APPENDIX I
Some of the Recommendations and Investigation Reports by CCAC

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

In 2013, the CCAC rendered a number of recommendations to government departments and submitted the investigation reports to the Chief Executive based on the significance of the matters involved in the complaints, including:

(1) Investigation report and suggestions concerning the "Macao Cable Television Company Limited" and the "public antenna service suppliers" signing the "Cooperation Agreement" and the execution of the judgment of the Court of Second Instance;

(2) A second report on analysis of "complaint on government's omission" and measures of supervision on public subsidy granting for associations/ individuals;

(3) Investigation and analysis report on the awarding of concession contract of collective passenger road transport service;

(4) Investigation report on the basis for termination of fixed-term appointment of Deputy Commissioner of the Fire Services Bureau and the relevant complaints;

(5) Analysis and conclusion on the responses of the Secretary for Security in relation to the "Investigation report on the basis for termination of fixed-term appointment of Deputy Commissioner of the Fire Services Bureau and the relevant complaints".

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

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Case I

Investigation Report and Suggestions Concerning the "Macao Cable Television Company Limited" and the "Public Antenna Service Suppliers" Signing the "Cooperation Agreement" and the Execution of the Judgment of the Court of Second Instance

Key points:

- The relations between the Government, "Macao Cable Television Company Limited", and the "public antenna service suppliers";
- The problems between "Macao Cable Television Company Limited" and the "public antenna service suppliers";
- Whether it is legitimate for the "public antenna service suppliers" to "donate" their transmission equipment that are subject to control to "Macao Cable Television Company Limited" through "agreement";
- Whether the above "agreement" is an execution of the verdict of the Court of Second Instance.

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Part I: Introduction

1. On 7th August 2013, the Commission Against Corruption (hereafter the CCAC) received a complaint (other complaints of the same content were received on 23rd of the same month), claiming that the cooperation agreement signed between the Macao Cable Television Company Limited (hereafter the "MCTV") and the public antenna services suppliers (hereafter the "public antenna companies") is illegal. On one hand, it harms the right of the residents to watch television programmes -- according to the information published by the Bureau of Telecommunications Regulation (hereafter the DSRT), the quantity of television channels that the residents can watch will be greatly reduced, on

the other hand, it deems unreasonable for the government to "pay" the MCTV in buying the "service", which is contrary to normal practice and logic of public administration. Moreover, it will reduce the number of television channels that the citizens could watch, which is extremely unfair and unreasonable; therefore, the CCAC is requested to investigate into the incident to find out whether there is illegality, transfer of benefits or administrative malpractices.

2. The CCAC sent an official letter on 15th August 2013 to the DSRT, requesting the latter to provide all documents related to the incident within 48 hours.

3. On 16th August 2013, the DSRT responded to the CCAC and delivered the following documents:

Table of documents

No.	Date	Type of Document and no. (if any)	To/From DSRT (Unit)	Subject	Type of version submitted (original/certified copy/copy)
1	06/08/2013	Cooperation agreement	1) Tak Va 2) Fai Chi 3) Sai Kai 4) Kong Seng 5) Hoi Ying 6) Kou Fong 7) Son Tong 8) Hi Tech 9) Sing Fei 10) Hap Heng 11) Kam Weng 12) Fat Kei 13) Jin Hung 14) Cotex	MCTV signing the cooperation agreement with the 14 public antenna companies	Certified copy (14 copies)
2	06/8/2013	Meeting minutes	Tak Va/Fai Chi/Sai Kai/Kou Fong/Hoi Ying/Tak Chou/DSRT	The meeting minutes of the MCTV withdrawing the charge against the 6 public antenna companies	Certified copy
3	22/01/2013	E-mail	To: the Office of the Secretary for Transport and Public Works (hereafter Office of the Secretary)	The calculation of the amount of compensation	Original
4	18/06/2013	Memorandum	From: Office of the Secretary	"Proposal to provide free basic TV signals of whole Macao by the government and the MCTV" submitted by the MCTV to the Office of the Secretary	Copy
5	21/06/2013	Proposal no. 237/03-12.01-811	Office of the Secretary	Proposal regarding the issues between the MCTV and the public antenna companies in response to the decision of the Court of Second Instance	Proposal no. 237/03-12.01-811 is the original (including annex 1 and annex 2), among which Report no. 106/GOSPT/IP/2013 and its annexes 1-5 are all copies.
6	12/07/2013	E-mail with one attachment	To: Office of the Secretary	Supplementary information (technical analysis)	Original
7	16/07/2013	E-mail with two attachments	From: MCTV	Reply-Detail discussion of the implementation scheme	Original
8	16/07/2013	E-mail with three attachments	From: MCTV	Reply-Detail discussion of the implementation scheme	Original

No.	Date	Type of Document and no. (if any)	To/From DSRT (Unit)	Subject	Type of version submitted (original/certified copy/copy)
9	16/07/2013	E-mail with one attachment	From: MCTV	Reply-Detail discussion of the implementation scheme	Original
10	17/07/2013	Letter of Intent and Preliminary scheme of Letter of Intent	1) Tak Va 2) Fai Chi 3) Sai Kai 4) Kong Seng 5) Hoi Ying 6) Kou Fong 7) Son Tong 8) Hi Tech 9) Hap Heng 10) Kam Weng 11) Fat Kei 12) Jin Hung	The Letter of Intent jointly signed by the 12 public antenna companies and Preliminary scheme of Letter of Intent signed by 6 public antenna companies (Tak Va, Sai Kai, Hi Tech, Fai Chi, Hoi Ying and Kou Fong) out of the 12 companies	Original
11	17/07/2013	E-mail with three attachments	To: Office of the Secretary	Related documents regarding the amendment of Administrative Regulation	Original
12	17/07/2013	E-mail with three attachments	To: DSAJ	Related documents regarding the amendment of Administrative Regulation no. 41/2011	Original
13	18/07/2013	E-mail with one attachment	To: Office of the Secretary	Draft of agreement of cooperation between MCTV and the public antenna companies	Original
14	19/07/2013	Letter of Intent	From: Cotex	Letter of Intent submitted by public antenna service supplier	Original
15	19/07/2013	Letter of Intent	From: Sing Fei	Letter of Intent submitted by public antenna service supplier	Original
16	23/07/2013	E-mail	To: Office of the Secretary	Draft of agreement of cooperation between MCTV and the public antenna companies (revised)	Original
17	23/07/2013	E-mail	To: DSAJ	Draft of agreement of cooperation between MCTV and the public antenna companies	Original
18	23/07/2013	Proposal no. 296/03-12.01-811	To: Office of the Secretary	Analysis on Letter of Intent of the public antenna companies	Original (among which annex 1 and annex 2 are copies)
19	24/07/2013	E-mail with one attachment	To: Office of the Secretary	Memorandum "Technical Arrangement of TV Signals Connection"	Original
20	24/07/2013	E-mail	To: DSAJ	Agreement of cooperation (opinions from DSRT)	Original
21	24/07/2013	E-mail with one attachment	To: Office of the Secretary	Network system configuration of TV transmission services	Original
22	26/07/2013	E-mail with one attachment	From: DSAJ	Solving the problems of public antenna services and future TV services policy	Original
23	29/07/2013	Agreement of cooperation	From: Public antenna service suppliers	Agreement of cooperation (opinions from public antenna companies)	Original
24	29/07/2013	Fax	From: MCTV	Request for information of contact person of 5 public antenna companies	Original
25	30/07/2013	E-mail with one attachment	From: DSAJ	Letter of Intent of concerning the cooperation with public antenna service suppliers sent by Jorge Menezes, Lawyer of MCTV to DSAJ	Original
26	30/07/2013	E-mail	From: DSAJ	Letter of Intent of concerning the cooperation with public antenna service suppliers sent by Jorge Menezes, Lawyer of MCTV to DSAJ	Original
27	30/07/2013	E-mail	From: DSAJ	Letter of Intent of concerning the cooperation with public antenna service suppliers sent by Jorge Menezes, Lawyer of MCTV to DSAJ	Original

No.	Date	Type of Document and no. (if any)	To/From DSRT (Unit)	Subject	Type of version submitted (original/certified copy/copy)
28	30/07/2013	E-mail with one attachment	To: Office of the Secretary	Contingency plan	Original
29	30/07/2013	E-mail with one attachment	To: MCTV	Contact person of public antenna companies	Original
30	31/07/2013	Official letter no. CE2013/088-P.0.01/0.04.1	TDM Executive Committee	Comments issued by TDM regarding the legitimate proposal to allow citizens to continue their access to free TV programmes	Original
31	31/07/2013	E-mail with two attachments	To: Office of the Secretary	Handling plan on termination of concession and detailed expenses of MCTV	Original
32	31/07/2013	E-mail with two attachments	From: Office of the Secretary	Immediate solution proposal of public antenna service	Original
33	31/07/2013	E-mail with two attachments	To: Office of the Secretary	Immediate solution proposal of public antenna service	Original
34	31/07/2013	E-mail with three attachments	To: Office of the Secretary	Revision of Annex 1 of the handling plan on termination of concession and calculation of arbitration compensation with annex	Original
35	08/01/2013	E-mail with one attachment	From: DSAJ	Letter of Intent of concerning the cooperation with public antenna service suppliers sent by Jorge Menezes, Lawyer of MCTV to DSAJ	Original
36	08/01/2013	E-mail with one attachment	To: Office of the Secretary	List of basic channels	Original
37	08/02/2013	E-mail with one attachment	From: MCTV	Memorandum of technical arrangement of TV signals connection – revised by MCTV	Original
38	08/02/2013	E-mail with one attachment	To: Office of the Secretary	Memorandum of technical arrangement of TV signals connection – revised by MCTV	Original
39	08/02/2013	E-mail with one attachment	To: DSAJ	Memorandum of technical arrangement of TV signals connection – revised by MCTV	Original
40	08/02/2013	E-mail with five attachments	To: Office of the Secretary	The arrangements of revocation of the concession contact and terms that MCTV failed to fulfil	Original
41	08/02/2013	Fax	From: MCTV	Memorandum "Technical Arrangement of TV Signals Connection"	Original
42	08/02/2013	Proposal no. 318/03-12.01-811	To: Office of the Secretary	Analysis of the Cooperation Agreement submitted by MCTV	Copy
43	08/03/2013	E-mail with one attachment	From: DSAJ	Cooperation agreement between MCTV and public antenna companies (2013-08-03)	Original
44	08/03/2013	E-mail with four attachments	To: Office of the Secretary	Proposal, order and compensation of the revocation of the contract with MCTV	Original
45	08/04/2013	Network coverage map	From: MCTV	Network coverage map (MCTV + Kong Seng)	Original
46	08/04/2013	E-mail with one attachment	From: MCTV	Fee structure	Original
47	08/04/2013	E-mail with one attachment	From: MCTV	System diagram	Original
48	08/04/2013	E-mail with one attachment	From: DSAJ	Cooperation agreement between MCTV and public antenna companies (2013-08-04)	Original
49	08/04/2013	E-mail	From: DSAJ	Additional comments on the cooperation agreement by the public antenna companies	Original

No.	Date	Type of Document and no. (if any)	To/From DSRT (Unit)	Subject	Type of version submitted (original/certified copy/copy)
50	08/05/2013	Letter of Intent	From: Public antenna service suppliers (Tak Va, Fai Chi, Hi Tech, Sai Kai and Kou Fong)	Recommendations of the Cooperation Agreement jointly signed by 5 antenna companies	Original
51	08/05/2013	E-mail with one attachment	From: DSAJ	Cooperation agreement between MCTV and public antenna companies (revised version)	Original
52	08/05/2013	E-mail with one attachment	From: DSAJ	List of cases submitted by MCTV	Original
53	08/05/2013	E-mail with one attachment	From: DSAJ	Cooperation agreement between MCTV and public antenna companies	Original
54	08/05/2013	E-mail with one attachment	From: MCTV	Fee structure	Original
55	08/05/2013	Agreement of cooperation	To: Office of the Secretary	Network coverage map (MCTV + Kong Seng)	Original
56	08/05/2013	E-mail with one attachment	From: DSAJ	Meeting minutes between MCTV and public antenna companies (2)	Original
57	08/06/2013	E-mail with one attachment	From: DSAJ	Government's reply on relevant document (Table of channels provided by MCTV)	Original
58	08/06/2013	E-mail with one attachment	From: DSAJ	Meeting minutes between MCTV and public antenna companies (2013-08-06)	Original
59	08/06/2013	E-mail with one attachment	From: DSAJ	Meeting minutes between MCTV and public antenna companies (2013-08-06)	Original
60	08/06/2013	E-mail with one attachment	From: MCTV	Itemised fees breakdown	Original
61	08/06/2013	E-mail with one attachment	From: MCTV	Itemised fees breakdown (resend)	Original
62	08/06/2013	E-mail with one attachment	From: DSAJ	Cooperation agreement between MCTV and public antenna companies (2013-08-04)	Original
63	08/06/2013	E-mail with one attachment	From: MCTV	Meeting minutes-5	Original
64	08/06/2013	E-mail	From: MCTV	Issue of telephone enquiry	Original
65	08/06/2013	E-mail with two attachments	From: MCTV	Related work of signal connections of the public antenna companies	Original
66	08/07/2013	Letter no. MCTV_070813_ GOV_224281	From: MCTV	The implementation of the proposal of provision of TV signals by MCTV	Original
67	08/08/2013	E-mail with two attachments	To: DSAJ	List of buildings of the public antenna companies	Original
68	08/08/2013	Letter no. 3229/03-811	To: MCTV	Matter concerning the submission of the copy of television service contract of MCTV	Original
69	08/09/2013	Letter	From: Legal Macau Lawyers (representing MCTV)	Reply to official letter no. 3229/03-811 of DSRT	Original
70	13/08/2013	Official letter no. 3303/03-12.01-811	To: MCTV	The transmission of 2 channels "HD TDM" and "TDM Sports"	Original
71	15/08/2013	Letter no. MCTV_130813_ GOV_226401	From: MCTV	Reply to official letter no. 3303/03-12.01-811 of DSRT	Original
72	15/08/2013	Letter	From: Legal Macau Lawyers (representing MCTV)	Reply to official letter no. 3303/03-12.01-811 of DSRT	Original

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Part II: Facts

1. Concerning the dispute between the MCTV and the public antenna companies, the CCAC had conducted an investigation and the investigation report was published. Recommendations were issued to the DSRT on 12th October 2010, details are as follows[7] :

    1) To immediately designate specific staff members (or form a professional task force) to take action and strive to completely solve the problems of the master antenna service within six months to no longer than one year;

    2) The members of the task force mentioned above should carefully study the concrete measures proposed by this report and other effective measures;

    3) To commence the preparatory works on the license application procedure according to Article 8 of Decree Law no. 18/83/M of 12th March, so as to have in-depth and comprehensive access to all concrete information about the master antenna service suppliers;

    4) To immediately commence legislative procedure to try the best to submit a proposal about regulating the master antenna service suppliers to the Legislative Assembly and establish a complete supervisory regime in three months;

    5) To study the problems concerning the concession (exclusive operation) contract, especially the arrangements and measures after the contract expires;

    6) Facing the controversial problems, the DSRT should re-identify its position and adopt legal means in order to safeguard the government departments' privilege in the society of rule of law;

    7) To improve the document handling methods and its staff's ability and sensitivity.

[7] See P. 152 and onwards of the Chinese version or P. 181 and onwards of the Portuguese version of the *2010 Annual Report of the Commission Against Corruption of Macao*.

2. It could be seen that the measures recommended by the CCAC at that time are basically matters within the duties of the DSRT. The purpose is to resolve the issue as quickly as possible and to prevent further worsening of the situation.

3. However, since the competent authority did not adopt measures to solve the problems in a timely manner, the Court of Second Instance made a judgment (Verdict no. 22/2013 of the Collegial Bench of the Court of Second Instance) on the case on 6th June 2013. Basic information of the case are as follows:

   - On 27th September 2012, the MCTV filed an administrative litigation for "an order to make a certain act" to the Administrative Court, a total of eight persons were being requested.

   - After investigation, the Administrative Court made a judgment on 27th November 2012: the reason for the request is untenable.

   - The applicant (MCTV) disagrees with the judgment of the Administrative Court and filed an appeal to the Court of Second Instance on 12th December 2012; after investigation, the Court of Second Instance made a judgment. Below is part of the content of the verdict:

     " I. Order each of the below defendants to make the following behaviours in 90 days:

     1 - ***The 1st defendant[8] should earnestly fulfil*** *the obligations established under the concession contract with the Macao Cable Television Company Limited* ***to ensure the inviolability of the exclusive concession rights of the latter and cease the illegal activities of re-transmitting television signals****;*

     2 - ***Defendants 2 to 7[9] shall respect the concession agreement, refraining from re-transmitting unauthorised television signals;***

     II. Dismissed the lawsuit against TDM, the 8th defendant."

4. The DSRT issued a press release with regard to the judgment of the Court of Second Instance on the same day:

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8 It refers to the Director of the DSRT.

9 It refers to the public antenna companies in case no. 22/2013.

"Response of the Bureau of Telecommunications Regulation concerning the verdict on the lawsuit of the Macao Cable Television by the Court of Second Instance

Press release

With regard to the judgment of the Court of Second Instance on the appeal brought by the Macao Cable Television, the Bureau of Telecommunications Regulation will study the relevant verdict as soon as possible, respect the judgment of the court, and take various feasible measures to enforce the relevant judgment in the short term. The Bureau of Telecommunications Regulation will also intensify the comprehensive review of the development of television transmission services and define long-term development strategy through the full liberalisation of the telecommunications market and the introduction of new technologies and network to ensure that citizens can enjoy a variety of diverse and high quality telecommunications and television services."

5. For this reason, the DSRT have to carry out the content of the judgment within the specified period, i.e. to solve completely the problems between the MCTV and the public antenna companies.

* * *

Part III: Analysis

1. First, it is necessary to emphasise that: "the MCTV is not an ordinary company, nor conducting an unregulated business activity. On the contrary, the MCTV provides terrestrial pay television service through the grant of a concession contract and therefore, it is subject to Law no. 3/90/M of 14th May (*Foundation of Regime of Public Works and Public Services Concession*) and the terms of the concession contract.

2. Item b of Article 2 of the Law stipulates:

"Article 2

(Definition)

For the purposes of this Law, the following conditions deemed as:

a. (...);

b. the award of public service – ***to transfer to a particular public person, by means of concession, the appropriate tools to meet the public needs felt by each person, at its own responsibility and risk."***

3. For this reason, back then, the government signed a contract with the concessionaire/company: the "Television and Audio Broadcasting Service Concession Contract" – published in Series II, Issue no. 18 of the *Official Gazette of the Macao SAR Government* dated 5th May 1999 – Article 8 of the contract stipulates:

"Article 8

(Subjection to international agreements)

The concessionaire shall comply with ***the provisions of international agreements*** *or* ***conventions in telecommunications and social communications that are applicable in Macao.****"*

4. Article 14 of the "*Concession Contract of Terrestrial Pay TV Service*" (hereafter the "*Concession Contract*") also stipulates:

"Article 14

(Appropriation)

One. Upon termination of the concession, whether with or without the right of claim, all assets and rights belonging to the concession, shall be reverted to the grantor without any liens, charges or liabilities.

Two. The concession of public telecommunication system, other assets used for the establishment of production sites and technique, administrative buildings or buildings for other sections, as well as equipment, tools, materials or other properties that are usually used by the concessionaire in the provision of the terrestrial TV service, shall be deemed as objects used in concession.

Three. The system used in the concession must be in operating condition when surrendered by the concessionaire while the assets handed over must have good maintenance, so as to enable the continuity of terrestrial TV service and keep the required quality. In case of lacking the above conditions, the grantor may retain the necessary amount to restore these conditions. For this reason, the grantor may make appropriate use of the compensation amount or, if it is insufficient, the guarantee deposit."

In addition, Article 8 of the "*Concession Contract*" also stipulates:

"Article 8

(Transfer and sub-concession)

One. ***The concession is not transferable.***

Two. The concessionaire may not sublicense partially the concession, or enter into any legal transaction of equivalent effect, without prior permission of the grantor."

5. According to the information submitted to the CCAC by the DSRT, the MCTV and the public antenna companies signed a "Cooperation Agreement" to facilitate the former to provide signals of television channels to the latter, subsequently the public antenna companies will provide signals of television channels to the citizens (generally refers to clients who are non-subscribers of pay cable TV service), the content of the "Cooperation Agreement":

"Cooperation Agreement

Party A: Macao Cable Television Company Limited

Party B: (…)(Signed by a total of 15 "public antenna companies")

For the strict implementation of the decision of verdict no. TSI Nº22/2013 of the Court of Second Instance, as well as the ensuring of the legitimate interests of the citizens to watch open television channels is not compromised, both parties agreed to enter into this cooperation agreement after friendly consultations, below is the specific content:

1. *Party B will stop all receiving of television signals and broadcasting through cables networks across the streets;*

2. *From the date of signing of this Agreement, Party B agrees* ***to donate*** *their original cable networks* ***to Party A at no charge****, to become part of the network of Party A and it is not necessary to sign any other document of this purpose;*

3. *From the date of signing of this Agreement, Party A agrees to* ***entrust Party B*** *to manage and maintain the* ***cable networks*** *that originally belong to Party B, and without obtaining the written consent of Party B, Party A cannot sell, remove, replace, or take any other deposition measures, in whole or in part, the cable networks (including their components) that are managed and maintained by the latter;*

4. *Party B shall not establish new cable network to any new building or buildings in any form, shall not make changes to the existing cable across the street, except for cases that are approved by the Telecommunications Authority; in case of damage of cables and replacement is needed, Party B shall promptly report to the Telecommunications Authority and notify Party A;*

5. *Before signing this Agreement, if Party B has already signed with third parties contracts to provide television services, they are not subject to the limits set forth in the preceding paragraph; for this purpose, Party B shall submit a list of third parties and submit a copy of the such contracts to Party A as Annex III to this Agreement within three day after the signing of this Agreement;*

6. *Party B shall be responsible for the damages in area of safety and area of quality and stability of television services caused by the cable networks managed and maintained by Party B, Party A does not bear any responsibility;*

7. *Party A shall provide television signals to the cable networks that are managed and maintained by Party B, and is responsible for the connection to the access point of the cable networks (see Annex 1 "Memorandum of technical arrangements for connection of borrowing television signals"*

for handling details), Party A is not allowed to charge Party B any fee for this service;

8. *Party A will ensure the quality and stability of the television signals, promptly handle any failure of the signals and report the situation to the Bureau of Telecommunications Regulation and notify Party B in a timely manner;*

9. ***Party A and the Bureau of Telecommunications Regulation will negotiate on the quantity and contents of television channels in the signals provided*** *(see Annex II "programme channels table); Party A shall give prior notice to Party B when there are changes of TV channels;*

10. ***Party A is responsible for the legality and copyright matters of television signals it provides, Party B will not bear any responsibility for disputes arising from the television channels it broadcasts;***

11. *Party B is responsible for the maintenance of its cable networks under its management, including cables across the street and building networks, as well as the customer services provided by such cable networks to ensure the transmission quality and stability of the television signals provided by Party A, any cost arises from such conditions will be responsible by Party B;*

12. *Party A agrees that Party B can receive the corresponding network management and maintenance fees from the customers using the cable networks that are managed and maintained by Party B, Party A will not charge any fee to such customers in this regard;*

13. *This Agreement shall remain effective till 21st April 2014. It shall not be terminated or amended without written consent of both parties within the period of validity of this Agreement;*

14. *If the Macao Special Administrative Region Government signed a new television service contract with Party A, after the expiry on 21st April 2014, this Agreement can be renewed for another two years under the same conditions. For this purpose, Party B shall raise the request in writing to Party A before 20th April 2014, and it is necessary to indicate the period of renewal and the latter may not refuse the request of renewal of Party B;*

15. *If the new television service contract between the Macao Special Administrative Region Government and Party A is signed on or after 20th April 2014, then Party B shall raise the written request for renewal prescribed in the preceding article within five days after the signing of new television service contract of Party A;*

16. *In case the Agreement is due to expire and is not renewed, or the Macao Special Administrative Region Government has not signed a new television service contract with Party A, Party A agrees to donate to Party B the cable networks that are under the management and maintenance of Party B on 21st April 2014 at no cost and shall not attach any other conditions or burden, and it is not necessary to sign any other document of this purpose; if the Agreement is renewed, the cable networks that are managed and maintained by Party B will be subject to the appropriate arrangement and handling of the Macao Special Administrative Region Government;*

17. ***By the signing of this Agreement and the implementation of the content of this Agreement by Party B, Party A confirms that Party B has already carried out completely the order in point 2 of item I of the verdict no. TSI Nº 22/2013 of the Court of Second Instance dated 6th June 2013;***

18. *Both parties agree to resolve through discussions as much as possible in case of disagreement regarding the implementation of this Agreement and to seek the assistance of the Bureau of Telecommunications Regulation if necessary, or to resolve through ways of voluntary arbitration or judicial proceedings;*

19. *In case of emergence of force majeure that is not attributable to either Party A or Party B during the process of execution of this Agreement, it will not be deemed as violation of the content of this Agreement;*

20. *The purpose and content of this Agreement shall not be cited for use outside the Agreement;*

21. *This Agreement shall be held in triplicate copies of the same form, both Party A and B and the Bureau of Telecommunications Regulation shall preserve one copy with equal legal effect;*

22. *This Agreement shall come into force from the date of signing by both parties.*

Party A:____(Signature)____ *Party B:____(Signature)____*

(Macao Cable Television Company Limited) *(Representatives of the public antenna companies)*

6th August 2013, Macao"

In addition, after the negotiations between the MCTV and the public antenna companies and reached an agreement, the government stated in one document that:

"I. The legal nature of the Agreement

1. The Agreement is a private contract signed by the MCTV and the public antenna companies and is subject to the provisions in the Civil Code.

2. The purpose of signing the Agreement:

1) For the strict implementation of the judgment no. 22/2013 of the Court of Second Instance;

2) To ensure the legitimate rights and interests of the citizens to watch open television channels is not compromised.

3. The objective of the Agreement: the MCTV and the public antenna companies will work together for a limited period of time to provide television signals services to citizens.

4. Main content of the Agreement:

1) To stipulate the way of cooperation between the two parties: the MCTV provides the television signals and the public antenna companies provide the cable networks. In order to comply with the provisions of the concession contract, the way that the public antenna companies to provide the cable networks will be

in accordance with the provisions of the Civil Code, which is done through a conditional donation of its cable networks to the MCTV.

2) To stipulate the rights and obligations of both parties.

II. Both parties indicate clearly the intention of signing the Agreement, neither there is physical or mental coercion, nor any indication that the two parties intent to deceive a third person. In fact, it is proved that after signing the Agreement, the two sides proceed with the content of the Agreement immediately, so as to fulfil the obligations of both parties.

III. The legality of the act of donation of cable networks in the Agreement:

1) As mentioned before, the act of donation of cable networks is the way for the public antenna companies to provide cable networks; its purpose (also the only purpose) is to implement the cooperation agreements between the two parties. Therefore, the intent to deceive a third person does not exist at all, so it is not a "hypocritical act" since according to the provisions of Article 232 of the Civil Code[10] , one of the elements for the constitution of hypocritical act is "the existence of the intent to deceive a third person". Moreover, the public antenna companies and the MCTV, as the donor and the recipient respectively in this act of donation, there is no situation of inconsistency between the surface meaning and the true meaning because:

(1) - The public antenna companies had indeed donated the cable networks to the MCTV in accordance with the Agreement. If the Agreement is not renewed after the expiry of the concession period, the MCTV will indeed return the cable networks to the public antenna companies, with no covered up intention or indication;

(2) - If the Agreement is renewed after the concession period, the cable networks will not be returned to the public antenna companies and will become the government's assets (according to the terms

[10] Paragraph 1 of Article 232 of the *Civil Code*: *"If, by an agreement between the declarant and the recipient, with the intention to deceive a third party, there is a discrepancy between the expressed intention and the true will of the declarant in a legal act, such legal act is considered a hypocritical behaviour"*.

of assets attribution of the concession), its disposal will be up to the government's decision;

(3) - The MCTV commissioned the public antenna companies to manage and maintain the cable networks since the MCTV does not have any ability to self-manage and maintain the networks at the present stage.

2) The content in relation to the act of donation in the Agreement is set in full observation of the provisions in the Civil Code, for example:

(1) - Its form complies with the provisions in Paragraph 2 of Article 941: to be done in form of writing;

(2) - The content stipulated in Article 16 of the Agreement complies with the legislative philosophy of allowing "the donor to set the terms of restitution of the donated objects in donation act of natural person" as described in Article 955 of the Civil Code. In addition, since the aim of the agreement is to cooperate in order to transmit television signals, while the public antenna companies donate their networks, the MCTV shall shoulder the responsibility of transmitting the signals, however, after the end of the concession rights, the MCTV has no right to transmit signals, causing it unable to fulfil the obligation. Therefore, as the donors, the public antenna companies can discharge the previous donation based on the reason that the MCTV is unable to fulfil the obligation. Even ultimately resulted in the cable networks being attributed to the public antenna companies, it also complies with the legislative philosophy of the provisions of the lifting of donation in Article 960 of the Civil Code.

