnel with license granted by the Health Bureau and the reports will be signed by them on behalf of the clinical laboratory. Subsequently, the Health Bureau suggested some measures to the clinical laboratory, so that the

clients will be able to know the way of the cooperation and the units responsible for the tests and thus ensuring their right to know.

Since the Health Bureau has already adopted measures to follow up the matters being complained over, the CCAC archived the case.

Case 34 — Problems concerning purchase of vehicle registration plates

In October 2013, the CCAC received a complaint alleging that at 17:00 on 28th in some month, the Transport Bureau (DSAT) announced that a number of vehicle registration plates including **XX-Y6-96** would be available for purchase on the following working day. However, the complainant found that the DSAT had already distributed the plate to another person through ballot in the afternoon of the previous day when he/she went to buy the plate in the morning of that day. The complainant was dissatisfied with it.

The DSAT stated that the last one of the 400 plates available as announced on the day mentioned by the complainant was **XX-Y6-83**. Since 12 of them were purchased on that day, the DSAT had to add 12 following numbers and one of them was **XX-Y6-96** so that there would be 400 plates to be distributed to the new vehicles that passed the examination on the previous day through ballot. After the ballot, the DSAT had to increase the number of plates available to 400 for purchase on the following working day (29th of the month). Citizens can view the list of plates available on the next day on the DSAT's website starting from 17:00 everyday or on the notice boards at designated locations starting from 17:15. Since **XX-Y6-96** was distributed to one of the new vehicles through ballot, the plate was no longer included in the list of available plates for purchase on the following working day.

Although the complainant stated that **XX-Y6-96** was included in the list of plates available for purchase on the following working day according to the DSAT's announcement at 17:00 on 28th in some month, the plates available for ballot and purchase should be listed in designated order and the DSAT would make public the process and results of the computer ballot, if the case mentioned by the complainant is true, it should be easy to discover it. Given that there is no information proving the complainant's accusation, it is unnecessary for the CCAC to follow up the case.

However, during the investigation, the CCAC found that regarding direct purchase of vehicle registration plates, the DSAT's website indicates that "*For the citizens who intend to view the numbers available, the information is publicized on the website of the DSAT or the notice board of the Service Area at **3:00pm** on the day before the day of purchase*." This information is inconsistent with that provided by the DSAT to the CCAC. Subsequently, the DSAT corrected the time of publication on the website after the CCAC pointed out the inconsistency.

Finally, the CCAC archived the case.

Case 35 — Dispute about whether bonus is included in regular wages

In November 2012, the CCAC received a complaint about dissatisfaction of the statement of the Labour Affairs Bureau (DSAL) that bonus was considered as variable pay and that since the complainant resigned before 30th June 2012 and thus did not meet the requirement for receiving bonus, the DSAL archived his/her case. The complainant pointed out that the *Labour Relations Law* does not provide clear stipulations of bonus and considered that the DSAL should have made reference to other documents with legal effect (such as the annual financial statement of the capital) when following up his/her case.

Information shows that after the DSAL received the complaint on 4th July 2012, it opened a case file to follow it up. Following investigation and evidence search, the DSAL considered that since there was no agreement of giving the complainant bonus every year and the bonus was incentive, the capital had the absolute right to decide whether to give bonus to its employees. If the employee submits resignation letter or is dismissed on or before the day of distribution of bonus, he/she will not be given any bonus. This shows that the bonus is irregular pay depending on the reality, in order words, "variable remuneration" defined in Paragraph 5 of Article 2 of the *Labour Relations Law*. Since the complainant resigned before the day of distribution of the bonus (the end of June) and thus failed to meet the requirement for receiving bonus, the Labour Inspection Department of the DSAL archived the case.

The complainant did not accept the result and filed a complaint to the Director of DSAL. Following analysis, the DSAL considered that the *Labour*

Relations Law does not provide the necessity to establish bonus system. Therefore, the requirements for receiving bonus depend on the agreement between the employer and the employee. If there was an agreement of giving bonus entered into between the complainant and his/her employer, it should be taken into account the condition of offering bonus in order to analyse whether the bonus was of the nature of variable remuneration given by the capital irregularly as stipulated under Paragraph 5 of Article 2 of the *Labour Relations Law*; or of the nature in accordance with Paragraph 4 of Article 2 and Sub-paragraph 8 of Paragraph 1 of Article 59 of the same law, which refers to the regular pecuniary payments payable to the employee for work performed agreed between the employer and the employee or by legal stipulation. If the bonus is paid regularly, it should be basic remuneration. In this case, when the labour relation terminates, the employer shall pay the bonus to the employee in proportion to the period of work provided under Article 76.

According to the employee handbook of the capital, the bonus is to be paid depending on the situation, while the conditions and requirements for paying the bonus each time depend on the capital's decision. If the employee submits resignation letter or is dismissed on or before the day of distribution of bonus, he/she will not be given any bonus. In this sense, the bonus mentioned by the complainant was not paid necessarily but a variable remuneration under Paragraph 5 of Article 2 of the *Labour Relations Law*. Since the complainant already submitted resignation letter to the employer before the day of distribution of bonus at the end of June 2012, he/she was not entitled to the bonus. Therefore, the Director of DSAL rejected the complaint.

Since there is no administrative illegalities or irregularities found in the DSAL's handling approach, the CCAC archived the case.

Case 36 — Procedure of handling traffic accidents involving vehicles of government departments

On 21st November 2012, a complainant told the CCAC that his/her car hit a car of the Public Security Police Force (PSP) on 12th October 2012. Later, the PSP detained his/her car for the reason that the compulsory civil liability insurance of the car had already expired. Although the complainant immediately paid the insurance fee and fine for violation of law and gave a written promise to pay for the damage, the PSP had not yet contacted the complainant and confirmed

the amount of compensation up until the complaint was filed. As a result, the complainant was still not able to take back his/her car.

According to the law, for those who have not bought civil liability insurance for his/her vehicles but have them driven on public roads, their vehicles shall be detained. If an accident has occurred, the detained vehicle will not be released until the compensation or the surety of which the amount is equivalent to the minimum coverage of the compulsory insurance is paid. The law also stipulates that when an accident involving government department's vehicle occurs, the department shall complete the investigation into the details of the accident and the extent of damage within 30 days since the notification of the accident is received. If the case is complicated, the deadline may be extended by 30 more days.

The PSP replied to the CCAC that it finished handling the matters about compensation on 21st November 2012 and requested the complainant to go to the PSP to go through the relevant procedure and take back his/her car on the following day.

Since the PSP has already completed handling the matters of the accident within 60 days, the maximum time limit, and satisfied the complainant's request for taking back his/her car, the CCAC archived the case.