IV. As the awarding party of the concession contract, the monitoring role of the Government in facing the Agreement signed between the MCTV and the public antenna companies:

1) Just like the news announced by the government, the government put efforts to bring the two sides to sign the relevant cooperation agreement, which aims "to strictly implement the judgment no. 22/2013 of the Court of Second Instance, to safeguard the core values of the Macao SAR and to ensure the legitimate rights and interests of the citizens to watch open television channels is not compromised;

2) *Regarding the content of the Agreement, taking into account that the act of donation of cable networks by the public antenna companies is carried out in a lawful manner and complies with the concession contract, and such act is intended to implement the Agreement between the two parties, and is the only effective way to implement the Agreement, therefore, based on the principles that administrative activities should comply with as stipulated in the Code of Administrative Procedure*[11] *, the government recognized the contents of the Agreement.*

V. *Whether the Agreement signed by the MCTV and the public antenna companies meet with the requirements of the judgment of the Court of Second Instance: the requirement of the Court of Second Instance is for the public antenna companies to stop broadcasting unauthorised television signals within 90 days, in order to respect the concession contract granted to the MCTV. Through this cooperation agreement, such requirement has been fully achieved and implemented, and obtained the cooperation and recognition of the MCTV."*

* * *

Quid juris (How to solve it in legal terms)?

We make an analysis from the following aspects:

I - Issues caused by the "Cooperation Agreement" of the two parties

1. Does the so-called "donation" obtain legal recognition?

2. What is the actual effect produced by the "Cooperation Agreement"?

3. Does the "Cooperation Agreement" truly execute the judgment of the Collegial Bench of the Court of Second Instance?

II - The legal problems the public antenna companies are facing

* * *

[11] In particular, Article 3 (principle of legality), Article 4 (principle of the public interests and the protection of the rights of residents) and Article8 (principle of good faith), and so on.

I - Issues caused by the "Cooperation Agreement" of the two parties

1. Does the so-called "donation" obtain legal recognition?

(1) Base on the contents of the above "Cooperation Agreement", the public antenna companies will donate their cable networks to the MCTV at no charge, in other words, it is a donation of a collection of objects *(universalidade de coisas)* (including instruments, equipment, cables, etc., collectively referred to as the cable network).

(2) Article 3 and Article 4 of the "Cooperation Agreement" stipulate:

"3. From the date of signing of this Agreement, Party A agrees to entrust Party B to manage and maintain the cable networks that originally belong to Party B, and without obtaining the written consent of Party B, Party A cannot sell, remove, replace, or take any other deposition measures, in whole or in part, the cable networks (including their components) that are managed and maintained by the latter;

4. Party B shall not establish new cable network to any new building or buildings in any form, shall not make changes to the existing cable across the street, except for cases that are approved by the Telecommunications Authority; in case of damage of cables and replacement is needed, Party B shall promptly report to the Telecommunications Authority and notify Party A;"

(3) **The public antenna companies need to obtain the permission of the DSRT only for conducting acts of disposal of the cable networks,** rather than getting the consent of everybody, the donee, which is the MCTV! **This is clearly in conflict with the contents stipulated in the law concerning the inherent rights of the owner.**

(4) Article 1229 of the *Civil Code* stipulates clearly the content of property rights:

"Article 1229

(Content of property rights)

*The owner **enjoys full and exclusive rights of use, usufruct and disposition** of things that belong to him, within the scope permitted by law and in compliance with the restrictions under the law."*

(5) With regard to general management practices, it is also defined in the "Cooperation Agreement" that such practices should be carried out by the public antenna companies, including the following acts:

a) Article 6 of the "Cooperation Agreement" stipulates: "*Party B shall be responsible for the damages in area of safety and area of quality and stability of television services caused by the cable networks **managed** and **maintained** by Party B, Party A does not bear any responsibility*;"

b) Article 7 of the "Cooperation Agreement" stipulates: "*Party A shall provide television signals to the cable networks that are managed and maintained by Party B, and **is responsible for the connection to the access point of the cable networks** (see Annex 1 "Memorandum of technical arrangements for connection of borrowing television signals" for handling details), Party A is not allowed to charge Party B any fee for this service;"*

c) Article 11 of the "Cooperation Agreement" stipulates: "*Party B is responsible for the **maintenance** of its cable networks under its management, including cables across the street and building networks, as well as the customer services provided by such cable networks to ensure the **transmission quality** and **stability** of the television signals provided by Party A, any cost arises from such conditions will be responsible by Party B*;"

d) Article 12 of the "Cooperation Agreement" stipulates: "*Party A agrees that Party B **can receive the corresponding network management and maintenance fees** from the customers using the cable networks that are managed and maintained by Party B, Party A will not charge any fee to such customers in this regard;"*

e) Article 16 of the "Cooperation Agreement" stipulates: "*In case the Agreement is due to expire and is not renewed, or the Macao Special Administrative Region Government has not signed a new television service contract with Party A, Party A agrees to donate to Party B the cable networks that are under the management and maintenance of*

Party B on 21st April 2014 at no cost and shall not attach any other conditions or burden, and it is not necessary to sign any other document of this purpose; if the Agreement is renewed, the cable networks that are managed and maintained by Party B will be subject to the appropriate arrangement and handling of the Macao Special Administrative Region Government;"

(6) It could be seen that, this so-called donation – is certainly not referring to the ownership of the cable networks, and also not other rights of the objects, because:

a) The MCTV has neither the ownership, act of deposition, nor management rights, but merely a "surface right holder".

b) This Agreement is essentially creating a "fake legal label" attached to the cable networks and other equipments which claimed to be belonged to the MCTV on the outside; however, in the inside, the substance that ought to be included is lacking.

c) Thus, this is an act of absolutely no legal effect of the rights of the object, and there is no change in the status of both parties, the two sides are attempting to create a "charade" through an "agreement".

d) On the other hand, if this "charade" is actually executable, then the content of Article 16 of the "Cooperation Agreement" will become very complex, since it is stated that:

"In case the Agreement is due to expire and is not renewed, or the Macao Special Administrative Region Government has not signed a new television service contract with Party A, Party A agrees ***to donate to Party B the cable networks that are under the management and maintenance of Party B*** *on 21st April 2014* ***at no cost and shall not attach any other conditions or burden, and it is not necessary to sign any other document of this purpose****; if the Agreement is renewed, the cable networks that are managed and maintained by Party B will be subject to the appropriate arrangement and handling of the Macao Special Administrative Region Government;"*

Since it is stipulated in Paragraph 1 of Article 22 of Law no. 3/90/M (*Foundations of Regime of Public Works and Public Services Concession*) that:

"Article 22

(Attribution of the concession assets)

1. Upon termination of the concession by any of the methods provided in Article 19, the property ownership and rights involved belongs to the grantor.

2. The attribution will take place in accordance with the relevant provisions of the contract, which may provide for the payment of compensation to the concessionaire.

3. The assets involved in the grant shall be delivered to the grantor free of any liability or burden.

Obviously, Article 16 of the "Cooperation Agreement" contravenes the stipulation of Article 22 mentioned above, thus, it could not produce any legal effect.

(7) With regard to donation, it is worth to point out the following key points:

a) Paragraph 1 of Article 934 of the current *Civil Code* stipulates that:

"1. Donation is a contract by which a person, out of his spirit of generosity and at the cost of his own property, ***discharges a thing of a right for free, or assumes a liability****, for the interests of the other party of the contract."*

b) If the donation is a collection of objects, Paragraph 2 of Article 936 of the *Civil Code* stipulates that:

"2. However, if the donation involving a continuous use and enjoyment of the collection of objects by the donor, all individual objects that are included in the collection of objects are deemed as donated items in the future, unless stated otherwise.

c) The main effects of donation is contained in Article 948 of the *Civil Code*, which states:

"The basic effects of donation are as follow:

a) ***The transfer of the ownership of object or rights;***

b) Obligation of delivery of the object;

c) The assumption of liabilities, as long as this is the subject of the contract."

d) As mentioned above, it is set in Article 6, Article 7, Article 11 and Article 12 of the "Cooperation Agreement" that the management rights will be returned to the donor, which is the public antenna companies. We can ask: Does it belong to a donation of reservation of usufruct? It is stipulated in Paragraph 1 of Article 953 of the *Civil Code*:

"1. The donor is entitled to reserve for themselves, or a third person, the usufruct of the donated goods."

If this view point is accepted, then the provisions of Article 1410 of the *Civil Code* must also be observed:

"Upon termination of the usufruct, the usufructuary shall return the things to the owner, *without affecting the relevant provisions of consumable things where applicable, and the usufructuary can refuse to return the lien in cases where it can be invoked."*

Base on the provisions of Article 16 of the "Cooperation Agreement", the will of both parties not wanting the extinction of usufrust from happening is very obvious, it is stated that:

"16. *In case the Agreement is due to expire and is not renewed, or the Macao Special Administrative Region Government has not signed a new television service contract with Party A,* ***Party A agrees to donate to Party B the cable networks that are under the management and maintenance of Party B*** *on 21st April 2014* ***at no cost and shall not attach any other conditions or burden, and it is not necessary to sign any other document of this purpose****; if the Agreement is renewed, the cable networks that are managed and maintained by Party B will be subject to*

the appropriate arrangement and handling of the Macao Special Administrative Region Government;"

e) Similarly, facing the above terms of agreement, it would be difficult to comply with the provisions of Article 955 of the *Civil Code* in reality, which states:

"1. The donor may stipulate the return of the donated items.

*2. **The return mentioned above occurs** under the circumstances when the donor still survive **after the death of the donee**, or when the donor still survive after the donee and all descendants were dead; unless otherwise stipulated the terms of return, it is understood that the return only occurs in the latter case.*

3. The provisions of the second part of Paragraph 2 and Paragraph 3 of the preceding article apply to the clause of return.

4. If the compliance with the clause of return cannot be fulfiled due to reasons attributable to the donee, or the descendants, then the person who has caused the infringement shall be responsible for the damage that is caused to the donor.

Thus, the above-mentioned clause of return could only be made when the donee is a natural person, that is, the usufruct could be retrieved after the death of the donee, **but the situation between the MCTV and the public antenna companies obviously does not fall into this category**. There is no doubt that the will of both parties to return the donated objects to the public antenna companies – is subject to one condition: if the SAR government does not renew the concession contract with the MCTV in the future.

For this reason, it is impossible to define the acts of both parties as a true and legally recognised donation.

(8) It can be seen that only non-gratuitous gift could lead to the transfer of ownership of the cable networks – but this is not the genuine will of the two contracting parties. Although both parties claimed that it is a donation, it is not difficult to find **that the true intention is to keep the ownership**

of the objects, which shows the inconsistency of the true meaning and the surface meaning.

(9) To this end, **the "Cooperation Agreement" between the two parties cannot produce effect of transfer of ownership, but rather the effect of liability at most**.

(10) Conclusion: when considering and analysing the "Cooperation Agreement", it is necessary to take into account the principles and provisions of public law while complying with the content of private law as well, especially the Civil Code. Thus, the "Cooperation Agreement" cannot produce the effect of property transfer.

* * *

2. What is the actual effect produced by the "Cooperation Agreement"?

(1) According to the "Cooperation Agreement", the public antenna companies broadcast the signals of TV channels provided by the MCTV. **This activity is clearly within the scope of transfer of grant,** therefore, whether it is in accordance with the provisions of the law or the "concession contract", **it is required to obtain permission from the grantor (i.e. the government).**

(2) So far, we have not seen any acts of permission from the government – allowing the public antenna companies to start operating this type of business activities. Certainly, the public antenna companies have other issues to resolve – see analysis later on.

(3) The situation will become more complex when combining the above-mentioned contents with Article 17 of the "Cooperation Agreement". Article 17 stipulates that:

"17. By the signing of this Agreement and the implementation of the content of this Agreement by Party B, Party A confirms that Party B has already carried out completely the order in point 2 of item I of the verdict no. TSI Nº 22/2013 of the Court of Second Instance dated 6th June 2013;"

a) Note: It is not only the interests of the MCTV that triggered

the litigation; it also included the interests of the public and the Macao SAR.

b) The illegal broadcasting of signals of TV channels **does not only contradict the "concession contract", but also the provisions of the law**.

c) According to the decision of the Court of Second Instance, all the public antenna companies were ordered to refrain from re-transmitting unauthorised television signal, rather than the MCTV agreeing the public antenna companies to broadcast the signals for the problems to be solved. Besides, the MCTV itself needs to meet certain criteria before being able to agree with the public antenna companies to carry out re-transmission of signals of TV channels, including:

1) The MCTV obtains the authorisation from the government to proceed with the transfer of grant (the relevant order shall be published in the *Official Gazette*).

2) The MCTV obtains the consent of the owners of TV channels for the signals to be re-transmitted by a third party.

(4) The MCTV claimed in the "Cooperation Agreement" that the decision of the Court of Second Instance was implemented through the Agreement, which is clearly not the case. The DSRT has the obligation to define whether the adopted measures could truly implement the court's decision; however, the DSRT is not a contracting party of this "Cooperation Agreement" and did not state specifically: which measures and specific content have contributed to the implementation of the court's decision?

(5) Even if we assume the abovementioned "Cooperation Agreement" could produce the desired effect – to execute the judgment of the Court of Second Instance, however, the procedure itself is illegal, since:

a) **The DSRT has never intervened in this Agreement, and also did not obtain any authorisation from the government to process the matter of "transfer of grant"; as a result, an act that appears to be legal but in fact violates the law was adopted to create a charade**, so as to execute the judgment of the Court of Second Instance.

b) **In fact, the DSRT must be one of the signing parties of the "Cooperation Agreement[12]" (or similar documents), however, the prerequisite is to obtain the authorisation from the government to handle the matter of "transfer of grant" and the related content shall be published in the *Official Gazette*** (See item c of Article 24 of Law no. 3/90/M of 14th May (*Foundations of Regime of Public Works and Public Services Concession*), combined with item e of Paragraph 1 of Article 23 of the same law.

c) **The so-called "consent" the MCTV and the public antenna companies to come into a "Cooperation Agreement", as stated in the press release of the DSRT, is not sufficient, since the elements of the prerequisite for bilateral cooperation has not yet established so far.**

d) In addition, whether the public antenna companies have the statutory requirements to become the party of the transfer of grant is also a key issue – see the analysis below.

* * *

3. Does the "Cooperation Agreement" truly execute the judgment of the Collegial Bench of the Court of Second Instance?

Regarding this point, we must first understand the litigation claims and statements of the plaintiff, and the final findings and conclusion of the court.

(1) The Director of the DSRT has made the following statements during the hearing of the case (Verdict no. 22/2013 of the Collegial Bench) trialed by the Court of Second Instance (equivalent to permission):

"Aquando do início das emissões de radiodifusão televisiva em Hong Kong, nos anos 60 do século passado, surgiu a necessidade de instalar equipamentos de recepção de radiocomunicações, vulgo antenas, nos topos das casas ou dos edifícios, e consequente ligação a cada uma das

[12] Strictly speaking, if the DSRT intervenes, it should not be called "Cooperation Agreement" since the DSRT is the regulatory party.

fracções autónomas - caso se tratasse de edifício - para receber o sinal e visualizar as emissões de radiodifusão televisiva sendo que, mais tarde, a esses canais de Hong Kong juntar-se-iam os canais públicos de Macau (TDM) e alguns do Interior da China.

*Tal actividade **não é ilegal tão pouco está sujeita a qualquer tipo de licenciamento**, aliás, qualquer pessoa é livre de instalar em sua casa uma antena, com as respectivas ligações, e de efectuar a sua manutenção, sem necessitar de qualquer licença, nem mesmo da autorização governamental prevista no Decreto-Lei n.o18/83/M, de 12 de Março, uma vez que o seu artigo 7.o,n.o1, alínea b) a dispensa expressamente em caso de receptores do serviço de radiodifusão sonora e televisiva."*

【English meaning:

At the beginning of television broadcasting in Hong Kong in the 60's of last century, it became necessary to install radio communications equipment and antenna for civilian use on the roof tops of houses or buildings, and subsequently connect to each separate unit – if they were buildings – to receive signals and visualise the signals of television broadcasts and, later, to these channels from Hong Kong, joined the public channels of Macao (TDM) and some of the channels from mainland China.

Such activity is not illegal and is not subject to any licencing, anyone is free to install an antenna in the house with the corresponding links and carry out its maintenance without requiring any licence or the governmental authorisation as stipulated in Decree Law no. 18/83/M of 12th March, since clause b of Paragraph 1 of Article 7 stipulates that the receivers of sound and television broadcasting services are exempted from government permission】

(2) After investigation, the Court of Second Instance considered a list of proven facts including the following one:

*"19.o Os 2.o a 7. o Requeridos **não obtêm qualquer licenciamento** junto do Governo da R.A.E.M., para fornecer aos residentes sinais televisivos transmitidos por terceiros autorizados."*

"No. 19: Defendants no. 2 to 7 do not obtain any licence from the Government of the Macao SAR, so as to provide Macao residents the television signals transmitted by authorised third parties."

(3) The Court of Second Instance also pointed out in the verdict that:

"Também nós somos a estranhar – embora tal não nos compita – como é possível conceder um exclusivo de um serviço, para mais sem concurso público, que toca de perto no conforto e bem-estar de uma maioria da população, permitindo-se a prática de tarifas que nem todos podem suportar, sem que aqueles interesses da população sejam devidamente acautelados.

A legalidade do contrato não vem posta em causa.

Por outro lado, não só se impõe o seu cumprimento, como se impõe o acatamento das ***regras reguladoras da captação e redistribuição licenciada dos sinais televisivos****, só nos regendo o primado da lei, dessa forma não se deixando de proteger a própria autoridade do Governo, pois de outra forma premiar-se-iam os contraventores e o não acatamento da ordem e da legalidade, permitindo o exercício de actividades económicas e a prestação de serviços à margem da devida regulação.*

Persistir na tese da complacência com a situação de facto existente seria o mesmo que dizer que há que pactuar com uma dada situação de natureza criminógena ou anti-social só porque dela tira proveito um significativo sector da população. Isto é um absurdo absoluto. Ninguém pode defender um superior interesse público baseado no não acatamento da lei.

Mas mesmo que se entendesse que particulares especificidades da RAEM e necessidades da população mereceriam uma tutela ao nível de uma liberalização no acesso aos sinais de televisão (fosse por uma resolução do contrato, fosse por uma renegociação do mesmo, fosse por uma liberalização do sector, fosse por uma compensação aos cidadãos, não seria caso virgem -, fosse por uma revisão dos valores da tarifas cobradas aos utentes, o que se afigura, em termos meramente abstractos, porventura, exorbitante e incomportável por um sector significativo da população), ***essa é outra questão que não cabe aos tribunais resolver, sob pena de se imiscuírem ilegitimamente na acção governativa****. Aos tribunais cabe,*

neste particular assunto, decidir de acordo com os critérios legais que mais não são do que aplicação do diversos diplomas pertinentes e do que foi definido e contratualizado, politica e administrativamente assumido pelo próprio Governo, reforçando assim a sua própria autoridade.

Em suma, diremos que ***não pode haver superior interesse público na ilegalidade****, sob pena de as disposições legais e contratuais terem de ser postergadas, o que só pode acontecer em nome de uma ordem normativa de natureza e valor superior."*

【English meaning:

We cannot help wondering – although this does not fall within the jurisdiction of the Court – why a concession right that relates so closely to the quality of life of a majority of the population is granted without public tender, setting this standard of charges that is not affordable by everyone, leaving the public interests with inadequate protection.

Nevertheless, the legality of the contract would not been jeopardised for this reason.

Instead, we have to comply with the contract, and also to observe the regulations of legal reception and transmission of television signals. Only when we act according to the law, the authority of the government could be preserved; otherwise the offenders would be benefited by non compliance of order and legality, thus putting the regulation of economic activities and the provision of services at risk.

If the current situation would remain unchanged out of good intention just because it benefits a significant portion of the population, it is tantamount to agreeing with the crimes and anti-social phenomenon. No one can defend an overriding public interest based on failure to comply with the law.

Even if it deemed necessary to protect the freedom of Macao residents accessing to television signals (either by a resolution or re-negotiation of the contract, or through the liberalisation of the industry, or by compensating the citizens – there is precedent – or by a review of the rates charged to users since from the perspective of its importance to the livelihood of the

citizens, the current standards seem to be exorbitant and unaffordable for a significant portion of the population), ***it is a separate issue and is not up to the courts to resolve, or else it will be an improper interference in government action****. In this particular subject, the Court only has the right to ensure the application of the relevant laws in the present case, the determination of the contents of the contract, as well as the responsibilities and obligations of the government in policies management, in order to consolidate its authority.*

In short, we believe that there cannot be any ***overriding public interest in illegality****, otherwise it is equivalent to the non-compliance with legal and contractual provisions, and such non-compliance would only occur when violating the provisions of a normative order with a more superior nature and value.*】

(4) It can be seen that according to the understanding of the Court of Second Instance: **The broadcasting of signals of TV channels shall obtain an administrative permit** (but should not be confused with the act of receiving signals); **the present controversy is not about receiving signals of TV channels, but rather the re-transmission of signals in chargable way, no matter the signals of TV channels are re-transmitted to a third person by way of an antenna or cable, it is required to obtain a permission**.

(5) Regarding this point, the present legal system has clear stipulations, including:

a) Article 12 of Law no. 8/89/M of 4th September stipulates:

"Article 12

(Television broadcasting)

Television broadcasting is a public service and is performed under a concession contract."

b) - Article 14 of the same law also stipulates:

"Article 14

(Concessionaire)

1. *The television broadcasting industry may be granted to any legal entity which is constituted under a corporate form, with the headquarters in Macao and could offer warranties of suitability, technical expertise and financial capacity of the activity of concession concerned.*

2. *The concession contract may allow the concessionaire to perform other related activities complementary to the principal service, by itself or in cooperation with other entities, namely:*

   a. Recording, sale and rental of sound tapes or video tapes;

   b. Publishing and sale of publications relating to television broadcasting and dissemination of the activity undertaken;

   c. Marketing for sponsorship of programmes;

   d. Renting studios for external productions.

3. *In exceptional cases, concessionaire may be collective persons under public law or public utility."*

c) Paragraph 4 of Article 2 stipulates as well that:

"Article 2

(Basis and bands for the use)

(…);

4. *Without prejudice to the preceding paragraphs, television and sound broadcasting can be done through a distribution network consists of coaxial cable or optical fibres, the installation and technical operating conditions of such network shall be governed by regulatory act.*

(…)."

(6) In summary:

(a) Re-transmitting television signals falls within the scope of transfer of grant.

(b) Even with the using of cables to re-transmit signals, the results are the same.

(c) This type of activity can only be operated by legal person (company) with technical and financial eligibility.

(7) For this purpose, the DSRT should make purposal to the Chief Executive – recommending the public antenna companies to carry out such activities based on the system of transfer of grant.

(8) Article 45 of the "Concession Contract" also stipulates that:

"Article 45

(Private cable networks)

One. Concessionaire may establish interconnection agreements with owners of private cable networks installed in buildings, for the provision of terrestrial TV service to subscribers; however, those networks should have the appropriate technical conditions.

Two. The evaluation of technical conditions referred to in the preceding paragraph is the responsibility of the Telecommunications Authority."

Thus, the first thing to do is to legalise the "identity" of the public antenna companies — having the conditions to become the object of "transfer of grant" — i.e. to meet with the three requirements mentioned above.

This "process of legalisation" can only be processed by the DSRT, which is to issue administrative permission for the running of the relevant business. Certainly, it is necessary to examine and confirm that the public antenna companies comply with all the statutory requirements.

(9) For this reason, the "Cooperation Agreement" alone could not solve the existing problem completely, and it could not be considered that the

judgement of the Court of Second Instance is fully executed.

(10) The DSRT has stressed repeatedly that "the judgment of the court is strictly implemented" in a number of press releases it published. However, based on the content of the "Cooperation Agreement", it is obvious that the agreement that the MCTV and the public antenna companies have reached is probably belong to a "hypocritical agreement" – the surface content is inconsistent with the actual content and the surface intention is inconsistent with the real intention.

(11) Are the interests of a third party being damaged because of this? Does a third person exist? For example, the Macao SAR or the consumers? Though there are still certain questions, they are not strongly related to the solving of the existing problems, therefore, we will not conduct in-depth analysis at this point.

* * *

II - The legal problems that the public antenna companies are facing :

1. According to the provisions of Article 14 of Law no. 8/89/M of 4th September, the entity that operates telecommunications services shall be made by the company's reputation; at the moment, not all the public antenna companies could meet with this requirement.

2. For this reason, if the public antenna companies wish to continue to run this type of business, the simplest solution is to change the way of set up and operate under the form of limited liability company by sole owner, and clearly listed the purpose of the company, so as to change the way of running business under one's own name.

3. Meanwhile, the public antenna companies should make application to the DSRT for the operation of re-broadcasting of television signals under the status of transfer of grant and assessment of such application should be made by the DSRT.

4. Besides, the DSRT should conduct evaluation of the financial and technical capacity of the applicants and subsequently submit to the Chief Executive for approval (or disapproval).

At last, it is worth to mention two additional points:

1. There are still a number of other issues surrounding the dispute, such as the number of TV channels, but since those are not the key issue of the complaint, and could be addressed through the negotiation between the MCTV and the public antenna companies at any time and adjusted by the intervention of the supervisory government department. Besides, the information that the CCAC could master is quite limited, therefore, detailed analysis would not be included in this report for the time being.

2. Similarly, if the underlying problem of this report is resolved, the issue concerning the transmission and broadcasting of the analog and high-definition signals of TDM is also tractable, the competent department should have the conditions to solve it properly.

* * *

Part VI: Solutions to the problem

Based on the above discussion and conclusion, in order to solve the problem between the MCTV and the public antenna companies and to implement the judgment of the Court of Second Instance, the competent authorities must comply with the following steps and take relevant measures:

(1) The public antenna companies should take the initiative to apply to the DSRT for administrative permission to be allowed to operate business of broadcasting television channels and signals;

(2) The public antenna companies should also make commitment to change the status to limited company (for example: limited liability company by sole owner) within the specified period, in order to comply with the provisions of the current law;

(3) The DSRT should make recommendation to the Chief Executive to approve the MCTV to cooperate with the fifteen "public antenna companies" by means of transfer of grant;

(4) The MCTV should make application to the Chief Executive for the approval

of its transfer of the grant, so as to facilitate the cooperation of the fifteen public antenna companies;

(5) At the same time, the DSRT should publish the Order of the Chief Executive approving the transfer of grant and the relevant requirements in the *Official Gazette of the Macao SAR Government*;

(6) The DSRT should publish the contract of transfer of grant that is signed by the MCTV with the public antenna companies and approved by the government in the *Official Gazette of the Macao SAR Government*;

* * *

Given the urgency of the matter (involving the implementation of the judgment of the Court of Second Instance[13] and resonsideration of part of the decision of the administrative authorities), to notify the Chief Executive of the report for consideration of the relevant proposal and execution.

* * *

Commission Against Corruption, 18th September 2013

Commissioner Against Corruption
Fong Man Chong

[13] Once problem occurs concerning the execution of the judgment, it will be handled in accordance to the system stipulated in Article 174 and the subsequent articles of the *Code of Administrative Procedure*.

Case II

A Second Report on Analysis of "Complaint on Government's Omission" and Measures of Supervision on Public Subsidy Granting for Associations/Individuals

Key points:

- Problems arising from public subsidy granting for associations;
- Relationship between public subsidy granting for association and freedom of association;
- Whether a review should be conducted into the granting criteria, procedure and subsidy amount;
- Whether a review should be conducted into the supervision of subsidised associations.

* * *

Preamble: Despite the fact that this report was completed as early as in May 2013, the CCAC suddenly received several complaints related to subsidy granting by public departments to associations/ individuals. For the purpose of having a comprehensive understanding of public subsidy granting to associations, particularly in the areas of granting criteria, procedures and supervision, the CCAC decided to prioritise the analysis of these complaints. Upon grasping more in-depth and comprehensive information of public subsidy granting for associations and individuals, the CCAC will continue to follow up this case. By strictly adhering to the role of the CCAC to function and undertake an investigation independently as well as sticking to the principle of debate, the government representatives have conducted a meeting with the representatives of the

CCAC regarding the issue of public subsidy granting. This facilitates the CCAC to understand the stance and direction of the government in this aspect.

Afterwards, the CCAC completed the analysis regarding this complaint according to the stipulated procedures and notified the complainant of the content of this report. Meanwhile, the CCAC has also decided to publish the content of this report for the knowledge of the public, hoping that the population will have a clear understanding of the relevant issues.

* * *

Part I: Introduction

1. The New Macau Association (hereinafter referred to as the complainant) lodged a complaint to the Commission Against Corruption (hereinafter referred to as the CCAC) on 11th September 2012, claiming that the government has committed an act of omission by failing to implement Article 19 of Law No. 2/99/M of 9th August, and thus requesting the CCAC to intervene into the issue and urge the government to execute according to the regulation.

2. Upon investigation and analysis of the issue, the CCAC has drafted a report and notified the complainant on 8th November 2012.

3. The complainant wrote a letter to the CCAC on 17th January 2013 (a typo of the year "2012" in the original text) with the content below:

   "The New Macau Association lodged a complaint to the CCAC on 11th September 2012, claiming that since handover, the SAR government has failed to set and announce a value on granted subsidy to associations in accordance with Article 19 of Law no. 2/99/M "Regulation concerning the rights to freedom of association" so that associations with subsidy granted beyond that value have to disclose their annual balance on local press within one month of approval.

   Upon receiving your reply letter by the end of 2012, the New Macau Association never thought that the CCAC mistakenly believed the act of the public entities to

list every subsidy item to associations in the Official Gazette according to Order no. 54/GM/97 has already implemented the stipulation of Law no. 2/99/M.

The New Macau Association is astonished that the CCAC has made a considerable misunderstanding and thus urges the CCAC to make an immediate review and rectification in order not to disappoint the public. We hereby declare that:

1. *In the complaint letter to the CCAC dated 11th September 2012, the New Macau Association requested the government to act according to Article 19 of Law no. 2/99/M, Regulation concerning the rights to freedom of association, in order for the associations which are granted with huge subsidies to take the initiative to publicise their accounts in the press annually. There is no doubt that the accounts refer to the income and expenditure accounts (including activity expenditure, rent of office, personnel expenditure and all government subsidies etc.), but Order no. 54/GM/97 just regulates the public entities to actively publicise every subsidised item in the Official Gazette. The nature between the two regulations is completely different.*

2. *Law no. 2/99/M (i.e. the provision that requests the associations to publicise their accounts in the press yearly) ranks higher than Order no. 54/GM/97 in the hierarchy of law. The latter cannot completely replace the former.*

3. *According to the CCAC's reply, it is surprising that it mistakenly believes the act of the public entities to list every subsidy item to associations in the Official Gazette according to Order no. 54/GM/97 has already implemented Law no. 2/99/M. This is a significant mistake.*

4. *The New Macau Association is astonished that the CCAC has committed such an obvious mistake in its analysis and reply and thus urges the CCAC to make an immediate review and rectification.*

Chao Teng Hei
President
The New Macau Association
17th January 2012[14] *"*

[14] It should be the typo of the complainant. Here it refers to the year 2013.

4. *Quid Juris?* How to solve this problem by legal means?

* * *

Part II: Analysis

1. Any complainant who lodges a complaint should present his/her grounds of argument and evidence (even though it may not be comprehensive) as well as specific facts and/or legal viewpoints that will then serve as the support or evidence for the complaint. There is no exception in this case.

2. However, it should be noted that whether the complainant's viewpoints are correct and his/her reasons are grounded rely on the investigation agency to conduct a comprehensive and thorough investigation, evidence search and analysis. The agency which is responsible for dealing with complaints should make judgment and analysis in accordance with the law. Otherwise, it will become a 'stamping' agency, which just mechanically echoes the opinion of the complainant. In some extreme circumstances, the agency may even reduce to act illegally or carry out omission. Therefore, Article 85 of the *Code of Administrative Procedure* states that:

"Article 85
(Leading an investigation)

1. The entity possessing the competence to make decisions ***has the responsibility to lead an investigation****, in exception of the cases stipulated by other provisions of the Organic Law of public entities or regulated by special stipulations.*

2. The entity possessing the competence to make decisions shall delegate its function of leading investigation to its subordinates, in exception of the cases where the entity itself is stipulated to be the leader.

3. The entity possessing the competence to make decisions shall authorise its subordinates to adopt specific investigation measures.

4. Members or personnel subordinated to the collegial body shall be delegated with the functions referred as in Paragraph 2."

Paragraph 1 of Article 86 of the same code stipulates that:

"Article 86
(Facts that need to be proved)

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

2. (...).

3. (...)."

3. The CCAC respects the different understanding and viewpoints of the complainant. With regards to the sufficiency of the reasons, only after independent and thorough analysis in accordance with the law can the CCAC draw conclusions.

4. The three main points stated in the complainant's reply letter regarding the report dated 7th November 2012 (hereinafter referred to as the first report) are as follows. Let us analyse them one by one.

* * *

Point 1: *The complainant claims in the rebuttal letter*: *The New Macau Association lodged a complaint to the CCAC on 11th September 2012, claiming that since handover, the SAR government has failed to set and announce a value on granted subsidy to associations in accordance with Article 19 of Law no. 2/99/M "Regulation concerning the rights to freedom of association" so that associations with subsidy granted beyond that value have to disclose their annual balance on local press within one month of approval.*

Upon receiving your reply letter by the end of 2012, the New Macau Association never thought that the CCAC mistakenly believed the act of the public entities to list every subsidised item to associations in the Official Gazette according to Order no. 54/GM/97 has already implemented the stipulation of Law no. 2/99/M.

The CCAC reiterates that:

1. In the first report, the CCAC has never claimed that Order no. 54/GM/97 of 1st September has already implemented Article 19 of Law no. 2/99/M of 9th August. The CCAC stated that Order no. 54/GM/97 of 1st September is **one of the ways** to implement Law no. 2/99/M of 9th August. The two ways of expressions are completely different.

2. The expression adopted by the complainant leads to a "close-end" consequence: that there is no need to adopt other measures. However, what the CCAC had expressed was: the aforementioned order was one of the ways to implement the content of relevant provisions, regardless of the competent entity to adopt other ways of implementation (which means there are numerous methods, subject to relevant conditions on its legality). Competent entities could even formulate a brand new system.

3. Therefore, the CCAC has kept paying attention to the situation of public subsidy granting to associations and individuals, particularly in handling related complaints, the CCAC will arrange and analyse relevant information thoroughly. In certain circumstances where irregular acts are allegedly committed, the CCAC will solve the problems case by case and request relevant departments to take proper measures to redress the defects, provided that the acts have not constituted criminal offences, otherwise the CCAC will handle the cases according to the *Penal Litigation Law* (In fact, the CCAC has sent this kind of cases to judicial agencies for handling).

* * *

Point 2: *The complainant claims in the rebuttal letter: In the complaint letter to the CCAC dated 11th September 2012, the New Macau Association requested the government to execute according to Article 19 of Law no. 2/99/M, Regulation of rights to freedom of association, in order for the associations which are granted with huge subsidies to actively publicise their accounts in the press annually. There is no doubt that the accounts refer to the income and expenditure accounts (**including activity expenditure, rent of office, personnel expenditure and all government subsidies etc.**), but Order no. 54/GM/97 just regulates the public entities to actively publicise every subsidised item in the Official Gazette. The nature between the two regulations is completely different.*

1. Through the interpretation of the complainant, the CCAC understands that the complainant would hope to see the measure will help fulfilling its expectation. However, being a law enforcement department, the CCAC shall strictly abide by Article 8 of *Civil Code* to interpret laws with contents below:

"Article 8
(Interpretation of the law)

1. Interpretation of the law shall not be restricted to literal meaning only. The legal thought is reconstructed from the text especially given the unity of the legal regime, the circumstances in which the law is formulated and the specific cases in which the law is applied.

2. ***<u>However, the interpreter can only consider the meaning which has a minimum of literal correspondence in legal sense, even if the expression is not perfect.</u>***[15]

3. When determining the meaning and scope of the law, the interpreter shall assume that the solution established by the legislatures is the most pertinent and the legislatures know how to express their thought with appropriate terms."

2. How does the content of Article 19[16] of Law no. 2/99/M of 9th August reveal the Chief Executive seeks to look into the following matters by issue of order?

- Expenditure of subsidised associations;
- Rental of office of subsidised associations;
- Subsidised personnel expenditure;
- All kinds of government subsidies etc (all these are pointed out by the complainant).

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[15] The underlined is inserted by the CCAC.

[16] The contents of the Article:
"Article 19 (Publication of accounts)
1. Associations receiving sums by way of subsidies or any other financial granting in connection with the public entities beyond the value stipulated by the Governor (now the Chief Executive) shall publish their annual balance within one month of approval.
2. The publication shall be made on one of the newspapers registered in the local territory."

There is not even a basic correspondence between the interpretation of the complainant and the wordings of Article 19, therefore we are reserved about the interpretation of the complainant.

3. We have pointed out in the first report that: (to a considerable degree) regulation of associations shall be made by legislative means, **otherwise the administrative authority may exceed its power or even be suspected to interfere into the fundamental power of freedom of association by administrative means** (e.g. interference of autonomy in management of associations by administrative procedures).

4. Article 19 of Law no. 2/99/M and Order no. 54/GM/97 contain substance that is not wholly different and is not mutually exclusive. The then legislator and the then Governor definitely knew the existence of Order no. 54/GM/97 when promulgating Law no. 2/99/M, but it does not mean the old regime (in the broad sense) cannot execute the new regime (in the broad sense); and in fact it does even though the "coverage" is not comprehensive.

5. We should admit that Article 19 of Law no. 2/99/M and Order no. 54/GM/97 contain substance that has an integral relation, but meanwhile, contain another part of content that is not duplicated. Therefore, the CCAC has clearly indicated in the first report that the content of the two regulations is not mutually exclusive, but the degree of complement may not reach an ideal level. Maybe it is the right time to make an amendment.

6. In addition, we should clearly point out that the present issue is not whether Article 19 of Law no. 2/99/M has been implemented, rather an amendment of the entire system of public institutions subsidising associations and individuals should be conducted. This is the core of the problem. Otherwise the issue cannot be completely solved.

* * *

Point 3: ***The complainant claims in the rebuttal letter*****:**

2. Law no. 2/99/M (i.e. the provision that requests the associations to publicise their accounts in the press yearly) ranks higher than Order no. 54/GM/97 in the hierarchy of law. The latter cannot completely replace the former;

3. According to the CCAC's reply, it is surprising that it mistakenly believes the act of the public entities to list every subsidy item to associations in the Official Gazette according to Order no. 54/GM/97 has already implemented Law no. 2/99/M. This is a significant mistake;

1. The CCAC has never mentioned that Order no. 54/GM/97 can replace Article 19 of Law no. 2/99/M and regrets for this unilateral concluding remark. As renowned German jurist Philip Hack says, "*The one who applies a law applies the whole legal system. The one who interprets a law interprets the whole legal system!*" Therefore, no unilateral understanding should be applied to legal provisions and regulations; and subjective appeal (or will) should not be imposed on a regulation beyond its original and literal meaning (the latter itself does not contain relevant meaning).

2. A challenge is also faced in interpretation of the law today: With legislation being a collective behaviour, objective meaning instead of versions interpreted by one or two legislators should be taken as accurate. Therefore, the fundamental regulations about interpretation of the law stipulated in Article 8 of *Civil Code* are very crucial, which are also the core of the current Macao legal system.

3. Due to the large gap between legal provisions (in the broad sense) and the reality, difficulty in interpretation and execution of the law is encountered. Frankly speaking, the best solution is to think thoroughly and make amendment of the law in order to carry out its function of regulating the reality.

4. Under most circumstances, legal provisions are "static" while the reality is "active" and the latter keeps changing. The saying "legislations shall keep pace with the times to harmonise with society for better governance and achievement of the country" has its own truth. Therefore, legislations should evolve with the times.

5. From legal perspective, both Law no. 2/99/M and Order no. 54/GM/97, which have been taking into force for over ten years, can hardly conduct a comprehensive and effective governance on the current circumstances, and thus amendment on the present system or formulation of a new system is deemed necessary. What means to take depend on legislative policy options, but perfection of the current subsidy system is one of the most pressing agenda. Realising the need, the government has commenced relevant preparatory work.

6. The CCAC has long been making suggestions to conduct a comprehensive review on public subsidy granting to associations/individuals. By merely implementing Article 19 of Law no. 2/99/M (Order) is insufficient, and thus the most urgent thing to do currently is to make a comprehensive examination and review from the origin of relevant work, including the procedure of assessment criteria, subsidy granting supervision and penalty for offences. The CCAC has commenced relevant work in this aspect.

* * *

Part III : Problems raised by public subsidy granting to associations/individuals and the orientation of the government

1. In fact, based on the information mastered by the CCAC when handling complaints related to public subsidy granting to associations and individuals, it shows that the growth of the Macao's economy in recent years and the rise of gaming revenue lead to a tremendous increase in public subsidy granting to associations, of which the most significant is the annual subsidy amount granted by the Macao Foundation. It is easily understandable why it calls the attention of the community. According to the stipulation of the establishment of the Macao Foundation (see Sub-paragraph 1 of Paragraph 4 of Article 6 of Law no. 7/2001 of 11th June and Paragraph 1 of Article 5 of Administrative Regulation no. 12/2001 of 26th June *Charter of Macao Foundation*), the revenue of the Macao Foundation comes from a levy of 1.6% on the gross gaming revenue generated by gaming companies. Therefore, a rise in its revenue means an increasing trend of its expenditure.

   Article 6 of Law no. 7/2001 of 11th June stipulates that:

"Article 6
Properties and financial system

1. (...).

2. (...).

3. (...).

4. The resource of the Macao Foundation consists of:

(1) Moneys provided from the "Appropriation to Foundation" as stated in the Concession Contract for Operation of Casino Games of Chance in Macao between the Macao Government and the Sociedade de Turismo e Diversões de Macau, S.A (STDM) as amended on 23rd July 1997;

(...).

In addition, Paragraph 1 of Article 21 of the "*Concession contract for operation of casino games of chance in Macao*", amended on 23rd July 1997, states that:

"Article 21
(Foundation)

1. ***The concessionaire shall contribute to the foundation an amount equivalent to 1.6% of the gross revenue of the gaming business every year commencing from 1st January 1996. The foundation, set up by the Governor of Macao as a legal person, aims to promote academic, cultural, scientific, educational, social and philanthropic activities****.*

2. The concessionaire shall once contribute the foundation MOP180 million within one month from the day of revision of the contract.

3. The contribution referred to in Paragraph 1 of this Article shall be paid quarterly every year by the concessionaire. The appropriation for the year 1996 shall be paid within one month from the day of revision of the contract."

In addition, see and take Order of the Chief Executive No. 93/2002 of 29th April as an example with the content below:

"Order of the Chief Executive No. 93/2002

Whereas the Macao SAR signed a contract with the Sociedade de Jogos de Macau, S.A (hereinafter referred to as the SJM) on 28th March 2002 with a subject of Concession contract for operating casino games of chance or games of other forms;

Whereas the SJM shall contribute to entities an amount equivalent to a fixed portion of the gross revenue of the gaming business pursuant to Chapter 10 of the contract for the promotion of economic and social development of the Macao SAR;

Whereas the beneficiary entities and the approaches of payment to the entities shall be ascertained;

Whereas one of the beneficiary entities entitled to receive the contribution equivalent to 1.6% of the gross revenue of the gaming business shall be a public foundation designated by the Macao SAR government whose objectives are to promote, develop or study culture, society, economy, education, science and engage in academic and charity activities;

I determine:

1. <u>The Macao Foundation shall benefit from the contribution of 1.6% of the gross revenue of the gaming revenue;</u>

(...)."

Order of the Chief Executive No. 158/2004 of 21st June also stipulates that:

"Order of the Chief Executive No. 158/2004

Whereas the Macao SAR signed a contract with the Galaxy Casino, S.A. on 26th June 2002 with a subject of Concession contract for operating casino games of chance or games of other forms. The contract was later revised on 19th December 2002, due to the aforementioned concessionaire signed a

subconcession contract with the Venetian Macau Limited;

(...);

Whereas one of the beneficiary entities entitled to receive the contribution equivalent to 1.6% of the gross revenue of the gaming business shall be a public foundation designated by the Macao SAR government whose objectives are to promote, develop or study culture, society, economy, education, science and engage in academic and charity activities;

I determine:

1. The Macao Foundation shall benefit from the contribution of 1.6% of the gross revenue of the gaming revenue;

(...)."

Therefore, with the enormous moneys generated from the gaming business delivering to the Macao Foundation every year, the query of whether the public funds are being effectively managed and used has become a focus of attention in the community recently.

2. According to the information obtained through the complaints received, the citizens have raised a number of queries on public departments, especially the Macao Foundation, about subsidising associations and individuals. Such queries include:

- To what extent do the subsidies contribute to the development of the entire society of Macao?

- Public entities (especially the Macao Foundation) have substantially increased the amount of subsidies year by year, reaching an amount of MOP 1 billion. Are the public funds being effectively managed and used? What effect does the expenditure bring?

- What purpose does this kind of subsidy in public expenditure serve? Does it serve as welfare, or a supportive public policy, or a channel to create employment opportunities, or a support to certain industries? Or there is no objective at all?

- What social efficiency does the large amount of subsidy bring? With this unusually large amount of subsidy, will it create an unfair situation?

(...) etc.

3. Among all public entities, the Macao Foundation grants the biggest amount of subsidy. Therefore, the Commission of Audit publicised a report upon conducting an audit on the subsidy granting procedure and the purpose of subsidy by the Macao Foundation (see Performance audit report of June 2012 - Grants awarded by Macao Foundation to associations). Afterwards, the CCAC also received relevant complaints requesting the Commission to conduct an investigation on subsidy granting by the Macao Foundation (the complaint letters were placed in case files and we are not discussing them here).

4. In just handling several complaints, the CCAC has found a string of problems. Take the handing out of "lucky bags" by the Macao Foundation as an example, below is the content of the complaints involved:

   - The items inside the bags are not genuinely needed by the beneficiaries, sometimes the selection is even made by the associations;

   - Quite a large number of citizens are members of different associations, and thus some get more than one bag, while others get none;

   - The prices of the items inside the bags are obviously higher than the normal prices and some of the items even expire soon.

5. As the Legislative Assembly election was approaching when handling these complaints, the CCAC requested the Macao Foundation to take some temporary measures. All associations/ individuals who were granted with subsidies during that period shall sign a declaration, promising not to directly or indirectly use the subsidy in the election campaign, otherwise the entire amount of subsidy shall be returned to the Macao Foundation. They shall also strictly follow relevant subsidy granting rules in order not to contravene the principle of neutrality for public entities and public resources as stated in the electoral law. The Macao Foundation indeed carried out the aforementioned actions.

6. Besides, many people suspected the criteria and fairness of subsidy granting in the complaint letters. Meanwhile, they have made many recommendations that

are worth studying, e.g. contributing half of the income of the Macao Foundation to a newly established welfare fund or housing fund for the purposes of welfare affairs and building of social housing so as to ensure citizens to benefit from social welfare fairly, rather than certain people or associations being always granted with subsidies by the Macao Foundation that definitely causes unfair allocation of public resources in the community.

7. In fact, the circumstances are worth attention. It is time to conduct a comprehensive review and analysis on the role and positioning of the Macao Foundation to ensure that it keeps up with the development of the government policies on subsidy granting for associations/individuals. Otherwise, it will cause more conflicts and unfairness in society.

8. According to the aforementioned analysis and the complaint content and information, the government also commented that they have been paying attention to the existing problems and their potential repercussions on society. The Chief Executive reveals that it is necessary to conduct an in-depth, holistic and objective analysis on the current subsidy granting systems, in addition to reviewing and making amendments to any outdated legislations and systems. He showed his support to the establishment of new regulations pertaining to public disclosure of accounts of the subsidised associations according to Article 19 of Law no. 2/99/M and instructed the CCAC to submit a feasibility report.

9. Therefore, upon analysis of the above information, the CCAC has already commenced the study of relevant solutions, with coverage wider than Article 19 of Law no. 2/99/M. It will request the subsidised associations/individuals that receive a certain amount of subsidy to publicise their accounts (Regarding the publicising approaches and content, the CCAC has already drafted a preliminary proposal that will be presented to the Chief Executive shortly). The CCAC will also carry out a comprehensive review on the procedures, approaches, criteria and supervision mechanisms of current subsidy granting systems, in hopes of preventing abuse of public resources and unfairness in society.

* * *

Part IV: Conclusion

1. According to the analysis above, here is our conclusion: Due to the fact that the SAR government has decided to carry out a comprehensive review on the procedures, approaches, criteria and supervision mechanisms of current subsidy granting systems for associations/ individuals, including a request for the subsidised associations/individuals to publicise their accounts and activity reports etc, the CCAC will allocate resources to concentrate on reviewing the current system in order to timely submit a proposal of solutions to the Chief Executive.

2. Based on the above conclusion and decision, the problems raised by the complainant will be handled and redundant analysis will not be conducted here.

* * *

Notify the Chief Executive of this report.

Notify the complainant of the certified copy of this report.

* * *

Archive this case after execution.

* * *

Commission Against Corruption, 4th October 2013.

Commissioner Against Corruption
Fong Man Chong

Case III

Investigation and Analysis Report on the Awarding of Concession Contract of Collective Passenger Road Transport Service

Key points:

- The statutory scheme for the government to authorise public service run by private companies: concession;
- Public transportation service shall only be operated by private companies under concession contract;
- Non-compliance with statutory concession system is unlawful;
- Not adopting concession regime resulted in the government's disadvantaged and passive position and thus impaired public interests;
- The indecision of the reversion of the concession assets may cause loss of public property;
- Many terms of the so-called "service provision contract" are against the law and impair public interests.

* * *

Foreword:

1. According to the original work plan of the CCAC, the result of analysis of the "Awarding of Concession Contract of Collective Passenger Road Transport" is to be published when the relevant investigation has been completed. However, the Reolian Public Transport Co., Ltd. suddenly filed a bankruptcy application with the Court of First Instance on 3rd October 2013. Therefore, the CCAC had to adjust its work plan by publicising this analysis report in advance without prejudice to other measures that are underway.

2. According to the information available to the CCAC, Reolian initiated an emergency procedure to the Administrative Court on 27th June 2013 – to mandate the implementation of a preservation measure (see Article 132 and subsequent articles of the *Code of Administrative Proceedings*). It requested the court to mandate the government to pay some MOP 36 million to the applicant in a designated period of time as bus service fee, plus a fine over any delayed payment. The case is still under trial.

3. In addition, the said company filed a lawsuit to the Administrative Court on 22nd July 2013 relating to administrative contracts (see Article 98 and Paragraph 1 of Article 113 of the *Code of Administrative Proceedings*), requesting the court to adjudicate that the government pay some MOP39 million to the company as bus service fee, plus interests for any delayed payment. The case is still under trial.

4. Obviously, the relevant public bus contracts have been leading to a few lawsuits and leaving the government in a very passive situation. Other problems are expected to come along in the future.

* * *

Part I: Background

1. The Commission Against Corruption (CCAC) received complaints on 30th May 2013, claiming that there were plenty of irregularities existing in the current collective passenger road transport service (hereinafter referred to "bus service"), and that the inefficacy of the relevant supervisory department has been causing a multitude of problems relating to the bus service. It went further to question that the government's "purchase" of the public service might involve illicit interests. CCAC's intervention was thus requested. In fact, there are many problems existing in the current bus operation, like the "ghost bus" incident.

2. After preliminary investigation and evidence collecting, the CCAC sent a letter on 28th June 2013 to the Transport Bureau (DSAT) for information and explanation for the following concerns:

    1. Why did none of the proposals by DSAT for the respective issue state that the current legislation only allows the adoption of the public service concession system?

    2. Why is there no mentioning of the rights of the concessor that may be lost due to the adoption of the "new operating model"?

    3. The clause "refund of tax" should be considered a major one in the contract. But why is it contained only in the "Tender Specifications" but not in the relevant contracts?

    4. In the two concession contracts[17] previously entered but already terminated, there were clauses in relation to the reversion of buses and other assets used during operation. Therefore:

        1) What was the way of disposal of the assets belonging to concessionaires that were used in the operation mentioned in the said two contracts? Where are the assets now?

[17] They are the contracts entered with two companies that operated public bus service in Macao until 14th October 2010.

2) Did recording of the said assets ever take place? Which of those assets should revert to the government? What were the criteria for such reversion?

3) Who was the recipient of the assets to revert to the government?

4) Was the new operating model adopted in order that the assets needed not to be reverted to the government by the concessionaires according to Law no. 3/90/M?

5) Why do the new contracts set forth clauses for administrative take-over only but not any clause in relation to reversion of assets for operation?

3. The CCAC received a reply from DSAT on 8th July 2013, reading as follows:

"1. The Law no. 3/90/M of 14th May (Foundations of Regime of Public Works and Public Services Concession) prescribes the general principles and provisions that should be observed in the awarding of public service concession. Also, Decree Law no. 50/88/M of 20th June also stipulates the policies and principles pertaining to public bus service in the road transport system of the Macao SAR. ***However, the relevant legislation does not expressly regulate that public service concession awarding system must be applied in public bus service.***[18] *To be in line with the bus service reform policy of the government, namely to adopt the total cost model in the bus service, after the previous concession came to a close,* ***the administrative authority acquired bus service through public tendering according to the current legal regime of public goods expenditure.***[19]

2. Taking account of the operational problems pertaining to the service concession before, the need to strengthen supervision, to help with the implementation of a series of long-term public transport priority policies, and to increase the government's control over the service through the adoption of the new model, DSAT ***therefore abandoned the bus operation model established in the previous concession agreements. At the same time, when preparing for the tender documents, DSAT also maintained***

[18] Emphasis added by the CCAC.
[19] Ibid.

some rights of the contracting authority in order to ensure the balance between the rights of the government as the contracting authority and the provisions of the private law.[20] *At present, in addition to the powers vested to it by the current applicable legislation, the contracting authority may also enjoy the rights deriving from the contracting of the bus service and setting requirements on the service of the bus companies, which can be decided according to the real need arising from the adoption of the new operation model. Such rights and requirements are included in the Collective Passenger Road Transport Service Provision Contract and the relevant tender documents.*

3. *The Collective Passenger Road Transport Service Provision Contract stipulates that the bus service is governed by the following documents: a) This Contract; b) The concession rules; c) The tender documents; and d) The bidding documents and additional clarifications. The relevant contracts comply with Article 17 of Decree Law no. 122/84/M of 15th December and Article 49 of Decree Law no. 63/85/M of 6th July, and thus has legal effect. The concessionaires shall observe all the requirements and obligations set forth in the contracts and documents and violators shall bear the relevant liabilities.*

4. *According to Paragraph 3 of Article 21 of the Collective Passenger Road Transport Service Concession Contract, the way of reversion of assets used in the contracted service and the quantity of property to revert shall be determined between the Macao SAR and the concessionaires according to the reasonable requirements of the Macao SAR on the assets to revert and the operating needs of the public bus service of the concessionaires; Paragraph 4 of the said article also provides that if the concession is terminated and the assets are to be reverted, the Macao SAR shall give reasonable compensation to the concessionaires. The values of the assets to revert shall also be taken as references for the amount of compensation to be determined by both parties. Therefore, considering the necessity to maintain the stability of public bus service, the necessity for the Macao SAR to redeem the assets, the negative influence on the SAR arising from asset redemption (e.g., negotiation on compensation might take place) and the opinion of the Finance Services Bureau, the bus companies will remain*

[20] Emphasis added by the CCAC.

their possessions of relevant buses. DSAT also negotiated with the bus companies regarding conditions for the continuous use of the said buses, in order to restrain the bus companies and ensure that the government may maintain the bus service when the bus companies give up or terminate the provision of the service. ***At present, the dialogue between DSAT and two bus companies regarding the relevant conditions has almost come to a close, which will be put into effect when approved. Also, DSAT already sent letters to the competent department regarding the land concerned.***[21]

5. *The reason why DSAT has adopted the new service model was not to attempt to make it impossible for the concessionaires to revert assets to the government; as a matter of fact, no matter how the government would continue the bus service after the concession comes to expiry,* ***DSAT will commence negotiation on the compensation and redemption with regard to the assets to be reverted according to the asset reversion procedure set forth in the concession contract. The adoption of the new service model***[22] *was out of the consideration of the fact that, under the previous concession contracts, bus routing and bus schedule arrangement by the public bus service providers were dependent on their financial profit or loss from the service provided, which by no means benefited the overall development of public transport. In addition, since some large-scale infrastructure projects are to be developed in Macao, the government must have more say on bus routes so as to meet the actual need of society. It also helps with the policy of upgrading the coverage of the bus-bus interchange scheme, including allowing passengers to change between different bus routes operated by different bus companies with no extra fare. To help with social development and the implementation of the "bus priority policy", DSAT believed, after rounds of study of experience of other regions, that it will be more beneficial to the realisation of public transport management policy if the administrative authority takes the leading role to manage bus routing. Therefore, DSAT decided to open tenders for the collective passenger road transport service by means of "acquisition of service".*

6. ***Since the respective reversion involves disposal of personal property, it shall be regulated by law. However, the currently applied legislation***

[21] Emphasis added by the CCAC.
[22] Emphasis added by the CCAC.

does not confer the relevant power of disposal to the administrative authority. Under the principle of legality and in pursuit of public interest, the current Collective Passenger Road Transport Service Provision Contract only stipulates that in case of the bus company giving up or terminating all or part of the service which is not due to force majeure, the concessor has the power to maintain the operation of the service directly or indirectly through a third party[23]***."***

4. Without affecting any other ongoing measures, the CCAC had given a comprehensive and in-depth analysis on a string of issues, including the current operating model of public bus service, the granting of service, and the content of the signed contracts. Some obvious irregularities will also be pointed out.

* * *

Part II: Analysis

I – Incompliance with the existing statutory regime

1. Before 4th January 2011, there were only two companies operating public bus service in the Macao SAR, which are:

   - Transmac - Transportes Urbanos de Macau, S.A.R.L.;

   - Sociedade de Transportes Colectivos de Macau, S.A.R.L..

2. Later, through the administrative contract signed on 4th January 2011, Reolian Public Transport Co., Ltd were also authorised to operate public bus service in the territory.

3. All the three companies became the public bus operators upon entering the relevant administrative contracts with the government.

4. Prior to 4th January 2011, the two companies mentioned in the first point were authorised to operate public bus service through "concession" – two extracts of

[23] Emphasis added by the CCAC.

the *Collective Passenger Road Transport Service Concession Contract* can be seen on pages 9803-9828 of Series II of *Official Gazette of the Macao Special Administrative Region* (no. 42) of 15th October 2008.

5. To facilitate our analysis, we will take a look at the *Collective Passenger Road Transport Service Concession Contract* entered between the Macao SAR and *Transmac - Transportes Urbanos de Macau, S.A.R.L.*. Article 1 of the contract is as follows:

"Article 1
Definition

*1) The Macao SAR – **the entity that awards the concession of collective passenger road transport service through this contract;***

2) The Operator – the legal person to whom the Macao SAR grants the concession of collective passenger road transport service in this contract, namely Transmac - Transportes Urbanos de Macau, S.A.R.L., located at Estrada Marginal da Ilha Verde, n.º 2, r/c, Macao, and registered with Commercial and Movable Property Registry Office of Macao under registration no. 3053 (SO);

3) Both parties – the Macao SAR and and the Operator;

4) Contract – This agreement, its annex and any supplementary documents to be entered into by both parties;

*5) **Concession** – The right granted by this contract to the Operator by the Macao SAR to provide the designated collective passenger road transport service in Macao;*

6) (...);

7) (...)."

6. In brief, public bus service was always operated under the legal regime "public service concession" in Macao previously. **However, in the above letter, DSAT said that the current law does not mandate the adoption of the said**

regime, and therefore another "model" for the regulation of public buses (acquisition of service by the government from the bus companies - what DSAT calls as "new model") **was introduced and became effective from 4th January 2011.**

We have a question regarding this: **Are the viewpoint and the method adopted by DSAT correct? Are they lawful?**

7. Let us proceed to a more detailed analysis:

   1. The legal means adopted by DSAT was to conclude "service provision contracts", whose basic concept can be seen in Article 1080 of the *Civil Code*, which provides that:

      "Article 1080
      (Concept)

      The service provision contract is the one in which one party is obliged to provide to the other certain outcome of their intellectual or manual work, with or without reward."

      The characteristic of this type of contract is: the service acquirer has no right to giving directions to the service provider. The latter has the complete discretion as to how to implement the contract and the former has no right to intervene in it. Essentially, the service provider has an obligation to deliver the outcome of the service to the service acquirer.

   2. Regarding the differences between "service provision contract" and "labour contract", a famous Portuguese professor, Antunes Varela, has the following comments:

      "The fundamental difference lies in this: while the labour contract obliges one of the parties to provide their work for the other party, the service provision contract concerns the outcome of the work rather than the work itself, and to yield the expected outcome the labour provider is not subject to the supervision and direction of the other party.

      (...)

Take this for example - if someone hires a driver for personal use, the both parties should enter a labour contract; if he pays a driver to take him to Lisbon, the both parties should enter a service provision contract if necessary."[24]

The name of contract entered between DSAT and three companies is: "***Collective Passenger Road Transport Service Provision Contract*** *between the Macao Special Administrative Region and Reolian Public Transport Co., Ltd – Bus routes of Section II and Section V*". (This is cited as an example only)

3. Regarding "service provision contract" and "public service concession contract", a scholar writes the following:

"In view of the purpose (management of a public service) of concession (a contract), it should be included in the general category of service provision contracts. In fact, the public service is the implementation of certain activities. To be more specific, it is provision of service to the users.

The fact that the provision of activities by the concessionaire is for citizens (rather than the public administration) seems to serve as the first important indication of distinction between concession and other service provision conditions under which the service provider assumes the obligation to present the results of their work or service to the public administration, not being authorised as such to establish any legal relations with a third party.

As mentioned before, it is possible that the service provision contract has the purpose of providing service directly to the beneficiary of a public service by the contractor; on the other hand, the provision "uti singuli" (associated with a specific legal relation created between the concessionaire and the user) is also no longer an essential element of concession. This situation causes hardship for the distinction between the two concepts, and threfore other bases are required to distinguish them.

Therefore, the distinction first requires the consideration of the purpose of

[24] Fernando Andrade Pires de Lima and João de Matos Antunes Varela, *Código Civil Anotado (Annotated Civil Code*), Coimbra Editora, Volume II, 3rd edition, 1986, p. 702-703.

the contract: regarding concession, a concessionaire is granted the right to manage a public service. The purpose of concession is the transfer or disposal of public service management (an activity originally performed by the administrative authority). Unlike concession, the service provision contract does not change the responsibility for managing the service, which should be borne by the administrative authority. The contractor only collaborates with it to carry out the activity."[25]

4. In the Tender Specifications and the contracts, DSAT quoted Decree Law no. 63/85/M of 6th July several times as the basis for the conclusion of the said contracts. However, **this decree law serves as the legal framework for the procurement of goods and services by the administrative authorities for their own use (in almost all cases)**, such as the purchase of computers, furniture and drawings. These purchased goods and services are not provided for the use of the third parties (this only happens on very rare and exceptional occasions; even so, the public administrative authorities first acquire such goods and services by themselves and then transfer them to the third parties, who do not have any direct legal relation with the suppliers of such goods and services).

5. In fact, there is legislation in relation to collective passenger road transport services – see Decree Law no. 64/84/M of 30th June and Decree Law no. 50/88/M of 20th June.

   The preamble to **Decree Law no. 64/84/M of 30th June** expressly states that:

   "Considering the provision of public services that is beneficial to the whole territory can be contracted out to companies, it is essential, given the size of the Territory, to clearly define the powers of the Governor (currently the Chief Executive) *on this matter."*[26]

   Articles 1 and 2 of the decree law are as follows:

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[25] Pedro Gonçalves, *A Concessão de Serviços Públicos (The Concession of Public Services)*, Almedina Editora, 1999, p. 160 - 161.

[26] The original text in Portuguese is: "*Considerando que a prestação de serviços públicos com interesse para todo o território pode ser objecto de concessão a empresas, afigura-se indispensável, face à dimensão do Território, definir com clareza a competência do Governador nesta matéria;*".

"Article 1

1. *Granting the concessions of public services that is beneficial to the whole Territory is within the competence of the Governor* (currently the Chief Executive[27]).

2. *The services of* ***public transport****, water and electricity cover the whole Territory and therefore the respective concessions shall be considered those mentioned in Paragraph 1.*

3. *The situations referred in the preceding two paragraphs shall be assured of the consultation and participation of municipalities concerned.*

Article 2

The Governor (currently the Chief Executive) *shall define the general bases of the concessions of public services and regulate the concessions of services mentioned in Paragraph 2 of the preceding Article."*

* * *

Moreover, Article 8 of **Decree Law No. 50/88/M of 20th June** (*General Bases of the Legal Framework for Transport in Macao*) provides the following:

"Article 8
(Operators of passenger transport services)

Passenger transport services provided by heavy vehicles may only be operated by:

a) ***Concessionaires of public transport services***[28]*;*

[27] The original text in Portuguese is: "*É da competência do Governador a concessão de serviços públicos com interesse para todo o Território*."

[28] In the *Official Gazette of the Macao Special Administrative Region*, the term in Chinese is "被特許人". However, the correct wording should be "承批人". In Portuguese, it is "*Concessionários de transportes públicos*".

b) Travel agencies that organise excursions or tours;

c) Travel and tourism agencies that meet the requirements laid down in the preceding subparagraph."

6. Subparagraph b) of Article 2 of Law no. 3/90/M of 14th May (*Foundation of Regime of Public Works and Public Services Concession*) provides the following:

"Article 2
(Definition)

For the purpose of this law, there shall be conditions as follows:

a. Public works concession – the transfer of power of construction of immovables and facilities intended for public use to a legal person, who exploits them at its own risk through the exclusive operation right conferred on it;

b. Public service concession – the transfer of power of provision of appropriate instruments that satisfy a public need experienced by each individual to a legal person, who exploits them at its own risk through the exclusive operation right conferred on it."

7. From the above-mentioned legislation, it is not difficult to conclude the following: **DSAT failed to abide by the current legal provisions** on the regulation of public bus service. Since **the law only prescribes that private companies may only be authorised to operate public bus service under "public service concession", it is an obvious violation of law** that "service provision contract" has been adopted. The wrong application of law (i.e., violation of law) **has led to various contradictions and illegalities in the terms of relevant contracts**.

8. The most adverse consequence is: Since DSAT entered agreements with the three bus companies by following the "service provision" model rather than "concession system", and that the above-mentioned legislation regulates that public transport service shall only be operated after concessions are granted, it means **the three bus companies are now under "illegal operation". They have neither been awarded the**

"concession" nor entered into any concession contract. It is obviously a violation of law!

9. It is also hard to comprehend this: in the last few decades (until 14th October 2010), **the publc bus services were operated under the concession system. So, how could DSAT change the public bus service provision model required by law from 15th October 2010 when the law has remained unchanged? Does the administrative department have the prerogative to break the law? Obvioulsy, it is a breach of legal provisions**.

* * *

II – Illegally defining tax exemption matters

1. The bus service contract entered between DSAT and Reolian will be used here as an example in our analysis. According to Article 4 of the contract:

"Article 4 (Contractual documents)

1. This service is governed by the following contractual documents:

a) This Contract;

b) The tender specifications;

c) The tender programme; and

d) The tender proposal of the concessionaire and the additional clarifications.

2. In case of divergence between the above documents, the precedence of documents depends on their order in the preceding paragraph."

2. The content of Item 21 of the *Tender Specifications on Collective Passenger Road Trasnport Service* stipulated by DSAT is as follows:

"21. Tax treatment

21.1 ***The expenditure on motor vehicle tax and vehicle circulation tax for the vehicles used for the provision of collective passenger road transport service shall be borne by the Macao SAR****. The concessionaire may apply for reimbursement from DSAT by submitting the proof of tax payment.*

21.2 The vehicles mentioned in the preceding paragraph refer only to large passenger buses which are used by the concessionaire for serving the assigned bus routes and are approved in the annual plan for the management of vehicles referred to in Paragraph 2.2 of the technical clauses.

21.3 If the concessionaire intends to use, within five years from the date of imposition of taxes, the vehicles with motor vehicle tax paid by the Macao Special Administrative Region for purposes different from what is provided for in Paragraph 21.2, or transfer them to the third parties by any means, it shall obtain prior approval from DSAT and refund the entire tax amount paid after the approval.

21.4 If the concessionaire intends to use, during the year of tax imposition, the vehicles with motor vehicle tax paid by the Macao Special Administrative Region for purposes different from what is provided for in Paragraph 21.2, or transfer them to the third parties by any means, it shall obtain prior approval from DSAT and refund the amount proportionally which corresponds to the number of full months remaining in that year when the change of purpose or transfers to third parties takes place.

21.5 The successful tenderer shall be subject to other taxes not indicated in Paragraph 21.1."

3. We may consider Item 21 of the above *Tender Specifications* as a component of the contract. When we look at its content carefully, it is not difficult to find that the Item is mainly about:

(1) Exemption from "**motor vehicle tax**" on vehicles operated by public bus companies;

(2) Exemption from "**vehicle circulation tax**" on vehicles operated by public bus companies.

When it comes to the exemption from vehicle circulation tax, there seems to be not much of a problem, as Subparagraph g) of Paragraph 1 of Article 4 of the *Regulations of Vehicle Circulation Tax* approved by Law no. 16/96/M of 12th August provides that:

"Article 4
(Exemptions)

1. Vehicles that are for the exclusive use by the following entities shall be exempted from the vehicle circulation tax:

(...);

*g) **Concessionaires of collective transport**, but limited to those who operate collective passenger transport;*

(...)."

However, given the same reason - the three bus companies have not been granted any concession, **they cannot be considered "concessionaires of collective transport" set out in the above article! In other words, they do not meet conditions to be exempted from the respective tax**!

4. **Regarding the exemption from motor vehicle tax**, it is governed by the *Regulations of the Motor Vehicle Tax* (hereinafter referred to as the *Regulations*), approved by Law no. 5/2002 of 17th June. According to Subparagraph 1) of Paragraph 1 of Article 6 of the *Regulations*:

"Article 6
Actual exemptions[29]

1. The transfer of new motor vehicles for the following purposes may also be exempted from tax set out in the Regulations:

*1) **Vehicles acquired by concessionaires of public transport for the exclusive provision of collective passenger transport service, but***

[29] Here the Chinese is "對行為的豁免" but the correct expression should be "對物的豁免" ("*isenções reais*").

limited to those with not less than fifteen seats, excluding the driver's seat;

(...)."

Also, according to Article 9 of the *Regulations*:

"Article 9
Recognition of exemptions

1. The exemptions provided for in Subparagraphs 1), 2), 7) and 8) of Paragraph 1 of Article 5 ***and Article 6 necessitate the application of the interested party, which shall then be recognised by administrative act****.*

2. ***The recognition of exemptions is within the competence of the Director of the Financial Services Bureau.****"*

Therefore, whether the motor vehicle tax may be exempted or not depends on the following elements:

(1) **Whether the interested parties** (the representatives of the concessionaires that provide the bus services) **make an application or not**;

(2) **Whether the Director of the Financial Services Bureau approves the application or not**.

Obviously, the Director of DSAT does not have the power to intervene into the above matter.

5. This is a clause on tax exemption, which can only be adjusted under certain legal provisions, otherwise it will constitute a violation of Subparagraph 3 of Article 71 of the *Basic Law of the Macao Special Administrative Region*, and Subparagraph 15 of Article 6 of Law no. 13/2009 of 27th July (*Legal Regime on Regulating Internal Normative Acts*) that stipulates that:

"Article 6
Laws

The following matters are subject to regulation by laws:

(...);

15) Budgets and ***taxation****;*

(...).”

Therefore, DSAT may ony act according to the provisions of the law and cannot be involved in matters outside its jurisdiction, especially those relating to tax matters.

* * *

6. Also, Article 13 of the *Foundation of Regime of Public Works and Public Services Concession* of 3/90/M of 14th May stipulates:

“Article 13

(Taxation)

1. Concessionaires of public works and services are obliged to pay taxes, levies, fees or charges.

2. When the natures of concessions are reasonably justified, ***the respective contracts may exempt concessionaires from all taxes, fees or charges on income generated from the operation or implemetation of the concession, or from realising, signing or practicing the contracts.****”*

This article does not stipulate that concessionaires may be exempted from paying taxes. It only allows the concessionaires to be exempted from some taxes on **income** (profit) under the respective contracts. That does not mean that the equipment used for the provision of service can be exempted from taxes.

7. What should be noted is that the previous public bus service concession contract signed in the past expressly stipulates:

"Article 14

(Taxation)

The Operator will benefit from exemption or reduction of taxes on the import of public transport vehicles, and tow trucks, cars and mopeds or motorcycles used for supervision and support of the service concession, as well as the respective vehicle circulation tax and registration fee under the law[30]*."*

So the article in the contract states clearly: **"*under the law*". Apparently, the relevant content of the contracts stipulated by DSAT violates the law**.

8. Furthermore, **the act of DSAT to have included the provisions on tax exemption in the *Tax Specifications* instead of the Contract was strange. Instead of being able to solve the existing problems relating to public transportation service, it creates new problems. As a matter of fact, the government was left in a situaion of "acting unlawfully", due to the fact that the provisions on tax exemptions mentioned above violate the law.**

* * *

III – Reversion of the concession assets

1. Under Article 22 of Law no. 3/90/M of 14th May (*Foundations of Regime of Public Works and Public Services Concession*), **upon expiration or termination of a concession contract, the assets shall be reverted to the concessor/government. The Article states:**

"Article 22
Reversion of concession assets

[30] See p. 980 of the *Official Gazette of the Macao Special Administrative Region* (no. 42) of 15th October 2008. The Portuguese version is as follows:
"Artigo décimo quarto (Regime fiscal)
A Operadora beneficiará de isenção ou redução de impostos relativos à importação de veículos de transporte colectivo, de reboque, dos automóveis ligeiros e dos ciclomotores ou motociclos para fiscalização e apoio do serviço concessionado, bem como no que se refere ao imposto de circulação e taxa de matrícula nos termos da lei."

1. ***Upon the termination of contract by any means under Article 19, the assets and rights involved shall be reverted to the grantor.***

2. *The reversion will be carried out under the relevant terms established in the respective contract, which may indicate the compensation to be paid for the concessionaire.*

3. *The concession assets shall be reverted to the concessor without any liens or encumbrances*[31]*."*

2. We would like to emphasise one point: **This article is a compulsory provision**, while the way of reversion is subject to the agreement between the two parties (see paragraph 2 of Article 22).

3. Since the DSAT adopted the method of "service provision contract", **which does not indicate any terms about the reversion of the concession assets in case of expiry of contract**. In the reply to the CCAC, the DSAT stated that it will discuss with the relevant companies to solve the problem. **This is apparently an illegal way to handle the matter.**

4. In its reply to the CCAC's query, the DSAT stated that:

   "(...)

   5. ***Since the reversion involves disposal of private property, it shall be directly subject to the law. However, the laws in force do not confer the relevant power of disposal upon the administrative authorities. Under the principle of legality and in pursuit of public interest, the Collective Passenger Road Transport Service Provision Contract only stipulates that in case the bus company gives up or terminates all or part of the service, the concessor has the power to ensure the operation of the service directly or indirectly through a third party."*** *(See official letter no. 1305876/1845/DGT/2013 dated 8th July 2013 from DSAT)*

   Here we have a fundamental question: **Is the "reversion of concession assets"**

[31] The original Portuguese version of the paragraph: "3. *Os bens afectos à concessão devem ser entregues ao concedente livres de quaisquer ónus ou encargos*."

based on the law or the will of DSAT? Is it necessary to strictly comply with the principle of legality?

Regarding the influence of termination of concession contract on management of property used for public service, expert Pedro Gonçalves says:

"As mentioned above, the movable and immovable assets used by the concessionaire for the management of public service can be categorised into three types, each of which is under a respective special regime - Concessor's assets, which are subject to reversion; concessionaire's assets, which are subject to a clause about transfer under the contract (assets to be transferred); and the assets that need not to be transferred (the assets that belong to concessionaire).

(…)

a) Reversion of concessor's assets

(…)

The reversion does not involve transfer of ownership. It only means to revert the property to the owner.

(…). Therefore, the concessor's ownership of the concession assets is the necessary and sufficient condition of the reversion: it is necessary because if the concessor is not the owner of the assets, it will be not necessary to revert these assets but transfer them to the concessor. It is also sufficient because the reversion does not need to be based on any contract terms.

(…)

b) Transfer of ownership of the assets to be transferred

The "clause of transfer" is a supplementary clause in the concession contract. Unless stipulated clearly, transfer of assets will not take place because the concessor does not have the power to request for the transfer. The concessor cannot request the transfer for the reason of ensuring smooth running of the service.

(…)

Therefore, this is transfer of ownership which takes place due to termination of contract. The result is that the concessionaire shall give the assets to the owner and shall not retain these assets for the reason of existence of a relation of liability.

(…)

c) Property that belongs to the concessionaire

Termination of concession does not have any effect on the assets that belong to the concessionaire (i.e. those not subject to the clause of transfer). Therefore, these assets still belong to the concessionaire.

(…)

If the concessionaire does not intend to remain its ownership of these assets, it may set up a priority of acquisition (of the assets) by means of convention.

On the other hand, the concessor may commence a procedure of expropriation in pursuit of public interest, aiming at these assets under the law of expropriation(…)"[32]

As we can see, **if both parties did not enter into any clause about reversion of the assets involved in operation of bus service in the contract, it is impossible to have a new negotiation when the contract terminates.** In other words, there is little chance to reach an agreement when the contract expires. It is unreasonable and illegal to leave the problem unsettled until the contract expires, as the government will be in a "passive position" instead of "active position" as supposed. If the concessionaire fails to negotiate with the government at that time, there will be no ground for the latter to dispose of these assets. The handling method adopted by DSAT has violated the concept and principle of public management as well as applicable laws.

5. According to the contract previously entered into between the two bus companies (Transmac and TCM) and the government (see *Official Gazette of the Macao SAR* No. 42, Series II, 15th October 2008, P. 9803-9828), Clause 21 states:

[32] Pedro Gonçalves, *A Concessão de Serviços Públicos*, Almedina, 1999, p. 326 and 336.

"Clause 21
Reversion

1. ***Once the operator gives up the service without any legitimate reason, all the assets involved in the operation of the service will be put into ownership of the Macao SAR gratuitously and immediately.***

2. *In the event referred to in the previous paragraph, the Macao SAR will contract the service to a new operator, while the original operator will lose the guarantee deposit, which will go to the Macao SAR.*

3. ***In the event of termination of concession by any means*** *that is not the case referred to in Item 1 or Clause 18,* ***the way of reversion of the assets involved in the operation of service and the quantity of those to be reverted will be determined by the mutual agreement between the Macao SAR and the operator*** *based on the former's reasonable need of the assets and the latter's need for operation of bus service.*

4. *In the case referred to in the previous item, the Macao SAR shall pay the operator reasonable compensation determined by mutual agreement based on the value of the assets."*

Here we have the following questions:

(1) When the concession expired on 14th October 2010, how was the problem concerning reversion of the assets of the two operators solved?

(2) Who was the final decision-maker?

(3) What was put on the inventory list?

(4) What was the basis for allowing the two companies to continue to use the assets? Were the assets on loan? Has the government yet to take the assets back? Weren't there any measures to carry out the reversion? Or did the DSAT again evade the problem?

Since so many illegalities have been discovered, the CCAC does not intend to waste any time to explain the above questions.

6. Obviously, according to Article 22 of Law no. 3/90/M of 14th May, upon expiry of the concession, **the assets involved in the operation of bus service will be reverted to the government. Therefore, the terms established by the DSAT have not only impeded public interest but also violated the law.**

* * *

IV - Illegal adjustment of bus fare during contract performance

1. Another "interesting" issue is: If the concept adopted by DSAT was accepted (Certainly, we do not accept it because it is illegal and results in "illegal operation" by the three companies as they have never been given the "concession right"), Decree Law no. 63/85/M of 6th July should have been applied. In this sense, it will be impossible to have the clause that allows adjustment of bus fare during contract performance **because the decree law does not allow it!** On the contrary, only Law no. 3/90/M of 14th May (*Foundations of Regime of Public Works and Public Services Concession*) **allows adjustment of bus fare during concession contract performance** (but DSAT did not apply this law).

2. Clause 7 of the "Public Bus Service Provision Contract" states:

"Clause 7 (Adjustment of unit prices of services)

1. Starting from 2012, the unit prices of the services may be adjusted based on the following formula:

Pc = Po x (0.294xAc/Ao + 0.474xSc/So + 0.232xFc/Fo)

Description:

Pc — the unit price after adjustment;

Po — the unit price provided by the contract;

Ao — Composite Consumer Price Index of Macao SAR in 2010;

Ac — Composite Consumer Price Index of Macao SAR in the year of the adjustment;

So — Average salary of full-time staff in land transportation sector in 2010;

Sc — Average salary of full-time staff in land transportation sector in the year of adjustment;

Fo — Average price of light diesel fuel for vehicle in 2010;

Fc — Average price of light diesel fuel for vehicle in the year of adjustment;

Ao, Ac, So, Sc, Fo and Fc are the data released by the Statistics and Census Service, while Pc is rounded to one decimal place.

2. *When the unit price after adjustment is less than or equal to the unit price provided by the contract (i.e. Pc ≦ Po), the unit price to be paid will be equal to the latter.*

3. *Adjustment of unit price will be no more than once every year and the request shall be raised by the intended party by 30th June.*

4. *Under any circumstances, the adjustment shall not be put into effect until approval by the contracting authority is obtained."*

3. The "formula" of unit price adjustment and the clauses about the factors seem very strange. **If the government only "purchases" the service, it has the right to decide whether to adjust the fare or not and need not to enter into any "agreement" with the bus companies. Moreover, the government may take into account the factors other than the abovementioned clause and these fees are still to be received by the government.**

4. The most important point is: Decree Law no. 63/85/M of 6th July does not provide the possibility of such adjustment. As said before, our conclusion is: This decree law is not applicable to public bus service but it has been adopted by the DSAT. Moreover, when it is adopted, it is not possible to adjust the bus fare during contract performance. This has reflected DSAT's contradictory method to solve the problem.

5. **Moreover, in fact, the government has acquired the service instead of operating it (according to the concept of DSAT). Therefore, it is not necessary to list these factors, which are, to a large extent, only the**

matters about operation of the companies and figures that are unilaterally presented by them. The final decision making power is still possessed by the government.

6. Article 9 of Law no. 3/90/M of 14th May (*Foundations of Regime of Public Works and Public Services Concession*) states:

"Article 9
Power of the concessor

1. The concessor has the power to regulate and inspect the operation of the public works and services in order to ensure regularity and continuity of the operation, and, in case of public service, to ensure users' convenience and safety.

2. The power referred to in the preceding paragraph will be exercised under the terms in the concession contract, while the following matters shall be priorities:

a. the schemes of setting fare, tariff and contracts related to the operation;

b. management activities carried out by the concessionaire which are subject to authorisation or approval by the concessor.

3. The concession contract may provide the ways of the concessor's participation in the capital or management of the concessionaire."

Following analysis on the activities carried out by DSAT, we have realised that: **the DSAT has been acting against the theory and concept of public management and the principle of legality, constituting maladministration and serious impairment of public interest!**

* * *

V - Disclaimer in violation of applicable law

1. Take the bus service provision contract between DSAT and Reolian Public Transport Co., LTD as example, clause 17 states:

"Clause 17

(Force-majeure and other events not attributable to the concessionaire)

1. The concessionaire is exempted from the penalties prescribed by Clause 14 in case of force-majeure or any other events proven not attributable to it.

2. Force-majeure only refers to unforeseeable and irresistible natural consequences or situations, whose occurrence does not depend on the will or personal factors of the concessionaire, such as war, invasion, subversion, terrorism, epidemic, nuclear radiation, fire, thunder, catastrophe, severe flood, cyclone, typhoon, earthquake and other natural disasters that will directly affect the service.

3. In case of failure to provide the service due to force-majeure or any other events not attributable to the concessionaire, it shall, through legally verified documents or any other proofs within five days following knowledge of the occurrence, request the concessor to recognise the relevant facts and verify the effect of the proofs in order to be exempted from the responsibilities."

2. This is a **disclaimer** under which the concessionaire may be exempted from certain due liabilities in case of force-majeure or events not imputable to it.

3. DSAT considers that the concessionaire may be exempted from responsibilities according to Article 55 of Decree Law no. 63/85/M of 6th July (*Process of Acquisition of Goods and Services*), which states:

"Article 55

Force-majeure

1. In case of failure and delay of performance of contract due to force-majeure, if proven properly, the relevant liabilities of the concessionaire will be ceased.

2. *In the event that should be considered as force-majeure, the concessionaire shall prove it by document or other legally accepted proofs and request the concessor to recognise the fact and verify the effect within five days following knowledge of the occurrence, in order to be exempted from the relevant liabilities."*

4. However, as mentioned above, **Decree Law no. 63/85/M of 6th July is not applicable to public transport service. The applicable one is Law no. 3/90/M of 14th May, which, however, does not allow such disclaimer.**

   Nevertheless, we have to emphasise one point: This does not mean that the concessionaire shall not be exempted from certain liabilities, but the problem is that disclaimer shall not exist in the contract because the concessor/ government has the power to make decision according to the circumstances – exercise of discretionary power. In other words, such case can only be dealt with according to the situation and applicable provisions.

* * *

VI – Other problems concerning the bus service provision contract

1. In fact, after thorough analysis on the terms in the bus service provision contracts entered into between DSAT and the three bus companies, we have found many other problems. Here we point out some of them for our analysis.

2. According to the DSAT's concept, the bus service is acquired from the three companies by the government. Under such contract, both parties are on a par. Here we come up with a ridiculous but possible hypothesis: the companies can refuse to provide the service. Based on this concept, how can the government, as the buyer of the service, supervise the service supplier? On the contrary, if the government was the concessor, the case would be totally different. **The concessor, being placed in a superior position, enjoys authority and decision-making power and may terminate the contract or modify the**

terms at any time[33] (in such case it may have to pay compensation to the concessionaire). **Therefore, the stipulation that public service provided by private entity shall be under the scheme of concession is not a coincidental decision made by the legislature.**

Regarding the right to unilaterally modify contract terms enjoy by public administrative bodies, an expert states:

"*The power to modify concession contract*

As one of the most remarkable powers or the most special situations, the power of unilateral modification (of contract) is certainly applicable to contracts of public service concession. In such case the function of the power is understood the best.

(...).

Item a) of Article 180 of the Code of Administrative Procedure (note: equal to Article 176 of the *Code of Administrative Procedure* of Macao*) provides an extra-contractual power. Under the laws of Portugal, whether this is a competence derived from the principles of administrative law or whether it only exists in case where the possibility is allowed by the contract will not be questioned. Nowadays, empowered by the Code of Administrative Procedure, the public administrative body/concessor may unilaterally modify public service concession contract*[34]."

3. Clause 10 of the bus service provision contract between DSAT and Reolian Public Transport Co., LTD states:

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[33] Article 167 of the *Code of Administrative Procedure* states:
"Article 167 (Powers of the Administration)
Unless otherwise provided by law or determined by the nature of the contract, ***the Administration may:***
(a) ***Unilaterally modify the content of the provision of service given that it will accord with objective of the contract and maintain financial equilibrium.***
(b) Direct the way of the operation of the service;
(c) Unilaterally terminate the contract due to public interest backed by proper reason, notwithstanding payment of reasonable compensation;
(d) Supervise the way of contract performance;
(e) Impose penalty for non-performance of the contract."

[34] Pedro Gonçalves, *A Concessão de Serviços Públicos*, Almedina, 1999, p. 255 and 256

"Clause 10 (Obligations of the concessionaire)

As a single clause, the concessionaire shall also fulfil the following obligations:

(a) To follow the principles of public interest and ensure normal operation of collective passenger road transport service during the period of service provision;

(b) Adopt the best quality standard as possible at any time so that the collective passenger road transport service will run regularly and efficiently and provide maximum comfort and safety;

(c) To notify the DSAT immediately when the provision or normal operation of the service is predictably affected by the company's own situation;

(d) ***To do the best as possible to complete all tasks and provide the services as prescribed in the objective of the contract and to fully comply with the principles of professional ethics, justice, independence, dedication and zeal***[35]*;*

(e) ***To have its staff complied with the relevant provisions and rules***[36]*;*

(f) To ensure the staff involved in the service will keep the relevant information confidential;

(g) To comply with the supervision conducted by the DSAT and cooperate with it in relevant works;

(h) To conduct all tests necessary for review of the conditions of the operation of the service;

(i) To comply with all applicable laws of the Macao Special Administrative Region, especially Decree Law no. 63/85/M of 6th July, Decree Law no. 50/88/M of 20th June, Law no. 3/2007 (Road Traffic Law), Road Traffic Rules approved by Decree Law no. 17/93/M of 28th April and Decree

[35] Emphasis added by the CCAC.
[36] Ibid.

Law no. 57/94/M of 28th November; to comply with relevant laws to be promulgated in the future as well as the instructions and provisions issued by public administrative authorities; and to be responsible for all administrative procedures and fees necessary for provision of the service."

If this is a service provision contract (as called by DSAT), what is the purpose for requesting the company to fulfil the obligation to comply with the principles of professional ethics, justice, independence, dedication and zeal? What makes the ground for the DSAT to intervene into these matters?

Here is a simple example: When you go to a laundry, do you have the right to request the laundry to hire local workers only to clean the clothes for you? Or when you go to a tailor shop, do you have the right to request him/her to receive the customers in a polite way?

These situations has reflected that **the matters that should have been regulated were not regulated by the contract, but those should not be subject to any kind of intervention have been regulated thoroughly.**

4. In the so-called "new model" adopted by DSAT, apart from many illegal behaviours, the condition that all the bus fares are to be received by the government and the fact that there is no stipulation of reversion of the property used for operation of bus service to the government, we do not find anything "new", because:

   (a) Why isn't the government the one to decide the bus fare?

   (b) Why isn't the government responsible for supervising the bus service?

   (c) …etc.

On the contrary, **we consider that such "new model" of bus service has severely impaired public interest and caused improper spending of public fund. This is one of the worst cases of law violation and public interest impairment that has ever been discovered by the CCAC in the area of ombudsmanship.**

5. Moreover, under Article 24[37] of Law no. 3/90/M of 14th May (*Foundations of Regime of Public Works and Public Services Concessions*), such kind of concession contract shall be published in the *Official Gazette of the Macao SAR*, **but the DSAT has never done it.**

Here we would like to particularly reiterate the **principle of legality** stipulated by Article 3 of the *Code of Administrative Procedure*, which states:

"Article 3

(Principle of Legality)

1. ***Public Administration bodies must act in accordance with the law and legal principles, within the limits of those powers which may be attributed to them and in conformity with the aims for which the same powers were granted.***

2. Administrative acts carried out under a state of extreme need, without observing the rules set out in such Code, shall be valid, provided that their results could not have been attained by any other means, but any parties injured shall have the right to be compensated under the general rules of the liability of the Administration."

This is the general rule of public administrative activities, **but the DSAT cannot even comply with it. It is hard to imagine how it ensures legal administration and pursue public interest.**

* * *

[37] It states:
"Article 24 (Publication)
The following acts shall be disclosed in the Official Gazette:
(a) Decision to open or remit tendering;
(b) Decision to declare void an open tendering or not to award the contract to any bidders;
(c) Concession contract;
(d) The decision involving any of the situations stipulated in Articles 17, 18, 20 and 21."

Part III: Ways to solve the problems

1. Given the above, the DSAT had misapplied the law in the beginning, frankly speaking, carried out a series of unlawful acts which have resulted in many defects in the contract, thus causing a number of complicated problems which have to be solved urgently.

2. It was the government, frankly speaking, the DSAT, that played the dominant role in the establishment of the "service provision contract" and it was the DSAT again that has made the mistakes in the whole process, namely the proposal for open tendering, the preparation of tender documents, the evaluation of the bidders and the conclusion of the contract. Therefore, according to the principle of good faith, the party that has caused defects in the contract should not take advantage of the defects[38] to put the other side at disadvantage. However, the defects are in contradiction with public interest and even illegal. Therefore, it is necessary for the government to take measures to remedy these illegal situations.

3. We suggest the following ways to solve the problems:

   (1) **In pursuit of public interest and under the applicable terms in the contract, one of the ways to solve the problems is to rescind the contract (unilaterally), provided that the government has to reach an agreement of compensation with the other side in accordance with the contract.** In fact, item 2 of clause 15 of the bus service provision contract between DSAT and Reolian Public Transport Co., LTD (as an example) states (as the company has filed bankruptcy, the case will be different):

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[38] Article 172 of the *Code of Administrative Procedure* states:
"Article 172 (Regime of invalidity of contracts)
1. When the administrative act that the conclusion of the administrative contract depends on is null or voidable, the administrative contract is also null or voidable in accordance with this Code.
2. The stipulations of the Civil Code which are about lack or defects are applicable to any administrative contract.
3. Notwithstanding paragraph 1, the followings are applicable to invalidity of administrative contracts:
(a) The regime of invalidity of contracts under this Code is applicable to the administrative contacts whose objectives are possible to be those of administrative acts.
(b) The regime of invalidity of contracts under the Civil Code is applicable to the administrative contracts whose objectives are possible to be those of private contracts."

"2. The contracting authority reserves the right to terminate the contract at any time in pursuit of public interest, with effect from the 30th days of notification to the contractor. In this case, the contractor is entitled to compensation equivalent to 10% of 1/84 of the total price for the contract of the relevant section, multiplied by the number of the remaining complete months of the same year after the termination."

(2) The second way is to transform the "service provision contract" into a "concession contract" under the mechanism provided by Article 286 of the *Civil Code* (Conversion of legal act)[39] - **to maintain appropriate terms and add the missing ones that are deemed necessary to the new contract according to the *Foundations of Regime of Public Works and Public Services Concessions*, which will require new negotiation.**

Clause 22 of the abovementioned bus service provision contract also provides such possibility:

"Clause 22 (Modification of contract)

Single clause: Modification of the contract may be made in written form based on mutual agreement if deemed necessary by both sides."

(3) The third way is to commence a new negotiation with the companies and enter into new concession contracts in full compliance with applicable law (the regime of concession shall be applied).

* * *

Part IV: Conclusion

Given the above, we have the following conclusion:

[39] The content:
"Article 286 (Conversion of legal act)
A null or cancelled legal act that has the essentials of the substance and form of another legal act of different type or with different contents can be converted to one of such type, only for the purpose pursued by the interest parties, provided that they are willing to do it if they foresee the invalidity."

1. Regarding the operation of public bus service, **the adoption of "service provision contract" by DSAT has overtly violated the law and constituted "illegal operation" by the three bus companies. Therefore, the DSAT shall strictly comply with Decree Law no. 64/84/M of 30th June and Law no. 3/90/M of 14th May to authorise operation of public bus service run by private companies under the scheme of concession.**

2. Many of the terms under the contracts between DSAT and the three companies **evade the provisions under Decree Law no. 64/84/M of 30th June and Law no. 3/90/M of 14th May which should have been strictly followed.** This is completely unacceptable under the law.

3. DSAT has illegally put down the condition of the exemption of motor vehicle tax for the bus companies in the terms set in the *Tender Specifications* for public bus service, **which overstepped the competence of the Director of the Financial Services Bureau.** Moreover, since this clause was not put in the contract, it has also violated subparagraph 1) of paragraph 1 of Article 6 and Article 9 of *Motor Vehicle Tax Regulation* approved by Law no. 5/2002 of 17th June.

4. The bus service provision contract does not contain the terms that the property used in the operation of bus services shall be reverted to the government upon the termination of the contract, **constituting violation of Article 22 of Law no. 3/90/M of 14th May (*Foundations of Regime of Public Works and Public Services Concession*). This is another illegality.**

5. Only Law no. 3/90/M of 14th May (*Foundations of Regime of Public Works and Public Services Concession*) **allows adjustment of bus fare during contract performance** on condition that it is approved by the concessor. However, this mechanism was also introduced to the bus service provision contract (based on the concept and system adopted by DSAT). This is unlawful and demonstrates the DSAT's arbitrariness and confusing thought when dealing with the relevant issues.

6. According to the legal basis and the concept that the DSAT has adopted, the disclaimer that benefits the concessionaires was put into the "service provision contract". However, in fact, **if the law is correctly applied and "public service concession contract" is established, disclaimer shall not exist. This has**

reflected its failure to adopt the applicable law, contradicting the principles and rules of public administration.

7. Some clauses as mentioned in point 1 can only be established according to Decree Law no. 64/84/M, which, however, was not applied by the DSAT. **As a result, many compulsory terms were not included in the contract, constituting violation of law.**

8. **DSAT did not publish the full text of the contract in the *Official Gazette of the Macao SAR*** according to the applicable law. **This is also unlawful.**

* * *

The report shall be submitted to his Excellency the Chief Executive for consideration of taking appropriate measures.

A certified copy of this report shall be sent to the complainant.

* * *

After being executed the present proceeding must be filed.

* * *

Commission Against Corruption, 12th December 2013

Commissioner Against Corruption
Fong Man Chong

Case IV

Investigation Report on the Basis for Termination of Fixed-Term Appointment of Deputy Commissioner of the Fire Services Bureau and the Relevant Complaints

Key points:

- The basis for terminating fixed-term appointment should be true, objective and sufficient;
- When not serving leadership and resuming the original position, corresponding rights of the position should be enjoyed and obligations should be fulfilled according to law;
- The arrangement of duties should be legal and justifiable and satisfy public interests;
- Disciplinary proceedings shall only be commenced with sufficient grounds in accordance to laws;
- It is significantly against the law to conduct performance appraisal based on incidents occurred in the year that did not fall within the assessment period;
- Almost ten management officials of the same bureau complained about administrative problems and were dissatisfied being unfairly treated, reflecting that it is necessary to pay attention to administrative crisis of the bureau.

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V. The Commissioner of the CB called a meeting of the supervisory staff to blame the complainant for carrying forward his annual leave from 2010.

(1) About the complaint
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VI. The complainant considered that it was necessary for the Commissioner of the CB to approve his 2011 annual leave plan and publish it on the functional order pursuant to law, but the Commissioner failed to do so.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

VII. Upon dispatching to the Central Fire Station, the complainant had no access to any work-related information.

(1) About the complaint
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VIII. In his order, the Commissioner of the CB ordered that the complainant carry out a study of the work of the CB and submit a report on it, requiring that confidentiality be maintained and no assistance be sought from others.

(1) About the complaint
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IX. The Commissioner violated the law by ordering the complainant to follow the normal and fixed working hours.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

X. The Commissioner purposely picked on the complainant and ordered the guard at the Central Fire Station to record the time-in and time-out of the complainant.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

XI. The long-term reservation of the video recording that contains the record of entry and exit of the complainant by the Commissioner targeting merely the complainant.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

XII. The complainant felt offended illicitly due to his registration record was subject to the approval of the Commander of the Central Fire Station, a position hierarchically inferior to his.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

XIII. Before being substituted by the complainant, the Commissioner would always convene meetings with the staff to request them not to report their work to the complainant during the period of substitution.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

XIV. The Commissioner demanded the staff of the CB to prepare reports of "denigration" against the complainant, so that he could give a lower grade to the complainant in the appraisal.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

XV. The claim of the Commissioner that the complainant has violated the Administrative Regulation no. 14/2002 of 12th August and the Order of the Secretary for Security no. 38/SS/2002 has no legal basis.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

XVI. The Commissioner claimed that the complainant has violated the stipulations of the *EMFSM* without going through any disciplinary proceedings.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

XVII. The complainant was assigned to the job of compiling the *Administrative Guide of the Fire Services Bureau*, but was given no administrative support despite of having made a written request.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

XVIII. The complainant thinks that the workplace allocated by the Chief of Resource Management Department is not suitable to be a workplace and the latter requested him to sign a verification form for room reception. The complainant considers that this is unprecedented and groundless in a legal sense.

(1) About the complaint
(2) Related facts and statements
(3) Analysis

XIX. The complainant considered that he was treated unfairly regarding attendance record.

(1) About the complaint
(2) Related facts and statements
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XX. The complainant believes the Chief of the Resource Management Department to have picked on him by saying he failed to report for duty after sick leave.

(1) About the complaint
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(3) Analysis

XXI. The complainant claimed that the Chief of the Resource Management Department did not allow him to drive his own car or use the vehicle of CB to report for duty at the Headquarters.

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XXII. The complainant claimed that the Chief of the Resource Management Department accused him of giving work orders to personnel of another department without authorisation.

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XXIII. The Secretary for Security's rejection of the appeal of the complainant.

(1) About the complaint
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Investigation Report on the Basis for Termination of Fixed-Term Appointment of Deputy Commissioner of the Fire Services Bureau and the Relevant Complaints[40]

Part I: Introduction

The complainant went to the Commission Against Corruption (hereinafter referred to as CCAC) to lodge a complaint on 4th November 2011 with contents as below:

1. Appointed by the Secretary for Security as the Deputy Commissioner of the Fire Services Bureau (hereinafter designated as CB) on 2nd August 2006, the complainant was reappointed for another two-year term on 1st August 2008 and 10th May 2010 respectively.

2. **On 23rd August 2011**, the Secretary for Security issued an order to terminate the fixed-term appointment of the complainant being the Deputy Commissioner **due to demand of work** starting from 1st September 2011 (See P. 135), accorded with Sub-paragraph (1) of Paragraph 1 of Article 16 of Law no. 15/2009 of 3rd August, *Fundamental Provisions of Statute of Leadership and Management*, Article 15 of Administrative Regulation no. 26/2009 of 10th August, *Provisions Supplementary to Statute of Leadership and Management*, and Sub-paragraph a) of Paragraph 3 of Article 107 of the current *Statute of Militarised Personnel of the Public Security Forces of Macao* (hereinafter referred to as *EMFSM*).

3. **The complainant filed a considerable number of complaints to the CCAC. Such complaints include the Commissioner of the CB "picked on" and "defamed" the complainant when he served as the Deputy Commissioner. Moreover, upon termination of his fixed-term appointment as Deputy Commissioner, he was treated unfairly when serving in the Resource Management Department.**

[40] A considerable number of statements given by witnesses are citied in this analysis report. Under the principles of confidentiality and moderation, the witnesses are identified by English alphabets.

4. The complainant went to the CCAC on 4th January 2012 to provide supplementary information regarding the complaint.

5. The complainant provided the CCAC with supplementary information again on 16th March 2012.

* * *

Part II: Investigation measures taken by the CCAC

1. The CCAC sent a letter to the Office of the Secretary for Security on 29th November 2011 to request for documents related to the above case including the information of the complainant being terminated of the appointment (See P. 229).

2. On the same day (29th November 2011), the CCAC sent a letter to the CB to request for documents including copies of *Internal Regulations of the Fire Services Bureau* and *Attendance Guidance* and asked the then Chief of Resource Management Department to give a statement in the CCAC (See P. 230 and P. 231).

3. The Office of the Secretary for Security sent relevant documents to the CCAC, constituting Annex 1 to Annex 5 of this case file.

4. The CB sent relevant documents (See P. 241) to the CCAC on 9th December 2011, constituting Annex 6 to Annex 10 of this case file.

5. Many incumbent CB staff and those who had left their positions were invited to the CCAC to give a statement (See P. 400, P. 401, P. 402 and P. 420).

6. On 5th January 2012, the CCAC requested the CB to provide the attendance records of leadership and management from January 2010 to December 2011 (See P. 399).

7. On 11th January 2012, the CB provided the CCAC with the attendance records of leadership and management from January 2010 to December 2011 with a total of 11 volumes (See P. 421), constituting Annex 11 to Annex 21 of this case file.

8. During 9th January 2012 to 13th January 2012, the CCAC heard the statement of many incumbent CB staff and those who had left office.

9. On 13th January 2012, the complainant provided the CCAC with the photos of his workplace (See P. 506 to P. 515).

10. The CCAC personnel sent a letter to the CB to request for documents for handling the complaint to the then Chief of Resource Management Department lodged by the complainant (See P.503).

11. On 16th and 17th January 2012, three incumbent CB staff and those who had left service were invited again to give a statement in the CCAC (See P. 504 and P. 516).

12. On 17th January, the CB provided the CCAC with documents (P. 517) regarding the complaint against the Chief of Resource Management Department lodged by the complainant, constituting Annex 22 of this case file.

13. On 19th and 20th January 2012, the CCAC heard the statement of three incumbent CB staff and those who had left service.

14. On 13th March 2012, the CCAC heard the statement of the Commissioner of the CB.

15. On 20th March, the CCAC heard the supplementary statement of the then Chief of Resource Management Department.

* * *

Part III: Powers of the CCAC

1. **Sub-paragraph (5) of Paragraph 1 of Article 3 of the *Organic Law of the Commission Against Corruption of the Macao SAR,* approved by Law no. 10/2000 of 14th August and amended by Law no. 4/2012 of 26th March, stipulates that*: "1. The Commission Against Corruption aims, within its scope of activity, at:… (5) Performing ombudsman activities by promoting the protection of the rights, freedoms, safeguards and legitimate interests of the***

individuals, and ensuring the legality in the exercise of public authority, as well as justice and efficiency in the public administration, through the means referred to under the following Article and other informal means."

2. **Article 4 of the current *Organic Law of the Commission Against Corruption of the Macao SAR,* also stipulates that: *"The Commission Against Corruption is entitled to: … (4) Conduct or request to conduct inquiries, comprehensive investigations, investigation measures or any other measures aimed at examining the legality of administrative acts and proceedings with regard to relations between public entities and individuals; … (6) Upon completion of investigation, report any findings of illegal acts to the authorities with disciplinary powers; … (12) Address recommendations directly to the concerned authorities for the purpose of rectifying illegal or unfair administrative acts or procedures, or of performing due acts;".***

3. Therefore, the CCAC is obliged to investigate into the complaints lodged by the complainant, including the investigation over the acts and proceedings of the authority, leadership and management regarding their compliance with the *EMFSM, Fundamental Provisions of Statute of Leadership and Management, Provisions Supplementary to Statute of Leadership and Management,* and principles[41] under the *Code of Administrative Procedure* approved by Decree Law no. 52/99/M of 11th October etc.

* * *

Part IV: Investigation results and analysis of concerned problems

Below is a glimpse of the problems:

I. **<u>The Commissioner of the CB blamed the complainant unreasonably for not putting his best efforts in fire and security coordination for the 10th anniversary of the SAR handover.</u>**

[41] Article 2 of the *Code of Administrative Procedure* provides that: *"1. The provisions of this Code apply to all bodies of the government that, in the performance of administrative activity of public management, establish relations with individuals… 4. The general principles governing administrative activities prescribed in the Code are applicable to all activities carried out by the administrative authority, even if they are merely technical or managed by private entities."*

II. **The complainant disagreed with the Commissioner that he had to bear disciplinary and criminal liability for failing to report for duty to the Commissioner after sick leave.**

III. **The Commissioner had not only ordered some supervisory staff of the CB not to befriend the complainant, he even suggested them directly and impliedly that they should avoid any personal or work-related contact with him. Meanwhile, the complainant specified that the Commissioner defamed him in front of other supervisory staff.**

IV. **The Commissioner used his power to make the complainant not able to enjoy his planned annual leave in December 2010.**

V. **The Commissioner of the CB called a meeting of the supervisory staff to blame the complainant for carrying forward his annual leave from 2010.**

VI. **The complainant considered that it was necessary for the Commissioner of the CB to approve his 2011 annual leave plan and publish it on the functional order pursuant to law, but the Commissioner failed to do so.**

VII. **Upon dispatching to the Central Fire Station, the complainant had no access to any work-related information.**

VIII. **In his order, the Commissioner of the CB ordered that the complainant carry out a study of the work of the CB and submit a report on it, requiring that confidentiality be maintained and no assistance be sought from others.**

IX. **The Commissioner violated the law by ordering the complainant to follow the normal and fixed working hours.**

X. **The Commissioner purposely picked on the complainant and ordered the guard at the Central Fire Station to record the time-in and time-out of the complainant.**

XI. **The long-term reservation of the video recording that contains the record of entry and exit of the complainant by the Commissioner targeting merely the complainant.**

XII. **The complainant felt offended illicitly due to his registration record was subject to the approval of the Commander of the Central Fire Station, a position hierarchically inferior to his.**

XIII. **Before being substituted by the complainant, the Commissioner would always convene meetings with the staff to request them not to report their work to the complainant during the period of substitution.**

XIV. **The Commissioner demanded the staff of the CB to prepare reports of "denigration" against the complainant, so that he could give a lower grade to the complainant in the appraisal.**

XV. **The claim of the Commissioner that the complainant has violated the Administrative Regulation no. 14/2002 of 12th August and the Order of the Secretary for Security no. 38/SS/2002 has no legal basis.**

XVI. **The Commissioner claimed that the complainant has violated the stipulations of the *EMFSM* without going through any disciplinary proceedings.**

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XVIII. **The complainant thinks that the workplace allocated by the Chief of Resource Management Department is not suitable to be a workplace and the latter requested him to sign a verification form for room reception. The complainant considers that this is unprecedented and groundless in a legal sense.**

XIX. **The complainant considered that he was treated unfairly regarding attendance record.**

XX. **The complainant believes the Chief of the Resource Management Department to have picked on him by saying he failed to report for duty after sick leave.**

XXI. **The complainant claimed that the Chief of the Resource Management Department did not allow him to drive his own car or use the vehicle of CB to report for duty at the Headquarters.**

XXII. **The complainant claimed that the Chief of the Resource Management Department accused him of giving work orders to personnel of another department without authorisation.**

XXIII. **The Secretary for Security's rejection of the appeal of the complainant.**

* * *

I. The Commissioner of the CB blamed the complainant unreasonably for not putting his best efforts in fire and security coordination for the 10th anniversary of the SAR handover.

(1) About the complaint

1. The Commissioner of the CB stated in Report no. 20/GAC/2011 dated 6th May 2011 (*Leadership Performance Appraisal Report*) that the complainant did not fulfill his responsibilities in the fire and security coordination for the celebration of the 10th anniversary of the SAR handover. The content of Operation Directive no. 13/CB/2009 (Commemorative Day of the 10th Anniversary of the Macao SAR Handover) submitted by the complainant on 30th October 2009, in particular, showed that the security coordination was imperfect, simple and inexecutable (See overleaf of P. 15 and P. 20).

2. The complainant pointed out that the aforementioned claim was untrue (See overleaf of P. 2), stating that he was responsible to handle the said event. Another fire officer F who also bore the duties of security coordination said that Operation Directive no. 13/CB/2009 was not a proposal. He explained that the format of the Directive had been used for many years and such format and content were adopted for all the security work after handover (including the security work for the visit of Chinese leaders to Macao in the past).

(2) Related facts and statements

1. The fire and security coordination for the celebration of the 10th anniversary event was mainly conducted in **late 2009 (from October to December in particular).**

2. The Commissioner of the CB gave a comment over the performance of the complainant for the period of **18th August 2009 to 17th April 2010** in his *Leadership Performance Appraisal Report* on 20th April 2010. It was stated that (See P. 3 and overleaf of Annex 5):

"Duty description: For the period of 18th August 2009 – 5th March 2010:

1. Coordinate and handle operational work;
For the period of 6th March 2010 – 17th April 2010:

1. Act on behalf of the Commissioner in the event of absence or inability to perform duties of the Commissioner;

2. Act on the Chairman of the Disciplinary Board of the CB;

3. Assist in the Commissioner to handle work in the fields of administration, resources, logistics, training and museum.

Comment: His work was satifactory; so I suggest reappointment."

3. The Commissioner of the CB put down in the complainant's *Leadership Performance Appraisal Report* (Report no. 20/GAC/2011) regarding the period of 18th August 2010 to 17th April 2011 that he failed to put his best efforts to coordinate the fire and security work for the 10th anniversary handover celebration event in 2009 (See P. 15 and overleaf).

4. The Office of the Secretary for Security furnished the CCAC with the action plan and relevant appendices of the handover celebration event (Such information, which originates from the CB, should be the entire original documents about the fire and security coordination for the handover celebration event archived in the CB) (See Annex 5). Besides the action plan of the celebration event, relevant documents such as operation directive, behavioural guidelines, official letters were also attached (See the attached table for details).

5. According to the above information, apart from Operation Directive no. 13/CB/2009, the complainant also compiled other operation directives or work guidelines. Except for Operation Directive no. 13/CB/2009, no other operation directive or work guideline were considered "too simple" or "infeasible".

6. Another Deputy Divisonal Officer of 1st class, **R**, compiled a document of "Problems over the fire and security coordination for the 10th anniversary of the SAR handover" on 20th January 2010 according to the instruction of the Commissioner, where various problems over the fire and security coordination about the celebration event along with the notes to concern in the future were pointed out (See P. 5 of Annex 5). Nevertheless, who should be responsible for the relevant problems was not made clear in the document.

7. The CCAC heard some incumbent CB staff along with those who had left office being responsible for the said security coordination for their comments over the complainant on the fire and security coordination of the event, as below:

Name	Statement
A	**A** considered the complainant responsible, earnest and had spared no efforts in the fire and security coordination for the 10th anniversary handover event (See overleaf of P. 404). **A** stated that the fire and security coordination for the handover event was more or less the same every year, the CB would yet review the inadequancy of the coordination work for future improvement. He/she added that the work was performed as usual without much difference for the 10th anniversary handover event. According to **A**, in light of the fact that the staff of his/her department, the Technical Department, had to always work overtime on the security coordination for the event, they had performed so well that they were all very satisfied (See P. 405).

B	Two to three weeks prior to the celebration ceremony, concerned staff had to work overtime until 20:00, 21:00 or even 22:00 every night while the complainant also stayed with them. (The superior attached great importance to the event and requested every detail to be perfect, hence it consumed a lot of time.) **B** explained that there was actually no need for the complainant to stay. (Besides, **B** heard that it should be the then Deputy Chief Fire Officer **F** who initially took charge of the coordination work. Without knowing the reasons behind, the work was later passed to the complainant). Given the fact that the complainant listened to the comment of his subordinates and took initiative to make amendment, **B** believed that the complainant did put his best efforts in the coordination work (See overleaf of P. 449).
C	The fire and security coordination for the handover celebration event was so excellent that the Chief Executive or the Secretary for Security had praised for the contribution and achievement of concerned authorities including the CB through an order. Not only did the Commissioner convened a meeting to pass on the complimentary message to and praise relevant staff, he even awarded certificates of appreciation to some fire officers including (C him/herself). However, **C** was not sure if the complainant was awarded. The complainant did put his best efforts in the coordination work. As a matter of fact, all concerned staff spared no efforts to work overtime until 22:00, with some even till 23:00 and 24:00 numerously (See overleaf of P. 476).

D	The complainant was as responsible as usual. According to **D**, the complainant had, at least twice, accompanied **D** and other fire officers to work until midnight. Besides, **D** remembered that there was once Fire Offier **F** being ordered by the Commissioner to complete a task within a very short period of time and hence facing great difficulties, the complainant worked until midnight to give him assistance (See P. 481). The Commissioner told **D** many times that the complainant had two wrongdoings, …another one was the complainant "disregarding" the security of the handover event and the safety of the Chinese leaders. The Commissioner said that the complainant designed a two-paged plan "carelessly" and made a site inspection hastily when handling the said event. In a response to the Commissioner, **D** explained that the complainant was responsible, but the Commissioner said that the reason behind was the complainant being urged by him. According to **D**, not only did the Secretary for Security commend the work of the concerned authorities on the event (including the Public Security Police Force etc.), the Commissioner also praised the effort of all relevant fire officers in writing internally. **D** added that as for the two-paged plan, the Commissioner stressed to all fire officers that he developed a detailed plan for the handover event ten years ago and hence the relevant plan of the said event should be designed accordingly. However, the handover plan made ten years ago was designed by the Commissioner and another Fire Officer **S** such that only two of them had seen the plan. Over the past ten years, there was no fire officer having seen the concerned plan. Moreover, the CB had accumulated much experience in fire and security coordination after handling a considerable number of large-scale activities or events over the past ten years (e.g. the handover celebration event and the Labour Day event each year) and there was hardly any noticeable discrepency in the coordination of the said event, **D** believed the action plan and the deployment of the mentioned event would not cause problems. Nevertheless, one day the Commissioner asked **D** to request **S** to search for the handover plan made ten years ago. **S**, whom the Commissioner was unpleasant with, had moved his office from the Auxiliary Office of the Command to a new one. **S** told **D** that such plan was not in his/her new office, adding

	that he/she would have sent it back to the Commissioner if **S** had it; thus urging **D** to look for the plan in the Commissioner's office. At last, the Commissioner ordered the fire officers to conduct a comprehensive search for the plan. It was finally found in a cabinet in front of the door of the previous office of **S**. **D** thought that the Commissioner would blame **S**, but the Commissioner just "grumbled over it" in the office (See overleaf of P. 481).
E	The leadership (including the complainant) had the duties of…giving commands. The complainant, who coordinated the fire and security work for the 5th anniversary handover event, had richer experience than the other fire officers and hence took initiative to hold meetings and work with **F** and **D** for consecutive nights until midnight despite the fact that the complainant was not the coordinator of the said event. As the concerned event involved Chinese leaders whose whereabouts be confidential and safety be "guaranteed", various fire and security plans had to be compiled. Meanwhile, only the Commissioner grasped the itinerary of the Chinese leaders, the concerned coordination staff had to design flexible plans in a very short period of time. The complainant, regardless of his rank, set a good example to lead and command the staff at the site. Therefore, **E** believed that the complainat was very responsible and spared no efforts in giving command of the fire and security coordination for the said event (See P. 486 and overleaf).

F	The complainant took charge of the overall coordination of the fire and security work for the 10th anniversary handover event; the Operation and Security Task Force notified him of the progress of work and he would then reported it to the Commissioner. As for the complainant's coordination work of the said event, **F**…thought that it was normal, but remembered that there was once the complainant submitting the aforementioned plan to the Commissioner for the purpose of attending a meeting in the Office of the Chief Executive, the Commissioner thought that it failed to meet his requirement and thereby ordered him to redo it. The complainant, who worked with **F** and another female workmate overtime for consecutive nights on the plan, submitted it to the Commissioner again, but the Commissioner still thought that it did not meet his requirement. **F** said that the so-called "requirement" was initially not clear and the complainant had previously asked him/her to search for the document made ten years ago in the Operation Department so that concerned specification could be followed. However, it was inavailable and only the document for the 5th anniversary handover celebration event could be found. The complainant then instructed **F**, who reported the above situation to him, to redo the plan by following the specification of the document of the 5th anniversary handover celebration event despite the fact that the Commissioner required the one made ten years ago. The Commissioner immediately asked other officials (i.e. Deputy Chief Fire Officers and fire officers of higher rank) to intervene into the concerned task force after the "requirements were not met" twice. As for whether the complainant had spared no effort in handling the fire and security coordination of the said event, **F** said that he/she worked together with the complainant who always asked F about the updated information, **F** thought that the complainant handled the work responsibly (See P. 495 and overleaf).

8. When inquired about by the CCAC staff why the Commissioner did not put down in the complainant's *Leadership Performance Appraisal Report* on 20th April 2010 that he failed to put his best efforts in the fire and security coordination of the said event, the Commissioner explained, "*…The complainant had excellent performance in the past and was a potential successor of the Commissioner. I hoped that his future wouldn't be ruined by this incident and therefore I still suggested the Secretary to*

reappoint the complainant." Afterwards, the Commissioner stressed that he had reported to the Secretary about not notifying the said event in the Report no. 20/GAC/2011." (See overleaf of P. 684)

9. When asked by the CCAC staff if the Commissioner's act of not reporting the complainant's irresponsibility in handling the said event in his *Leadership Performance Appraisal Report* on 20th April 2010 accorded with the existing legal stipulations of leadership and management and the Order of the Secretary for Security, the Commissioner replied, "*There was no consideration in this aspect at that time*." (See overleaf of P. 684)

10. Moreover, failing to report to the superior about problems in work capacity seems concealing the truth, which is unfavourable for the superior, the relevant authority and the concerned party, let alone training an appropriate successor.

(3) Analysis

1. In fact, for the purpose of analysing whether this complaint is valid, **two core problems have to be analysed objectively**:

   1) **Whether the blame on the complainant by the Commissioner of the CB that he failed to put his best efforts in the fire and security coordination for the 10th anniversary handover celebration event in 2009 as stated in the complainant's *Leadership Performance Appraisal Report* for the period of 18th August 2010 to 17th April 2011 (Report no. 20/GAC/2011) is legal and justifiable;**

   2) **Whether the Commissioner of the CB has sufficient evidence for his blame.**

2. As for problem 1), let us first review the stipulations about the appraisal and reappointment of leadership along with the Order of the Secretary for Security previously issued to his subordinated authorities.

3. Article 14 of *Fundamental Provisions of Statute of Leadership and Management* provides that:

   "*1. Leadership is subject to performance evaluation every year.*

2. *For the effect of the above paragraph, all government Secretaries shall submit to the Chief Executive the Leadership Performance Appraisal Reports of their subordinates or of the departments subject to their supervision and entities 90 days prior to the completion of every one year's work duration.*

3. *The above reports shall contain all information important to evaluate the performance of the relevant appraisees, particularly in their capacities to lead their departments, execute the instructions of their superiors and implement the established objectives."*

4. For the purpose of implementing the above stipulations, the Secretary for Security issued Order no. 42/SS/2009 on 11th September 2009 to his subordinated authorities, requesting leadership equivalent to rank of director to submit to the Secretary analysis reports over the performance of their Deputies within 20 days upon completion of eight months' work from the day of regular appointment of the Deputies. The reports shall strictly follow Paragraph 3 of Article 14 of *Fundamental Provisions of Statute of Leadership and Management* to ***contain all information important to evaluate the performance of the relevant appraisees, particularly in their capacities to lead their departments, execute the instructions of their superiors and implement the established objectives***. (See P. 8 to P. 10 of Annex 2).

5. On the other hand, Article 8 of *Provisions Supplementary to Statute of Leadership and Management* stipulates that:

"1. Regular appointment shall be ineffective upon termination, except for explicit intention of reappointment with the consent of the interest party 60 days prior to the expiration of the regular appointment.

…

3. For the effect of Paragraph 1, department leadership shall notify the Secretary possessing supervisory power about the termination of his/her regular appointment along with that of his/her responsible personnel not less than 90 days prior to the termination.

4. In the reports, department leadership shall put down the opinions and justifications about the regular appointment of his/her responsible

personnel, along with specificiations over their capacities in performing their duties, executing the instructions of their superiors and implementing the established objectives. For supervisory staff, their performance ratings shall also be indicated.

5. *Regular appointment of supervisory staff with a rating of "satisfactory" in their performance evaluation shall only be made by the Chief Executive through issuing an order. The competence shall not be delegated."*

6. **Given the above, the Commissioner of the CB is subject to evaluate the work performance and quality of the complainant within time and in an honest manner in accordance with the aforementioned law and the Order of the Secretary for Security.**

7. In this case, firstly, **the time of the Commissioner placing the blame on the complainant is in dispute**.

8. **It is objectively significant that** the Commissioner, who placed his blame on the complainant for not putting his best efforts in the fire and security coordination for the said event in late 2009 in the complainant's *Leadership Performance Appraisal Report* (Report no. 20/GAC/2011) for the period of 18th August 2010 to 17th April 2011, **is indeed evaluating an incident not relevant to the evaluating period. Such act not only goes against the above stipulations and the Order of Secretary for Security, but is also unjustifiable and unfair to the complainant**.

9. As mentioned previously, the Commissioner of the CB gave comments in the complainant's *Leadership Performance Appraisal Report* **for the period of 18th August 2009 to 17th April 2010** on 20th April 2010. Whether it be political or administrative point of view, **the fire and security coordination for the said event is of great importance** such that the Commissioner of the CB **has to fully reflect the complainant's performance on his coordination work for the said event in his performance appraisal for the period of 18th August 2009 to 17th April 2010** in accordance with the *Fundamental Provisions of Statute of Leadership and Management, Provisions Supplementary to Statute of Leadership and Management* and the Order of Secretary for Security no. 42/SS/2009.

10. However, **the Commissioner failed to indicate in the complainant's *Leadership Performance Appraisal Report* on 20th April 2010 that he was irresponsible or his work was unsatisfactory in the fire and security coordination for the said event. On the contrary, the Commissioner of the CB specified that his work was satisfactory**.

11. Under the above circumstances, the Commissioner of the CB, however, indicated in the complainant's *Leadership Performance Appraisal Report* on 6th May 2011 and the Report no. 20/GAC/2011 that the complainant was irresponsible and his performance in the fire and security coordination for the said event was unsatisfactory. **Such act is clearly contradictory and unreasonable.**

12. It is worth stressing that the Commissioner of the CB has the duty to make an **opportune and accurate** report to the Secretary over the complainant's performance in accordance with Article 14 of *Fundamental Provisions of Statute of Leadership and Management,* Order of Secretary for Security no. 42/SS/99, Article 8 and Paragraph 3) of Article 16 (Leadership and management are obliged to notify the government all important issues of their departments appropriately and faithfully) of *Provisions Supplementary to Statute of Leadership and Management*.

13. **Assuming that the Commissioner had a true evaluation over the complainant's performance in the fire and security coordination for the said event in his *Leadership Performance Appraisal Report* (Report no. 20/GAC/2011) on 6th May 2011, such problems should rather be reflected in his performance appraisal on 20th April 2010. Otherwise, the act of the Commissioner is against the *Fundamental Provisions of Statute of Leadership and Management, Provisions Supplementary to Statute of Leadership and Management* and the stipulations and obligations as required in the Order of Secretary for Security no. 42/SS/2009. Objectively, there is an alleged violation of disciplines.**

14. As a matter of fact, the Commissioner's claim that "*…The complainant had excellent performance in the past and was a potential successor of the Commissioner. I hoped that his future wouldn't be ruined by this incident and therefore I still suggested the Secretary to reappoint the complainant.*" is hardly a justified explanation over the aforementioned

act. **Firstly, the fire and security coordination for the said event is of great importance, just as what the Commissioner pointed out in the Report no. 20/GAC/2011 datd 6th May 2011 that the event "involved the safety of the Chinese leaders" and "could not afford any mistake". Morever, if the Commissioner considers the event insignificant, why should he respecify it in Report no. 20/GAC/2011 dated 6th May 2011 and put it as one of the evidences to terminate the appiontment of the complainant who is the Deputy Commissioner?**

15. **In addition, whether the complainant is "a potential successor of the Commissioner", the Commissioner is obliged to notify the Secretary for Security the performance of the complainant legally, timely and faithfully. Shouldered with the duties to supervise and appoint leadership, the Secretary for Security possesses the terms of reference to know their actual work performance. Be it the Commissioner's preference, or his so-called potential successor, he should not selectively report his work.**

16. Moreover, **as mentioned previously, it is also necessary to analyse whether the Commissioner of the CB has sufficient evidence for his blame.**

17. In fact, **the statements given by the fire officers who participated in the said event show that the complainant did put his best efforts in the coordination work.**

18. Besides Operation Directive no. 13/CB/2009, concerned information of the case file showed that the complainant also compiled other operation directives or work guidelines. Except for Operation Directive no. 13/CB/2009, **no other operation directive or work guidelines were considered "too simple" or "infeasible".**

19. It is worth mentioning another Deputy Divisonal Officer of 1st class, R, compiled a document of "Problems over the fire and security coordination for the 10th anniversary of the SAR handover" on 20th January 2010 according to the instruction of the Commissioner, where various problems over the fire and security coordination about the celebration event along with the notes to concern in the future were pointed out. Nevertheless,

who should be responsible for the relevant problems was not made clear in the document. In addition, information reveals that except for the complainant, A, F, E, D and some others also served in the fire and security task force.

20. Under the above circumstances, among the various problems pointed out in the fire and security coordination of the said event, which part should the complainant be responsible for? The document can hardly give a specified answer.

21. Therefore, **there is temporarily no information supporting the Commissioner's blame on the complainant. Even if so, detailed record and analysis should exist, but the CCAC has not seen any.**

22. To conclude, **the act of the Commissioner to evaluate over the complainant's performance in the fire and security coordination for the said event in his *Leadership Performance Appraisal Report* (Report no. 20/GAC/2011) on 6th May 2011 is against the *Fundamental Provisions of Statute of Leadership and Management, Provisions Supplementary to Statute of Leadership and Management* and the Order of Secretary for Security no. 42/SS/2009. His act is contradictory, unjustifiable and unsupportive.**

* * *

II. The complainant disagreed with the Commissioner that he had to bear disciplinary and criminal liability for failing to report for duty after sick leave.

1. Article 76 of the *Internal Regulations of the Fire Services Bureau* stipulates that:

"1. All staff have to report for duty to their superiors under the following circumstances:

a) Entering the forces;

b) Upon promotion;

c) Alteration of status;

d) Resuming the original position upon completion of a task that lasts for over 48 hours;

e) Returning to work after leave of absence, annual leave, staying home to rest due to sickness, rehabilitation and discharge from hospital;

f) Upon completion of any kind of disciplinary action.

2. Reporting for duty is conducted in the following ways: 1) the Deputy Commissioner reporting for duty to the Commissioner (O Segundo Comandante, ao Comandante) (See P. 25 and P. 26 of Annex 6)."

2. Based on elementary analysis and current information, **the act that the complainant failing to report for duty to the Commissioner on the following day after sick leave on 12th April 2010 existed.**

3. There is no information supporting the complainant's claim that the Commissioner of the CB had verbally exempted him from reporting for duty to him.

4. Under the above circumstances, the act of the complainant is allegedly against Sub-paragraph e) of Paragraph 1 and Paragraph 2 of Article 76 of the *Internal Regulations of the Fire Services Bureau*.

5. In addition, the Commissioner of the CB stated, "*Some staff, noticing that there were some problems between the Commissioner and the complainant, showed their concern by asking the Commissioner what had happened. In a response to the above circumstances, the Commissioner disclosed the above incident to them, adding that he had not asked the complainant to bear disciplinary liability. He stressed that he merely told the colleagues about the complainant violating disciplinary liability, but he understood the situation after the complainant had made an apology. The Commissioner said that he had never mentioned anything related to criminal liability.*" (See P. 686)

6. Under the above circumstances and upon investigation, there is no concrete evidence to prove that the Commissioner had asked the complainant to bear criminal liability due to the fact that he failed to report for duty to him after sick leave.

7. Therefore, **the complaint is groundless.**

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III. The Commissioner had not only ordered some supervisory staff of the CB not to befriend the complainant, he even suggested them directly and impliedly that they should avoid any personal or work-related contact with him. Meanwhile, the complainant specified that the Commissioner defamed him in front of other supervisory staff.

(1) About the complaint

1. The complainant told the CCAC, "*The Commissioner had not only ordered some supervisory staff of the CB not to befriend the complainant, he even suggested them directly and impliedly that they should avoid any personal or work-related contact with him*". *In addition, "a considerable number of colleagues and supervisory staff rejected to submit to the Commissioner to pick on and boycott the complainant. Such acts led to unjustifiable deduction of points on grade of behaviour by the Commissioner that adversely affected their promotion chances. Some of them were even dispatched from original positions while some were not arranged any work to handle*." (See overleaf of P. 2 and P. 4)

2. The complainant told the CCAC, "*The Commissioner of the CB… kept defaming the complainant in front of other supervisory staff and colleagues by saying that he, who made a tie with the triad society, was bribed and corrupt*." (See P. 4)

3. In the written statement submitted by the complainant to the Judiciary and Disciplinary Board on 31st May 2011, "*Over the past year, the Commissioner picked on me and reduced me to a 'figurehead'. He even requested some supervisory staff and officials to alienate me, but most of*

them rejected such that their grade of behaviour were off and promotion chances were impaired." (See P. 99)

4. According to the minutes of the Judiciary and Disciplinary Board dated 13th June 2011 and the submission of the advisor of the Office of the Secretary for Security, the Board and the Office had never conducted any investigation or sought any proof over the above issue (See P. 2 to overleaf of P. 10 of Annex 1 and P. 12 to P. 14).

5. The complainant told the CCAC that the following persons, including **A**, **E**, **G**, **D**, **C**, **B**, **H** and **I** could help support the above accusations (See overleaf of P. 2, P. 4 and P. 14).

(2) Related statements

1. The above persons were invited to the CCAC to give a statement in order to prove whether the complainant's claim is true, as below:

Name	Statement
A	Since the Commissioner had a dispute with the complainant over the abovementioned annual leave incident, the Commissioner always told **A** the defects of the complainant at work; ... The most impressive one was the Commissioner once told **A** in the office that the complainant made a tie and went for meal with (…) in order to "obtain advantages". At the meal, (…) of the Public Security Police Force was also there. Considering that the words were too harsh, **A** thus told the complainant about the Commissioner's comments. According to **A**, the complainant had phoned the concerned official of the Public Security Police Force and told him/her what the Commssioner had said. Afterwards, the complainant explained to **A** that the situation was not as what the Commissioner had said and he was just having meal with his friend that did not involve (…) (See overleaf of P. 405).

E	Being reduced to a "figurehead", the complainant was very upset and confused. In order to console the complainant, **E** always talked in the phone and went for meal with him but, without knowing the reasons behind, the Commissioner knew about it and once specified to **E**, "You're such an accomplice! Are you overthrowing me?", "Do you think I'll hinder you from promoting (to Chief Fire Officer)?" He specified that **E** should not have any personal or work-related contact with the complainant. Meanwhile, he also explicitly requested **E** to clearly recognise the character of the complainant (See overleaf of P. 486). Having worked in the Technical Department for eight years, **E** served as the Acting Chief of the Department for many times but the Commisioner appointed **J**, who did not have relevant work experience and whose promotion (to the Chief Fire Officer) was later than **E**, to be the Chief of the Technical Department. Arrangement such as **D**, **C** and **G** being removed (who were originally directly subordinated to the Commissioner) from the Commissioner could reflect that the Commissioner intentionally boycotted the colleagues who befriended the complainant. The Commissioner had also told **E** that **H**, who had submitted the attendance document on behalf of the complainant, was considered "disloyal". Therefore, **H** was removed from the post of Coordinator of the Welfare Association even his/her term of office had not come to an end. Moreover, the Commissioner and **T** asked **E** not to give a high point on **H**'s grade of behaviour due to the incident of "submission of attendance document". In addition, **B**, **H**'s predecessor who had a good relationship with the complainant, was also removed from the post of Coordinator even his/her term of office had not come to an end (See P. 487). The Commissioner had told **E** that the complainant had started up a business with (…) of the Public Security Police Force, but had not given it in details (See P. 487).

	According to **G**, the complainant and **G** were both graduates from the Academy of Public Security Forces and were high school classmates and thus knew each other well. The Commissioner knew about it and had never requested **G** to boycott the complainant; maybe he knew "it was in vain". **G** added that when he/she served as the Chief of the Service Division, he/she had to report on work to the Commissioner one to one. According to **G**, the Commissioner, who got used to criticising senior officials as "being disqualified", "performing badly" or "being too young to serve as senior officials", never praised any of them. He also said that the complainant "should not be against him". Facing the above circumstances, **G** always kept silent and did not give his stance. Then, the Commissioner would stop after criticising for a while. However, he would be very delighted if any official echoed him, he would then continue talking for more than one or two hours. The colleagues described such circumstance as "broadcasting a video tape". The Commissioner would pick on/ criticise different staff at different time (See P. 471 and overleaf).
G	**G** stated that the Commissioner had done something to harm him/her due to his/her relationship with the complainant. When **G** served as the Chief of the Service Division, the Commissioner would evaluate his/her performace and **G** got 8.9 points for three consecutive years. The Commissioner explained that as (…) of the Academy of Public Security Forces got 8.8 points, G was given 8.9 points so that he would be given a priority to be promoted in the future (**G** said that the Commissioner reduced his grade of behaviour to 8.4 points in 2010). In addition, the Commissioner told **G** that **J**, who used to serve as the Chief of the Operation and Ambulance Division, got around 7 points for his/her grade of behaviour (**G** doubted the Commissioner should not disclose it to the others) and "would not be promoted". It was heard that J had nothing to do during his/her term of office (just like the present situation of **G**), but he/she was commended three to four times in a year and got 9 points in his/her grade of behaviour. He/she was even promoted from Deputy Chief Fire Officer to Chief Fire Officer and served as the Chief of the Technical Department by the end of the year. According to **G**, when he/she was dispatched to serve as the Chief of the Operation and Ambulance Division on the first working day last March, the Chief of the Operation Department told **G** that,

	according to the instruction of the Commissioner, it was not necessary for **G** to handle fire incidents (**G** thought that this arrangement violated the law because the Chief of the Operation and Ambulance Division was obliged to handle fire incidents in accordance with the law). As a matter of fact, apart from the gas explosion incident of Gold Dragon Hotel in NAPE (at that time the Commissioner and the Deputy Commissioner were also at the site, but **G** was notified at a later time [police offiers, judiciary police officers were also at the site for investigation], by the Divisional Officer of 1st class who served as the Commander of Areia Preta Fire Station that he/she had to go to the site according to the request of the Department Chief.), **G** had never participated in any fire incident and attended any external meetings. Moreover, he was never notified to attend any regular meeting convened by the Chief of the Operation Department (ranks of Division Chiefs and Divisional Officers of 1st class [Commander of Fire Station, a rank lower than **G**] had to attend the meeting.) In addition, **G**'s subordinates would directly report their regular work to the Department Chief such that **G** was also reduced to a "figurehead" (See overleaf of P. 471). As to whether the Commissioner of the CB had told G that the complainant made tie with (…), **G** said that he/she had never heard about this (See overleaf of P. 471).
D	**D** stated that the Commissioner had made use of his/her promotion chance to threaten him/her due to the fact that **D** had satisfied the qualification for promotion based on his/her resume (In fact, his/her overall grade was reduced to 8.4 points in 2010 even though he/she obtained a rating of "very satisfactory (*muito bom*)" in the past.) The Commissioner asked **D** to pay attention to his/her behaviour. Meanwhile, knowing that **D** was a close friend of the complainant, the Commissioner asked D to persuade the complainant to apologise, otherwise **D** him/herself had to leave the office. He also requested **D** not to agree with what the complainant did (See P. 481). (The CCAC staff asked **C** if the Commissioner of the CB had ordered him/her not to befriend the complainant and whether he suggested explicitly and impliedly that he/she should avoid any personal or work-related contact with the complainant).

C	**C** said yes to the above question and explained that it usually occured after **C** had reported his/her work to the Commissioner individually. The Commissioner had blamed the complainant for failing to report for duty to him when he was back from annual leave (**C** believed that relevant regulation did not apply to leadership). He also complained about the complainant performing badly in the fire and security coordination for the 10th anniversary handover celebration event (such as the ceiling was not clean enough because there was rubbish and the wire for fixing the Shenzhou rocket was not firm enough). The Commissioner had asked **C** about his/her stance to support the Commissioner or the complainant and told **C** explicitly to avoid having lunch with the complainant when he/she worked in the Headquarters in Sai Van Lake (when the complainant was still working in the Headquarters in Sai Van Lake, other colleagues and **C** used to dine out with the complainant) (See P. 477). In his/her reponse to the Commissioner about his/her stance, **C** explained that he/she took no position becasue he/she had no idea what had happened. Afterwards, other supervisory staff and **C** who had not given their stance to support the Commissioner had encountered an alteration of duties such as project (Hong Kong and Macao Interport Sports Competition) which was orignally assigned to the Chief of Fire Services Training School was assigned to another staff. Later on, **C** was even dispatched from the Fire Services Training School (the Chief of School had to directly report on work to leadership) to work under the Chief of the Operation Department of Taipa and Coloane so that **C** would not have any contact with the leadership. The grade of behaviour for **C** was reduced from 8.5-9.0 points to below 8.5 points. Staff who used to be given low points in their grade of behaviour were given high. Afterwards, the Commissioner had told other fire officials that C had joined (…) association, his prospect, as a result, would come to an end (See P. 477).

B	According to **B**, both the complainant and **B** had contact at work and had common hobbies (travelling, photo-taking, reading, jogging) privately, thus they were quite close [**B** claimed that the Commissioner did not like their subordinates to get along privately such as dining out or staying out of town. It was heard that some staff had planned to go travelling together but the Commissioner did not approve their annual leave in order to avoid them from "forming their own circles". After the complainant had dispatched from the Sai Van Lake Fire Station, **B** had to directly report on work to the Commissioner, who had complained about the complainant in front of **B** for a few times and requested **B** to give his/her stance on who was right. **B** rejected because according to law, militarised personnel could not comment their superiors. Knowing that **B** had a close relationship with the complainant, the Commissioner asked **B** after several complaints over the complainant, "Do you think it's worth being a friend of the complainant?" **B** replied it was true that they had a long-term work relationship along with some private common hobbies, but their personal life would not affect his/her performance at work. **B** said that he was the then Commander of Sai Van Lake Fire Station and the then "Coordinator of the Welfare Association" (the term of office was two years in principle). Upon giving his/her stance to the Commissioner, one day he/she was suddenly notified to be dispatched to serve as the Commander of Taipa Fire Station and was no longer "the Coordinator of the Welfare Association" (but the term of office had not come to an end). Afterwards, he was not given any "extra work". Later, **B** asked the Commissioner if he/she had done anything wrong such that he/she was given such an arrangement. The Commissioner denied, replying that he would like **B** to "take a rest" (**B** explained that his/her family indeed encountered some problems, but the Commander of every Fire Station had loads of work to handle and his/her workload was hardly lower upon dispatch to the Taipa Fire Station.) In addition, prior to the "complainant's incident", he/she got 8.5 points over his/her performance for seven to eight consecutive years (If the staff is at a present position for five years and gets 8.5 points or higher on the fifth year, he/she fulfils the fundamental qualification for promotion, otherwise he/she has to wait for six years in order to get promoted.) However, after the incident, **B** just got 8.4 points such that he/she

	could not be promoted. In a previous open occasion, the Commissioner had publicly said that three of the Divisional Officers of 1st class including B would be promoted. **B** also pointed that among them, there was another officer, who had also told the Commissioner that he/she would not avoid being closed with the complainant, was given the same "arrangment". For the remaining one, as he/she was not familiar with the complainant and thus had a chance to get promoted as scheduled (See P. 450 and overleaf).
H	**H** stated that due to the "attendance record" incident, his/her grade of behaviour was deducted dramatically (upon understanding the truth, **H** knew that instead of his/her fault; it was rather what he/she did was against the preference of the superior). **H** was deprived of duties (including the duty of the Coordinator of Welfare Association without being notified). He/she was then dispatched to other position. The Deputy Commissioner had mentioned that **H** was removed from the position becasue there was a loss of money of the Welfare Association. **H** explained that the association was a non-profitable association which gave benefits and it was normal to have a loss of money (See overleaf of P. 457). **H** also pointed that after the "attendance record" incident, he suffered from "bad luck" and was always picked on or treated unreasonably. For instance, the Welfare Association offered set meals (MOP21) and speical meals (steak with prawn at MOP80). Once the Commissioner served some guests (over a dozen guests) and specified to order angus beef. The procurement staff had bought some angus beef but the Commissioner said it was not the type he wanted and thus requested **H** to purchase one-inch top angus beef from Cheang X Kei Frozen Food situated in Supreme Flower City of Taipa. Wearing military uniform, H had to follow the instructions of the Commissioner to go with the procurement staff to pay in advance to purchase the food. However, the Commissioner even blamed **H** for not knowing how to do procurement and the prawns were too small. Another instance was when it was time for **H** to be promoted to Deputy Chief Fire Officer, the Commissioner expressed implicitly to him/her ... "You help him (referring to the complainant), then you're a friend of him and thus you will suffer (which means no job to be assigned to him/her)".

	If he/she kept on being a friend of the complainant, he/she would never be promoted. **H** said that what the Commissioner had done made him/her believe that he/she could not have any personal or work-related contact with the complainant, "Try not to be a friend of the complainant, othewise you will suffer" (See overleaf of P. 457 and P. 458).
I	**I** stated that after the annual leave incident, the Commissioner had told **I** that he knew the officials would dine out together and **I** was one of them. Understanding that **I** was too young and ignorant to be blamed, the Commissioner asked **I** not to do it again. In addition, the Commissioner also complained that the complainant was incapable or his work was imperfect. For example, the Commissioner said the complainant "was too young to be an official", "he was disqualified" and did not put his best efforts in the fire and security coordination for the 10th anniversary handover celebration event etc. (See overleaf of P. 443).

2. In the statement of the Commissioner given to the CCAC, he denied having told his staff not to befriend the complainant, such as not to recognise his work or to dine out with him. He stressed that he had never interfered their private gathering. In addition, the Commissioner denied to have warned his staff to avoid maintaining close relationship with the complainant or giving him assistance, otherwise their promotion or appraisal would be adversely affected. "*I just told the staff that they could make friends with the complainant, but friends should help each other. They could persuade the complainant to rectify his faults and handle things in a peaceful way,*" said the Commissioner (See overleaf of P. 686 and P. 687)

3. The Commissioner also denied that he had told his staff about the complainant making ties and going for meals with (…) in order to "obtain advantages". The Commissioner said, "***D*** *told me about the complainant interacting and dining out with* (…), *but I replied that relevant rumour had been heard*." (See P. 687)

(3) Analysis

1. Upon analysing the statements of various CB staff (incumbent ones or those who have left service), the following conclusions are drawn:

   1) At least four CB officers claimed that the Commissioner suggested explicitly and impliedly that they should avoid any personal or work-related contact with the complainant.

   2) At least three CB officers (including **A**, **E** and **D**) claimed that the Commissioner directly told them about the complainant making ties with the others to "obtain advantages" etc. In addition, according to a minimum of two CB officers, they heard from their colleagues that the Commissioner had such comment about the complainant.

   3) At least six CB officers stated that they were considered by the Commissioner to refuse boycotting the complainant or continue standing by the complainant, therefore they were deprived of chances to serve as supervisory staff, their grade of behaviour (appraisal grade) being deducted, their job duties being terminated and their normal promotion chances adversely affected. They were even reduced to "figureheads" etc.

2. Paragraph 1 of Article 11 of *Fundamental Provisions of Statute of Leadership and Management* provides that:

   "1. Leadership and management are subject to the general obligations and special obligations inherent in the relevant duties of personnel of public administration of the Macao SAR, without prejudice to any exclusive applications or special stipulations in the Statute."

3. Therefore, the Commissioner of the CB (*equivalent to the rank of Fire Commissioner*), being a militarised personnel, is also subject to the obligations of the *EMFSM*.

4. Undoubtedly, beside the *EMFSM*, the Commissioner of the CB, being the leadership, shall also abide by the obligations as stipulated in the *Fundamental Provisions of Statute of Leadership and Management, Provisions Supplementary to Statute of Leadership and Management* and *Code of Conduct of Leadership and Management – Obligations and*

Liabilities in Case of Violation published in Chief Executive Order No. 384/2010 of 27th December.

5. Sub-paragraph c) of Paragraph 2 of Article 7 of the *EMFSM* provides that:

"2. When fulfilling the obligation of impartiality, militarised personnel shall, in particular:

…

b) never seek profits or benefits by means of one's power, grade or position in one's authority and by means of one's superiors; never give pressure or take revenge over any acts or procedures;

c) be cautious and fair when requesting one's subordinates to carry out instructions, and never force them to perform illicit acts or carry out any acts that are beyond their scope of duties;

…".

6. Sub-paragraph d) and f) of Paragraph 2 of Article 11 of the *EMFSM* also stipulates that:

"2. When fulfilling the obligation of politeness, militarised personnel shall, in particular:

…

d) behave in a rational and prudent way, speak in a seemly manner and act in a firm and calm attitude;

…

*f) **treat one's subordinates politely and patiently, gain respect and affection of the subordinates by means of fair acts instead of by using force…"***

7. Sub-paragraph h) of Paragraph 2 of Article 12 of the *EMFSM* also stipulates that:

"2. When fulfilling the obligation of dignity, militarised personnel shall, in particular:

…

h) ***promote the harmony, unification and brotherhood among militarised personnel of the Macao Public Security Forces.****"*

8. Article 16 of the *Provisions Supplementary to Statute of Leadership and Management* stipulates that:

"Leadership and management shall fulfill the general obligations and the following special obligations of personnel of public administration, without prejudice to exemption and special stipulations under the Statute:

…

(2) To exercise relevant functions so as to ensure one's own acts and the acts of one's subordinates comply with applicable laws; ***and respect the personal protected rights and interests according to law;***

…".

Article 18 of the same law provides that:

"Under applicable laws, the Commissioner shall possess the following functions in human resources management of one's bureau, without prejudice to other functions conferred.

…

(3) To formulate measures in order to prevent acts of infringing upon the personal and occupational dignity of staff".

9. Point 2) of *Code of Conduct of Leadership and Management – Obligations and Liabilities in Case of Violation* clearly specifies that:

"Meanwhile, according to Article 16 of the above supplementary stipulations (Provisions Supplementary to Statute of Leadership and Management), leadership and management shall observe the law,

administrative regulations and other regulatory documents when executing one's functions. Leadership and management shall also treat one's subordinates in a just manner, in accord with one's mission to promote organisational reform according to law and foster good relationship building among personnel in order to enhance the overall effectiveness of the organisation."

10. **In this case, various incumbent CB staff claimed that the Commissioner suggested explicitly and impliedly to avoid any personal and work-related contact with the complainant. Apparently, it is such an "incautious and unfair" order that hardly promotes the harmony, unification and brotherhood among CB staff. In addition, such order is significantly beyond the justifiable "scope of duties" of the concerned staff, particularly involving their private life such as friends making and personal relationship among colleagues. Unless it involves a violation of law such as the authority's reputation will be ruined, otherwise it shall not be interfered by the Commissioner.**

11. **According to various CB staff whom the Commissioner exerted pressure on to boycott the complainant, their grade of behaviour (appraisal grade) or promotion chances were threatened to be reduced. Those who were close with the complainant claimed that they were deprived of chances to serve as supervisory staff, their grade of behaviour (appraisal grade) being deducted, their job duties being terminated and their normal promotion chances being adversely affected. They were even reduced to "figureheads". Such allegations show that the Commissioner has allegedly used his power and position improperly to pressure and unfairly treat his subordinates.**

12. **Finally, the above allegations review that there is not sufficient evidence on which the Commissioner can find to support his claims to the others that the complainant seeking improper benefits with other parties outside. Such act is considered improper use of words, violation of "obligation of politeness" and "obligation of dignity".**

13. There is yet another concern. **Despite the fact that the Commissioner denied the concerned statement and situation, considering from the perspective of empirical rule, only when the Commissioner had treated his subordinates unfairly or the operation and management**

of the bureau existed problems would various CB staff (a majority of them had even served as department chiefs) make allegations of alleged violation of disciplines by the Commissioner. Therefore, what the CB staff had specified is possibly a truth and there is also sign showing serious problems existing in the internal management of the CB.

* * *

IV. The Commissioner used his power to make the complainant not able to enjoy his planned annual leave in December 2010.

(1) About the complaint

1. The complainant told the CCAC, "Over the past two years, the Commissioner never used to approve the annual leave plan of the Deputy Commissioner according to law. Due to the fact that the Commissioner would take special leave in August 2010, the complainant arranged his leave during the period of 17th to 27th December 2010. Soon, he was notified by the Chief of Resource Management Department in August 2010 that the Commissioner intended to take his leave in December. However, the written statement of the Department Chief revealed that the above incident was a result of "the Commissioner using his powers" to pick on the complainant." (See overleaf of P. 2 and P.3).

(2) Related facts and statements

1. The Commissioner specified in *Leadership Performance Appraisal Report* no. 20/GAC/2011, "*The complainant applied to take his annual leave during the period of 21st June 2010 to 2nd July 2010 on 24th May 2010, but the usual practice is that leadership will first coordinate among themselves and reach an agreement prior to making leave application in order to avoid inconvenience to work. Without common understanding, the complainant, however, applied to take leave in a period that coincidentally overlapped mine. For the purposes to avoid conflict with the complainant whom I believed needed some time to take a rest, I approved his application so that he could enjoy his annual leave. Therefore, I particularly specified to*

the two Deputy Commissioners in June in advance that I would take my leave in December for the purpose of seeking medical consultation and the appointment with the doctor had been made. On 5th August 2010, the complainant, taking the reasons that he also intended to take his leave in December but that overlapped with the Commissioner's…" (See P. 17).

2. In the minutes written by Deputy Chief Fire Officer **J** of the CB on 5th August 2010, "…*Due to the heavy workload of the bureau in the second half of the year that includes business trips to Singapore and Beijing respectively in September and October along with security coordination work for the Grand Prix in November, the Commissioner can only enjoy his remaining annual leave in December. Without regard to his privacy, the Commissioner discloses that he has to go to the doctor and may need an operation in December. The above notice is issued to avoid misunderstanding*." (See overleaf of P. 79)

3. The complainant specified in the "written statement" submitted to the Judiciary and Disciplinary Board that, "*The annual leave incident described in the report is totally untrue. The fact is, being notified by Deputy Chief Fire Officer D that the Commissioner would take his annual leave in December on a day of June, I immediately replied that I had already reached a consensus with the Commissioner early that year that I would take annual leave during that period. (By the end of each year, the Commissioner would first select his annual leave, followed by me prior to the Resource Management Department compiling the annual leave plan where the secretary of the Commissioner could prove it.) Moreover, I had already made reservation on hotels that could not be refunded. I asked another colleague to remind this to the Commissioner, but the reply was the Commissioner did not give any permission to my annual leave in December*…" (See P. 96).

4. The complainant submitted to the CCAC a document – a written statement drafted by Chief Fire Officer D on 30th July 2010 with content below: "*On 30th July, I was ordered by the Commissioner to inform the two Deputy Commissioners that his annual leave would cover 13th to 30th December such that they had to coordinate during the said period and the period when the Grand Prix took place. I immediately passed the instructions to the Deputy Commissioners. Upon informing the complainant, he replied that, with common understanding, the Commissioner's leave would be*

arranged during New Year and in August while his would cover December to accompany his kid. He added that he had already reserved hotel rooms, but he knew there was nothing he could do but to select another period to avoid overlapping the Commissioner's. Then I told the Commissioner what the complainant had said. The Commissioner replied, 'I will no longer tolerate him! Indeed I have nowhere to go during that period; I just use my power intentionally.' (Another paragraph) *After listening to what the Commissioner had said, I found it disgusting and decided to make a written statement. Over the past half year, the Commissioner kept on picking on the complainant, defaming him in front of me and resuming his powers step by step… The Commissioner, who used to take annual leave secretly without early notice, would only inform our Department of his approved leave several days before the leave. However, he gave an early notice this time. I did not even notice it at the very beginning. In view of the fact that the Commissioner told me in person that he used his powers intentionally on the complainant, I found it disgusting and thus drafted a particular statement.*"(See P. 8, emphasis added)

5. When **D** was invited by the CCAC to give a statement, **D** confirmed to have written and signed the above document, adding that "*The document recorded what actually occurred at that time.*" (See P. 481)

6. In the statement given by the Commissioner to the CCAC, "*As I had to seek medical consultation in Hong Kong in December 2010 over his ophthalmic and nasal disease…"* (See P. 684)*, "On the agreement that the complainant's annual leave fell in late December 2010, the Commissioner, without disclosing that he would go for diagnosis, asked **D** to inform the complainant that he would take his leave during the same period. Afterwards, **D** replied that the complainant agreed to make amendment to his annual leave. The Commissioner denied that he had told **D** that he would no longer tolerate the complainant, and that he indeed had nowhere to go, but just used his power intentionally"*. The Commissioner also said, "*My problem of Sinusitis was improved by nasal irrigation and thus did not go to Hong Kong for consultation on schedule. I remembered that I just went for Ophthalmology consultation in Kiang Wu Hospital and the Hospital Conde de S. Januário by that period.*" (See overleaf of P. 686)

(3) Analysis

1. According to the above information, it can be assured that the complainant had gained the verbal authorisation of the Commissioner to take his annual leave in late December 2010. The Commissioner requested **D** to ask the complainant to make amendment to his annual leave on 30th July 2010 so that he could enjoy his leave in late December.

2. The Commissioner denied to have told **D** that he had to enjoy the annual leave in late December 2010 due to his illness. Meanwhile, he also denied that he used his power to make the complainant not able to enjoy his planned annual leave in December 2010. On the other hand, although the Commissioner said he originally planned to go for medical consultation on his ophthalmic and nasal disease in Hong Kong, his problems improved after nasal irrigation and thus gave up his plan for consultation in Hong Kong.

3. **Considering that D had recorded the Commissioner using his power to make the complainant not able to enjoy his planned annual leave in December 2010 on the day of the incident (30th July 2010), D's record is quite credible according to the empirical rule. According to D, the Commissioner would not leave Macao during that period. Such circumstance coincided with the situation that the Commissioner giving up his plan for diagnosis in Hong Kong.**

4. **Therefore, the complaint, as shown by strong and apparent sign, is valid and the act of the Commissioner is allegedly against Sub-paragraph c) of Paragraph 2 of Article 7, Sub-paragraph d) and f) of Paragraph 2 of Article 11 of the *EMFSM*, as well as Article 16 and Article 18 of the *Provisions Supplementary to Statute of Leadership and Management*.**

* * *

V. The Commissioner of the CB called a meeting of the supervisory staff to blame the complainant for carrying forward his annual leave from 2010.

(1) About the complaint

1. The complainant told the CCAC, "*The complainant thus applied to the Commissioner to carry forward his annual leave of December that has already been approved to the following year…The Commissioner merely read part of the complainant's application in the meeting convened by the Commissioner to the supervisory staff upon receipt of the complainant's application. The complainant felt that such act of the Commissioner would make the supervisory staff believe it was the whole story and that the complainant was intentionally bringing difficulties to the Commissioner. Therefore, the complainant requested the Commissioner to read the entire content of the application, but the commissioner rejected. Meanwhile, the complainant stated that there were other staff whose ranks were lower than him, the Commissioner should not blame him in front of other subordinates pursuant to law. The Commissioner asked Legal Advisor I who was also present at the meeting to give his/her comment regarding his act, the legal advisor replied that such act was against the law. Then the Commissioner immediately hindered the legal advisor from continuing to give comment. Afterwards, the Commissioner requested the legal advisor to write his/her legal opinions in another room, but he/she rejected because his request was violating the law. At last, the Commissioner gave an order of consent on the complainant's application*." (See P. 3)

(2) Related facts and statements

1. The complainant has also stated the same content in the "written statement" submitted to the Judiciary and Disciplinary Board on 31st May 2011. (See P.96 and overleaf)

2. The Commissioner of the CB stated in the *Leadership Performance Appraisal Report* No. 20/GAC/2011, "*Due to the complainant's planned annual leave of December overlapped the Commissioner's, he applied to bring forward his annual leave to the following year on 5th August of the same year (2010). I returned the application document to him because there was no signature on it. The complainant, who was at my office, became very emotional and talked to me very impolitely, 'You surely know you're playing tricks on me!' Then I explained to him that the document was not signed and thus was returned. He then realised he was wrong. I disclosed*

the above incident that occurred in the morning to the attended officials in the meeting of supervisory staff conducted in the afternoon for the purpose of discussing if such application was proper instead of disapproving his application of transfer of annual leave. If the complainant's attitude remained the same, it would be difficult to cooperate with him at work and it was not one's own matter. Then the complainant questioned me in an extremely impolite and arrogant attitude, stating that he would reserve the right to pursue the matter through legal channels. He completely disregarded the hierarchical relationship of military forces." (See overleaf of P. 17)

3. In addition, in the minutes written by Deputy Chief Fire Officer **J** of the CB on 5th August 2010, "*The Commissioner, who presided at the meeting, said that he would inform a matter and thus made the following notification to the attendees: 1. The complainant submitted to him a document without signature at 10:22am today requesting the approval of transfer of annual leave. The Commissioner returned it to him but he said unsatisfactorily, 'This is my right and you should approve it.' Then the Commissioner said, 'Look carefully, the document has not been signed.' The Commissioner immediately asked him 'Do you think I'm playing tricks on you?' The Deputy Commissioner replied, 'You surely know you're doing it!'* (Another paragraph) *2. The Commissioner stated that annual leave of the Command depended on actual work situation that was hardly fixed.* (Another paragraph) *3. …Afterwards, the Commissioner said due to the heavy workload of the bureau in the second half of the year that included business trips to Singapore and Beijing in September and October respectively along with security coordination work for the Grand Prix in November, the Commissioner could only enjoy his remaining annual leave in December. Without regard to his privacy, the Commissioner disclosed that he had to go to the doctor and might need an operation in December. The above notice was issued to avoid misunderstanding.* (Another paragraph) *The Commissioner said that the complainant should not lose his temper because of such incident and should change his attitude; otherwise he would consider if it was still appropriate for him to continue his duties."* (Another paragraph) *The complainant said with a very bad attitude, 'You're insulting me! I reserve the right to pursue the matter!' The complainant stated that the Commissioner should not do this in this occasion. However, the Commissioner specified that he was just giving a notice that annual leave should be taken in light of work*

arrangement and hoped to explain that (the complainant) had not signed the document. Meanwhile, (the complainant) should also assist in the Commissioner to carry out duties pursuant to Article 8 of the Organic Law of the CB. The Commissioner added that he could apologise to the complainant if he had any fault, but he did not want to make an argument in the meeting. (Another paragraph) *(The complainant) specified in his proposal that he took his leave based on his personal plan, adding that the Commissioner could read his document. Moreover, the complainant also said that he had already reserved air-tickets, but he had to make amendment to his annual leave because the Commissioner planned to take special leave. (The complainant) also explained that he was so careless that he forgot to sign the document.* (Another paragraph) *According to the Commissioner, despite the fact that the annual leave for the CB was yet to be approved, mutual trust should be sought among each other. Moreover, (the complainant) should understand that he benefited the most from a decade's training.* (Another paragraph) *Finally the Commissioner said that the relevant document could be sent to Legal Advisor **I**. He explained that his intention was to hope the colleagues avoid misunderstanding of the annual leave arrangement of December, adding that he was willing to apologise if the advisor found any problems*." (See overleaf of P. 79 and P. 80)

4. In the "written statement" submitted to the Judiciary and Disciplinary Board by the complainant on 31st May 2011, he stated that there were noticeable discrepancies between the content of the minutes and the actual situation of the day. "*Judging from the fact that the minutes was obviously modified and deleted, it was never sent to the attendees to sign for confirmation*." (See overleaf of P. 96)

5. According to the above minutes, the attendees of the meeting include the Commissioner, **S**, the complainant, **T**, **A**, **J**, **D**, **G**, **F**, **E**, **C** and **I**.

6. For the purpose of understanding what really occurred in the meeting, after hearing the statements of most of attendees, it was summarised as follows:

Name	Statement
T	**T** stated he/she had attended the meeting and remembered that nearly all of the supervisory staff had also joined it. According to the Commissioner of the CB, his annual leave of December 2010 overlapped the complainant's (who was the then Deputy Commissioner) that he planned to modify. Therefore, the Deputy Commissioner applied to carry forward his annual leave to 2011. Meanwhile, the Commissioner added that the complainant had not signed his application document. **T** said that the meeting was short and the Commissioner described the concerned incident calmly, but the Deputy Commissioner replied furiously. **T** said that he could not recall what the Deputy Commissioner had said during the meeting as it occurred long time ago (See overleaf of P. 232).
A	The attendees included all supervisory staff of the CB and Legal Advisor **I** etc. Once the meeting began, the Commissioner stated that the Deputy Commissioner had selected a period of annual leave overlapping the Commissioner's purposely. However, the complainant replied that he had selected the date in advance and had gained approval. The Commissioner added that, that morning, the complainant submitted to him a document that he requested him to sign, but he rejected. Then they had a fierce dispute and both were furious, but **A** said that he/she could not remember what they had said. Moreover, **A** remembered that the Commissioner had requested Legal Advisor **I** to voice his/her opinions in the meeting but **A** forgot what **I** had expressed (See overleaf of P. 403).
J	**J** stated that he/she was the then Chief of the Operation and Ambulance Division of Taipa and Coloane. The Commissioner informed the attendees that included supervisory staff and Legal Advisor **I** of an incident. The Commissioner said that, that morning, he received an annual leave application from the then Deputy Commissioner who requested him to sign it. (**J** added he/she had not read the document and thus had no idea what it was about.) However, the Commissioner explained and returned the unsigned application to the complainant. Afterwards, the Commissioner said that annual leave arrangement for

	leadership was subject to mutual coordination of work, adding that the Deputy Commissioner had to assist him in performing duties such that he had to coordinate with him over leave arrangement. Then, the complainant said he reserved the right to pursue the matter/complaint in a rude manner (**J** forgot the exact words the complainant had said.). Afterwards, what he said was also impolite. The Commissioner just kept sitting and stressed calmly that he just informed the attendees of the annual leave arangement, with a hope that they could understand the situation. The meeting lasted for around 15 to 20 minutes (See overleaf of P. 489).
D	**D** said that the Commissioner asked all the supervisory staff and clerk **J** to go to the meeting room before the complainant entering it. Once the meeting began, the Commissioner specified the wrongdoings of the complainant's duties such as failing to report for duty to the Commissioner after sick leave and the problem over annual leave application. The Commissioner stated that the complainant submitted to him an unsigned application document such that the Commissioner had to return it to him. The complainant, however, misunderstood that the Commissioner disapproved his application and thus said that he had the right for application and questioned why the document was returned. According to the Commissioner, the complainant said to him, "You surely know you're playing tricks on me!" The Commissioner thought his act was very impolite and believed that the complainant intentionally failed to report for duty to the Commissioner after sick leave. Then, the Commissioner said he would enjoy his special leave in August, go for business trips in September and October respectively while the Grand Prix took place in November. Thus he had to take his annual leave in December. Moreover, he was sick recently and might need to stay in hospital during that period and hence had no choice but to take his leave in December. After that, the complainant replied he did forget to sign the application document, but the act that the Commissioner blamed him in front of so many subordinates had violated the *EMFSM* and he would reserve the right to pursue the matter. For matter of transfer of annual leave, the complainant said that the truth was hardly like this. He explained that when he submitted the document to the Commissioner, the

	Commissioner immediately returned it to him and said, "Clean up your own mess." He added that there should be mutual respect between superiors and subordinates and superiors should not always be the "decision-makers". The complainant, who stated that he had never attempted the December leave against the Commissioner, requested the Commissioner to read the remaining content of his application, but he refused. Instead, the Commissioner asked Legal Advisor **I**, "Is there anything wrong with my act? If so, just say it! I'll admit it." I was embarrassed, but when he/she decided to reply, the Commissioner said, "Dismiss" (See overleaf of P. 479 and P. 480).
G	According to **G**, the Commissioner stated the complainant who was the then Deputy Commissioner applied to amend his annual leave". **G** said that he/she was not the concerned party and thus could not remember it well. He added that the Commissioner requested the attendees to give their opinions, but all of them were very confused. The complainant immediately made a response, "Sir, my annual leave matter should not be discussed in the meeting of supervisory staff!" The Commissioner said, "Why not? It's a discussion of your right and wrong!" The complainant replied, "Sir, you shouldn't criticise me in front of staff whose rank was lower than mine!" When asked by the Commissioner whether he could do it or not, the Legal Advisor who sat opposite to **G** was very embarrassed. **G** said all militarised personnel knew that a superior should not criticise another superior in front of other subordinates pursuant to *EMFSM*, and thus the Legal Advisor was very embarrassed. However, his/her expression showed that he/she did not agree with the act of the Commissioner and when he/she decided to reply, the Commissioner asked him/her to stop, saying "Ok! You don't need to answer!" The Commissioner then asked the complainant to leave the meeting room. **G** added that there was a routine internal meeting (usually referred to as "family meeting") held at the meeting room of the Command of the Sai Van Lake Fire Station at 10:00am every Friday where all supervisory staff who were directly subordinated to the Commissioner had to attend. Concerned staff over the matters discussed were also requested to attend. In the meeting, as long as the Commissioner was dissatisfied or the attendees could not answer his question (**G** said that sometimes the questions of the Commissioner were illogical.), the

	Commissioner would yell at them and get them out of the meeting room (The staff of the CB described themselves in this circumstance as "being a target without any reason"). Chief Fire Officer **S** (Because of this, **S** had had an argument with the Commissioner and the situation was so stiff that all the attendees were very embarrassed. At last **S** asked the Commissioner, 'Are you talking about business or personal matters?'), Chief Fire Officer **T**, Chief Fire Officer **U** and G had also been yelled at and got out of the meeting room by the Commissioner (See overleaf of P. 469 and P. 470).
F	Only when **F** attended the meeting did he/she realise it was about the "annual leave application matter" of the then Deputy Commissioner. According to **F**, once the meeting began, Commissioner notified the attendees "about a matter…how can I approve a document without signature" "in an ordinary tone" (F remembered that "the document" was put on the meeting table, but he/she was not sure.) The complainant immediately stood up, saying loudly, "…the Advisor will reserve the right to pursue the matter." The Commissioner then said, "Advisor, am I wrong?" Then it was very silent in the meeting room and the meeting was over. **F** believed that the two "left the meeting unpleasantly" and specified that he/she could not remember the details of the meeting (See overleaf of P. 494).
E	**E** specified that the meeting started at around 10:20am. **E**, who served as the Media and Public Relations Coordinator and was also obliged to assist in the Command, had to report on work to the Commissioner at 9:00am every morning during 2009-2010. In the course of reporting before the meeting, the Commissioner had told **E**, "That's supposed to be my holiday. Now he asks to have the period off. Does it mean I'm the one to stay at work?" E said that the annual leave plan of the Commissioner and that of the Deputy Commissioners (leadership) had never been publicised (It was publicised in 2012 and that was the first time after the handover) such that nobody knew when the Commissioner would take leave. The meeting started with the Commissioner holding a proposal submitted by the complainant. He said, "All of you know I take my annual leave every December. This year I am sick again and have to consult doctor in Hong Kong, but Deputy

	Commissioner wants to take leave in December as well, what do you think?" The complainant replied, "Sir, don't just say part of the story. You better make clear of the content of the proposal. Your document on hand is about me knowing you will take leave in December and thus I apply to carry forward my leave that is originally planned to take in December to the following year." After listening to what the complainant had said, the Commissioner blamed the complainant, saying, "You surely know I plan to take leave in December." (E added that the Commissioner started to throw a tantrum, become "irritated" and smack his hand down on the table.) The complainant said, "Sir, your tone and attitude of blame show no respect to me in front of so many subordinates! According to *ESFSM*, superiors and subordinates have to respect each other. As you don't respect me, I'll reserve the right to pursue the matter!" Then the Commissioner immediately asked Legal Advisor **I**, "Am I wrong?" When I started to reply, the Commissioner stopped him/her, adding that "If I have anything wrong, you can pursue the matter to me!" Afterwards, the meeting was over. (**E** pointed that the attendees were all astonished, adding that it was customary that the Commissioner and the longest serving Deputy Commissioner could not take leave at the same time. **E** had no idea why such a small problem could become so complicated and "uncoordinated" so that a meeting of supervisory staff had to be convened. **E** could not understand the purpose of the meeting because the complainant had already taken the initiative to give up his annual leave in December. He/she also thought that what the Commissioner had said did not comply with the truth.) (See overleaf of P. 485 and P.486)
C	**C** said that the meeting was held in the afternoon. As **C** was the then Chief of the Fire Services Training School and there was no supervisory staff superior to him and thus he/she had to attend the routine and special meetings. It was a special meeting that he/she had no idea what it was about. According to the Commissioner, the meeting was about the transfer of annual leave. At the beginning, the attendees did not understand what the Commissioner meant. Afterwards, they realised that the Commissioner specifying that the complainant had submitted to him an annual leave application document without signature. The Commissioner added that the annual leave of

	the complainant overlapped the Commissioner's (both were in December) after adjustment and thus the complainant could not enjoy his annual leave during that period. He blamed the complainant for not respecting him over the annual leave matter (C forgot the exact words used.) The complainant requested the Commissioner to read the entire content of his document, but the Commissioner rejected. The complainant said there should be mutual respect and the Commissioner should not discuss his wrongdoings in front of the subordinates pursuant to law. He said he would therefore reserve the right to pursue the matter. At once, the Commissioner asked Legal Advisor **I** to voice his/her opinion, but he/she did not give any comment. In fact, under the circumstances, no one "dared to speak". Then, the Commissioner said, "You don't need to answer!" The meeting lasted for at least half an hour. At the meeting, the Commissioner was quite furious while the complainant was quite calm (See overleaf of P. 474).
I	According to **I**, the Commissioner stated there was something wrong with his health and hence needed … to take annual leave. However, the complainant also applied to take leave during that period and thus there was a conflict. **I** pointed out that the Commissioner's tone was strong, claiming that the complainant had occupied his planned period of leave. However, the complainant replied that the Commissioner had just read part of the document instead of the entire content of the document. He requested the Commissioner to read the whole document, but the Commissioner rejected. **I** stated both argued against annual leave arrangement and whether the complainant had mentioned "You're playing tricks on me" in his office, along with the incident of transfer of annual leave. (The CCAC staff asked **I** if the complainant had specified the Commissioner should not blame him in front of other subordinates who also attended the meeting pursuant to law, and whether the Commissioner requested **I** to give his/her opinions regarding what the complainant had said. At that time, **I** had stated that such act was against the law, but the Commissioner hindered him/her from continuing to give comment.)

	I confirmed the above situation. In the meeting, he/she intended to say that there was some staff of rank lower than the Commissioner and the complainant, while one of them was just a Divisional Officer of 1st class. Hence it was inappropriate for them to have a dispute in front of their subordinates. However, **I** just had the chance to say "there was some staff of lower rank" and then the Commissioner stopped him/her (See overleaf of P. 422 and P. 443). According to **I**, on the day or the following day of the meeting, the Commissioner of the CB took a document recording what the Commissioner intended to say in the meeting and requested **I** to give his/her written legal opinions. The document was about the reason why the Commissioner had to take his annual leave (due to sickness). **I** stated the document was about the annual leave dispute between the Commissioner and the complainant instead of legal issues. Being a subordinate, **I** said that it was inappropriate for him/her to give opinions (See P. 443).

7. In the statement of the Commissioner of the CB given to the CCAC, "*The complainant had submitted to him an application document for annual leave transfer without signature that morning, hence he returned it to the complainant, who said to (the Commissioner) very impolitely, 'You're playing tricks on me! My application should be approved according to law!' Then the complainant left the office of (the Commissioner). Afterwards, (the Commissioner) knew from another colleague (he had forgotten who told him) of the Command that the complainant told the colleagues that his application for annual leave transfer was unreasonably rejected by the Commissioner. Therefore, the Commissioner decided to convene an urgent meeting that afternoon for the purpose of clarifying the fact, adding that he hoped to avoid misunderstanding that would affect cooperation. (The Commissioner) stated the complainant had not requested (the Commissioner) to read the content of the application and thus (the Commissioner) believed that it was not necessary. (The Commissioner) stressed that the complainant was very furious, adding that he smacked his hand down on the table, stood up and said he would reserve the right to pursue the matter. Then (the Commissioner) replied he could apologise*

if there was any misunderstanding, adding that he sought to clarify the matter in order to facilitate future cooperation in the meeting. Afterwards, (the Commissioner) asked the complainant to leave the meeting room." (See overleaf of P. 686)

(3) Analysis

1. It can be shown from the above information:

1) The complainant had submitted the Commissioner an annual leave transfer application document without signature, but the Commissioner returned it to him.

[The content of the annual leave application (Proposal No. 871/GAC/2010): "1. *According to my annual leave plan of this year, I will take my last period of annual leave during 17th – 27th December. 2. Since the Commissioner will take his special leave in August and my daughter will only have long holidays in December apart from in August, I have such arrangement for my leave so that I can accompany my daughter and stay out of town. 3. I received a notice from the Commissioner via Deputy Chief Fire Officer* ***D*** *who was the Acting Chief of Resource Management Department that the Commissioner would enjoy his annual leave in December. Therefore, I have to avoid taking leave during that period. 4. Hence, according to Point 2 of this proposal, if I cancel my annual leave plan in December, I will lose the purpose and meaning of accompanying my daughter during her holidays to stay out of town. According to Paragraph 4 of Article 83 of Statute of Personnel of the Public Administration of Macao, I hereby suggest your Excellency the Commissioner to carry forward four days of my annual leave to the following year so that I am able to accompany my daughter to stay out of town to enjoy holidays. 5. Submit to the superior for consideration and giving an Order.*" (See P. 9 and P. 10)]

2) The Commissioner knew from another colleague (he had forgotten who told him) of the Command that the complainant told the colleagues that his application for annual leave transfer was unreasonably rejected by the Commissioner. Therefore, the Commissioner convened a meeting for supervisory staff to clarify the concerned matter.

3) According to the complainant, the Commissioner pointed in the meeting that he had met the complainant alone after receiving the concerned proposal where he returned the proposal to the complainant because it was not yet signed. Then the Commissioner stated that the complainant was impolite and even said to the Commissioner, *"You surely know you're playing tricks on me!"*

4) According to five fire officers who attended the meeting, the message they got was the Commissioner could only enjoy his annual leave in December because of demand of work, but it happened that the complainant also planned to take his leave in December which meant their annual leave overlapped.

5) On the other hand, the complainant stated what the Commissioner said was not true. The fact was when he made his application, the Commissioner immediately returned to him the document, stating, "*Clean up your own mess*". Besides, the complainant requested the Commissioner to read the entire document because the Commissioner just read part of the story, but the Commissioner rejected.

6) The complainant believed that the act of the Commissioner to blame the complainant in front of various staff of lower rank was against the *ESFSM*.

7) The Commissioner had requested Legal Advisor **I** who was also at the meeting to give his/her opinions. **I** intended to say that it was inappropriate for the two to have a dispute in front of their subordinates, but **I** just had the chance to state, "*There were some staff of lower rank*", and then the Commissioner stopped him/her.

8) However, there was not a proper conclusion regarding the attitude and tone of the Commissioner and the complainant in the meeting because the attendees made different statements. Some stated that the Commissioner was calm while the complainant was furious, but some said it was vice versa. Others said both were furious.

2. **Two core problems** can be summarised in this complaint: **1) The complainant pointed out that the Commissioner had not read the whole application document of annual leave transfer such that some supervisory staff believed the complainant intentionally brought**

difficulties to the Commissioner. 2) The complainant believed that the act of the Commissioner to blame him in front of other subordinates violated the *ESFSM*.

The complainant pointed out that the Commissioner had not read the whole application document of annual leave transfer such that some supervisory staff believed the complainant intentionally brought difficulties to the Commissioner.

3. Firstly, regarding core problem 1), the complainant **mainly expressed in his application of annual leave transfer that he had previously arranged to take leave from 17th to 27th December. Notified by the Commissioner that he would enjoy his annual leave in December, the complainant thus made amendment to carry forward his annual leave to the following year.**

4. **According to the information on hand, the Commissioner had not read the entire application document of annual leave transfer of the complainant in the meeting. In addition, the Commissioner had not clearly indicated that the document was an application of annual leave transfer. In the meeting, the commissioner explained that he could only enjoy his annual leave in December because of demand of work, but it happened that the complainant also planned to take his leave in December, which meant their leave overlapped.**

5. **It is worth stressing that even the minutes (See overleaf of P. 79 and P. 80) of the meeting had not recorded the document submitted by the complainant was an application of annual leave transfer. Instead it just mentioned the complainant made amendment to his annual leave.**

6. **Under the above circumstances, information objectively shows that the Commissioner of the CB had not clearly indicated to the attendees that the complainant had submitted an application of annual leave transfer for carrying forward his leave to the following year. Instead, the attendees misunderstood that the complainant intentionally made amendment to the period of his annual leave in order to overlap the Commissioner's.**

7. **Under the said circumstances, what the Commissioner presented in the meeting is unfair to the complainant.**

The complainant believed that the act of the Commissioner to blame him in front of other subordinates violated the *ESFSM*.

8. On the other hand, the current *ESFSM* has not clearly stipulated that when a superior blamed his/her subordinates, subordinates or staff of lower rank of the said subordinates should not be at the site.

9. Therefore, **the complainant claimed that the act of the Commissioner to blame him in front of other subordinates violated the *ESFSM* is invalid.**

10. Lastly, it is worth noting that according to Sub-paragraph c) of Article 194 of the *ESFSM*, ("*The fundamental principles of disciplines are: …… c) With regards to the relationship with the subordinates, the superiors shall act as role models and establish a relation of mutual respect……*") At the time when the Commissioner returned to the complainant the document of his annual leave transfer, only the two were at the site and thus the CCAC was not able to judge whether the complainant was impolite after investigation because the two insisted on their own statements. Therefore, **with regards to the Commissioner claiming that the complainant was "impolite" and even said, "You surely know that you're playing tricks on me" in the meeting, the CCAC lacked the conditions to determine whether it was "true" or just the Commissioner "defaming" the complainant.**

11. **Meanwhile, due to the attendees giving different statements regarding the tone and attitude of the Commissioner and the complainant in the meeting, the CCAC is not able to judge whether the Commissioner has showed no respect to the complainant or vice versa.**

However, it is ascertained that being the leadership of the CB, it sounds too ridiculous to have handled the annual leave incident in such a way! In case facing an enormous decision, how will the consequence be? It is unimaginable! This further proves that management problems are prevalent in the CB.

* * *

VI. <u>The complainant considered that it was necessary for the Commissioner of the CB to approve his 2011 annual leave plan and published it on the functional order pursuant to law, but the Commissioner failed to do so.</u>

1. As for whether it is necessary to publish the annual leave plan on Functional Order, the CCAC sent a letter to the CB on 29th November 2011 (See P. 230).

2. In the reply of the CB to the CCAC on 9th December 2011, "…*there is no need for our bureau to publish the annual leave plan on the Functional Order of the CB every year. However, after all ranks of staff have filled out the special forms (Format 8) 'Application form for absence and holidays' approved by Order no. 65/GM/99 and have received approval, our bureau will publish it on the Functional Order in accordance with Paragraph 3 of Article 31 of the EMFSM and Paragraph 4 of Article 72 of the Internal Regulations of the Fire Services Bureau. The CB has always abided by the stipulations above*." (See P. 241)

3. Upon preliminary analysis, the CCAC explained that there is not such a stipulation in the *Statute of Personnel of the Public Administration of Macao*[42] and the *EMFSM*[43]. Similar stipulation is neither stated in the *Internal Regulations of the Fire Services Bureau*.

4. On the other hand, according to the information on hand, the Commissioner of the CB already approved the annual leave plan of the complainant on 1st March 2011 and the then Chief of Resource Management Department had notified the complainant verbally (the complainant has not denied it).

5. **<u>Based on the above information, there is no proof to support the complainant on the validity of the complaint.</u>**

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[42] Paragraph 5 of Article 80 of the *Statute of Personnel of the Public Administration of Macao stipulates, "5. Department leadership shall give order to publish a table stating the amount of annual leave to which each personnel shall be entitled in respect of the year no later than 15th January every year."* Paragraph 5 of Article 80 also stipulates, *"5. Department leadership shall approve the annual leave plan no later than 1st March each year and notify the personnel immediately.*" Therefore, there is no stipulation to publish the annual leave plan in the *Statute of Personnel of the Public Administration of Macao*.

[43] In fact, Paragraph 3 of Article 31 of the *EMFSM* stipulates, "*3. Annual leave and holidays shall be published on the Functional Order of all forces of Public Security Forces of Macao at which militarised staff provide service*." However, there is no stipulation to publish the annual leave plan on the Functional Order.

* * *

VII. <u>Upon dispatching to the Central Fire Station, the complainant had no access to any work-related information.</u>

(1) About the complaint

1. The complainant told the CCAC, "The complainant was dispatched to a workplace inside a "deserted" building of the Central Fire Station since September 2010 and his power vested by the Secretary was suspended." Besides, he felt that he was isolated from receiving information unreasonably because he was never notified on any internal circular documents or documents from other departments, such as activity invitation letters from the Public Administration and Civil Service Bureau and the Office of the Chief Executive, and even notices and circular documents of the Fire Services Welfare Association etc.

(2) Relevant statements

1. Considering that the secretary to the Commissioner could give evidence, the CCAC thus invited him/her to the CCAC to give a statement.

2. **O** declared to the CCAC, "(The CCAC staff asked **O** if there were any documents that should be given to leadership were not handed to the complainant but just handed to **S** when the complainant still served as the Deputy Commissioner.) **O** said that he/she remembered it did happen. However, he/she added that sometimes after the Commissioner had examined the documents, he would not specify to which Deputy Commissioner the documents should be handed to. Then **O** would hand the documents to the concerned Deputy Commissioner according to usual practice, such as documents related to activities held by the Fire Services Welfare Association." On the other hand, there were cases that the Commissioner would specify some documents to be handed to Deputy Commissioner **S** only. **O** remembered that those documents involved operations of the CB and explained that such act was due to the respective duties responsible by the Deputy Commissioners. As for some unimportant documents, he/she added, the Commissioner would give instructions to directly archive them (such as some information regarding foreign

embassy). Under these circumstances, the documents would not be sent to the two Deputy Commissioners. **O** said that when the complainant still served as the Deputy Commissioner, the documents would be sent by the messengers to the complainant as his workplace was in the Central Fire Station." (See overleaf of P. 525 and P. 526)

3. Besides, **O** said the following when giving a statement, "**O** stated that, when the complainant served as the Acting Commissioner, the Commissioner would instruct **O** to report to him directly or to Deputy Commissioner **S** when there were problems related to work commencing from late 2010. **O** also said that he/she would hand the documents to Deputy Commissioner **S** instead of the complainant for examination as his office was in the Central Fire Station which was far away from the Headquarters in Sai Van Lake when the complainant served as the Acting Commissioner." (See P. 526)

(3) Analysis

1. According to the statement, the Commissioner of the CB sometimes did hand some leadership documents to Deputy Commissioner **S** only and would not pass them to the complainant. Such documents involved operation of the CB. As for general documents that were not specified to be handed to which Deputy Commissioner such as documents relevant to activities held by the Fire Services Welfare Association, the secretary to the Commissioner **O** would send them to the complainant.

2. **According to Subparagraph (6) of Article 17 of *Fundamental Provisions of Statute of Leadership and Management*, the Commissioner of the CB is obliged to administration of human resources, financial resources, materials and asset resources.**

3. **Therefore, the Commissioner of the CB has the power to decide to which Deputy Commissioner the documents related to operation of the CB shall be handed.**

4. **Moreover, information shows that the Commissioner of the CB suspended the power of the complainant vested through Order No. 6/CB/2010 of 31st March by Order No. 18/CB/2010 on 15th September**

2010. Under this circumstance, there is no sign of malpractice of the Commissioner of the CB for not handing the documents related to operations of the CB to the complainant.

5. **To conclude, there is no sign that the complaint is valid.**

* * *

VIII. In his order, the Commissioner of the CB ordered that the complainant carry out study of the work of the CB and submit a report on it, requiring that confidentiality be maintained and no assistance be sought from others.

(1) About the complaint

1. The complainant stated to the CCAC, "*In his order, the Commissioner of the CB ordered that the complainant carry out study of the work of the CB and submit him a report on it, requiring that confidentiality be maintained and no assistance be sought from others*." (See overleaf of P. 3)

(2) Related facts and statements

1. Information shows that the Commissioner of the CB issued Order No. 18/CB/2010 and 19/CB/2010 on 15th September 2010 and 24th September 2010 respectively and stated in the former, "*I ordered the Deputy Commissioner (the complainant who was equivalent to the rank of Deputy Fire Commissioner) to carry out the study and analysis of the internal operation of the bureau and then make a report and work plan individually and confidentially. He shall report and render suggestions in light of the actual situation to accord with the new government policy of the SAR*." (See P. 81)

2. As for the content of the above Order, the advisor to the Office of the Secretary for Security stated in its Opinion, "…*after analysis of the above Order, the content of work is considered too rough and vague. Strictly speaking, the request of 'reporting and rendering suggestions in light of the actual situation' implies that the Deputy Commissioner himself can determine whether to report and render suggestions in light of the actual*

situation. In other words, relevant decision shall be made by the Deputy Commissioner (the complainant) and it is his discretion to make opportune judgment. (Another paragraph) *The CB is responsible for a wide range of internal work including fire fighting, rescue, logistics support, human resources, finance, resource management, among the others, and thus it seems ineffective to conduct the work in confidence since detailed study and analysis have to be conducted before making macro and in-depth study, analysis and formulating a report or plan. In addition, hardware like office facilities and software like support at work are two separate issues. If what the Deputy Commissioner (the complainant) has complained including unable to receiving information and participating in meetings is true, it is just an empty talk to execute Order No. 18/CB/2010. …Given the above, the blame on failing to submit the report and work plan according to Order No. 18/CB/2010 issued by the Commissioner shall not be simply laid on the Deputy Commissioner and it shall not constitute a sufficient reason for terminating the Deputy Commissioner's (the complainant's) appointment (fixed-term appointment).*" (See overleaf of P. 6 of Annex 1 and P. 7)"

3. In other words, the advisor to the Secretary for Security also believes that the content of the above Order issued by the Commissioner of the CB is too rough and the work is irrelevant to be carried out "in confidence".

4. In the statement of the Commissioner of the CB given to the CCAC, he stated, "What the Deputy Commissioner was requested to carry out was to formulate the annual report of the CB and the work plan of the following year. (The Commissioner) explained that it was a routine project that the complainant had worked on before, but it was afterwards carried out by two to three staff of the Command and led by the Deputy Chief Fire Officer of the Command. The work was requested to be carried out in confidence because the complainant might suggest some forward-looking work which was yet to be carried out or was at the stage of studying. Therefore, it should be kept confidential." "(The Commissioner) explained if the complainant needed any information or support, he could request staff of the Command for assistance. (The Commissioner) had never hampered the complainant from seeking assistance from the staff of the Command Department over the relevant work. It was just the complainant who had not made any relevant request." (See overleaf of P. 684 and P. 685)

5. In addition, when asked by the CCAC whether the transfer of the complainant to the Central Fire Station will affect him from carrying out research and analysis as well as formulating report and work plan, particularly in seeking assistance from staff of the Command, the Commissioner replied, "*Due to the avian flu drill (lasting for three days to one week), some colleagues of the Command also worked in the Central Fire Station. Upon completion of the drill, relevant personnel went back to the Sai Van Lake Headquarters. The complainant had served as an official for so many years that he could reflect (to the Commissioner) in writing if he encountered any difficulties and problems in performing his work. However, he had not contacted (the Commissioner) or reflected his need.*" (See P. 685)

(3) Analysis

1. In fact, **the CB carries out many functions. Judging from the content of the Order of the Commissioner, it is objectively unable to identify what work the complainant should be in charge of.**

2. In addition, from the content of the Order of the Commissioner that the complainant has to "*carry out study and analysis of the internal operation of the bureau individually and confidentially*", apparently, it can be implied that relevant work can only be carried out by the complainant himself without disclosure to the others.

3. The complainant stated in the written statement to the Judiciary and Disciplinary Board, "*Our bureau has long set up various task forces to follow up the study mentioned in the above Order a few years ago and they will submit reports to the Command regularly. Before I was reduced to a figurehead, I was the leader of many task forces. Due to the content involves different departments of our bureau, it is necessary for relevant supervisory staff and official representatives to join hands to conduct the study, render suggestions and provide the latest information.*" (See P. 95)

4. In fact, information from the CB reveals that the Commissioner of the CB had established a special task force to make analysis and study of the attendance system along with the guidelines of accessing different Fire Stations (See P. 17 and overleaf and P. 48 of Annex 8).

5. Under the above circumstances, **there is objectively no reasonable ground to support the Commissioner of the CB to request the complainant to be "solely responsible" for the entire study and analysis of the internal operations of the CB.**

6. Moreover, relevant study involves all duties of the CB. Therefore, it is necessary for the complainant to communicate and discuss with staff of different subunits when carrying out relevant study and analysis of it so as to understand the actual situation of relevant work. It is objectively very justifiable. How can a researcher do a research "behind a closed door" without knowing the actual situation? How can the research and result of analysis be operational?

7. However, the Commissioner requested the complainant to carry out study and analysis of the work "individually and confidentially". Such request is significantly contradictory to the nature of the appointed work. **Justifiable ground to support the work is also not seen.**

8. **On the other hand, what comes to our attention is judging from the Commissioner's Order, it is objectively unable to conclude the work refers to the routine annual report and work plan of the following year.**

9. **In fact, if the Commissioner intends to appoint the complainant to be in charge of the routine annual report and work plan of the following year, he can and should specify it in the Order.**

10. In addition, judging from the content of the Commissioner's Order – "carrying out study and analysis of the internal operation of our bureau individually and confidentially", **it is objectively believed that only the complainant himself shall carry out relevant work and he shall not disclose it to any other. Such implication contradicts to the Commissioner's claim that the complainant can seek assistance from the staff of the Command.**

11. **Therefore, the Commissioner has failed to convey his work instructions properly through his Order that the complainant taking charge of the routine annual report and work plan of the following year in a condition that he can seek assistance from the staff of the Command.**

12. Finally, with regards to the "*termination of the Order of the Commissioner of the CB No. 6/CB/2010 about the delegation and sub-delegation of authority to the Deputy Commissioner (the complainant) as published in Series II, No. 13 of the Official Gazette of the Macao SAR dated 31st March 2010" as stated in the Commissioner's Order No. 18/CB/2010*, it is worth noting that an advisor to the Office of the Secretary of Security specified that there is an existence of substantial defect and defect in form. It is because "*The delegation of power to the Commissioner of the CB originates from the Order of the Secretary for Security No. 154/2009; whilst Paragraph 2 of this Order stipulates that the Commissioner shall delegate his power to the Deputy Commissioner or personnel who bear supervisory functions by way of issuing an Order; subject to the ratification of the Secretary for Security and publication on the Official Gazette of the Macao SAR. Order of the Commissioner of the CB No. 6/CB/2010 was issued in accordance with Paragraph 2 of Order of the Secretary for Security No. 154/2009 and was published on the Official Gazette of the Macao SAR. However, the Commissioner altered the sub-delegated power that was ratified by the Secretary for Security through Order no. 18/CB/2010 without presenting it to the Secretary for Security for ratification and publishing it on the Official Gazette of the Macao SAR. Therefore, there is an existence of substantial defect and defect in form in Order no. 18/CB/2010* " (See P. 7 and overleaf of the Annex)

* * *

IX. The Commissioner violated the law by ordering the complainant to follow the normal and fixed working hours

(1) About the complaint

1. The complainant revealed to the CCAC that: "*The Commissioner ordered the complainant to follow the normal and fixed working hours by means of an Order. However, in accordance with Law no. 15/2009, there is no fixed working hour for personnel of leadership and chiefs. Therefore, the order of the Commissioner is suspected of a violation of the law.*" (See overleaf of P. 3).

(2) Related facts and statements

1. The Commissioner of the CB expressed in his response to the CCAC dated 9th December 2011 that: "*(...) the staff attendance management of the CB is a comprehensive management regime, which is applicable to all work locations and all staff of the CB (including militarised and non-militarised personnel).* (Another paragraph) *Before the return of Macao to China, when I took over the duties as the Commissioner, I had already noticed the problems existed in attendance management of staff. Given its serious impact on the operation of the department, immediate corrections were imposed. Since then, staffs of all levels were requested to start and finish their services on time in accordance with the schedule defined for the corresponding type of work. Later on, it was decided to sign in and out for record of attendance. On 24th January 2003, the "Guidelines on taking attendance by signing the registration book" was issued (...), to stipulate the attendance management of personnel who are not subject to the system of shift work. Subsequently, on 5th October 2005, "Guidelines on defining various working hours (for militarised personnel)" (...), to further affirm the working hours of militarized personnel, which includes all militarised personnel of the CB. Afterwards, the CB had sequentially issued the "Guidelines on defining various working hours (for non-militarised personnel)" in May 2006 (...). The attendance guidelines of our Bureau are applicable to all staff, including leadership and chiefs; they should abide by the guidelines and sign in and out on the registration book based on their defined working hours. (...)* (Another paragraph) *In 2010, an official of the leadership needed to change the workplace temporarily, given the situation; I have made an order as well to remind the said official to continue to fulfil the relevant obligations.* (Another paragraph) *The reason for our Bureau to formulate the above mentioned guidelines is merely to fulfil the monitoring obligation stipulated in Paragraph 2 of Article 12 of Law no. 15/2009, Paragraph 7 of Article 18 of Administrative Regulation no. 26/2009 "Provisions Supplementary to Statute of Leadership and Management", as well as Article 79 of the "Statute of Personnel of Public Administration of Macao", ensuring the compliance with the obligation of assiduity and observe the normal working hours by all staff. Therefore, we need to stress that the above general requirements do not prejudice against the provisions concerning the exemption of fixed working hours of leadership and chiefs due to justifiable reasons such as the need of work.* (See P. 241 to 243).

2. In order to prove the facts presented by the Commissioner, the CCAC on one hand requested the CB to provide the copies of the sign in and out record of the leadership and chiefs during the period between January 2010 to December 2011, including copies of written record of leaving the workplace during the work period if there was any (see P. 399); on the other hand, the CCAC sought clarification concerning the matters of attendance management and signing of registration from the leadership personnel when they came to the CCAC to provide statements.

3. First, according to the sign in and out records provided by the CB (See P. 421 and Annexes 11 to 21), the Deputy Commissioner and all the leadership personnel of the CB have started and finished their services and signed in and out based on the normal office hours. Moreover, prior to being transferred to work at the Central Fire Station, the complainant has been carrying out the same practice (serving normal office hours and signing in and out).

4. **In addition, during the time when the chiefs of the CB made statements to the CCAC (See P. 233, overleaf of P. 403, 404, 470, 475, 480, 486, 490 and overleaf of P. 494), all of them expressed that they were subject to the fulfilment of normal working hours and signed in and out.**

(3) Analysis

1. It is pointed out in the opinion report made by the adviser to the Office of the Secretary for Security that: "*With reference to Article 12 of Law no. 15/2009 Fundamental Provisions of Statute of Leadership and Management, (Note: Former regime was established in Article 7 of Decree Law no. 85/89/M of 21st December, the content is the same as the current regime), there is no fixed working hours for the leadership and chiefs, however, this does not mean that they are exempted from observing the obligation of assiduity, rather it mainly reflects that when such personnel is requested for compulsory attendance at services, they will not be compensated for overtime work.* (Another paragraph) *The Commissioner of the CB, for the need of monitoring and supervision of the staff, deems necessary to take measures, including the request of signing in and out by all staff. Indeed the Commissioner is entitled to oversee the attendance of the employees, but I have reservations with regard to impose such supervision on other*

leadership and chiefs since it is in conflict with the special provision of Article 12 of Law no. 15/2009. In fact, the performance of the leadership and chiefs should be evaluated not merely by their punctuality; more consideration should be given to their dedication and zeal in performing their duties, particularly when the personnel concerned is exempt from fixed working hours." (See overleaf of P. 5).

2. While respecting the opinions mentioned above, the CCAC deems that in accordance with the stipulations of Paragraph 1 of Article 12 of the *Fundamental Provisions of Statute of Leadership and Management (1. There is no fixed office hours for the leadership and chiefs, they will not be compensated for overtime work*), Paragraph 1 of Article 78 of the *Statute of Personnel of the Public Administration of Macao* and Order no 21/GM/95, even though in principle the leadership and chiefs are exempt from following the normal working hours for their services, however, when considers also the provision of Paragraph 2 of Article 12 of the *Fundamental Provisions of Statute of Leadership and Management:* "***2. The term no fixed office hours as described in the preceding Paragraph refers to the flexibility of requesting the leadership and chiefs to report to their duties at any time*** *and they shall observe the general obligation of assiduity and the normal hours of work*." (Emphasis added). In other words, within the government department, the competent leadership (such as the Commissioner), under the prerequisite of **sensible reason, may request the subordinate leadership (such as Deputy Commissioner) or chiefs to report to their duties based on normal office hours.**

3. Thus, in this case, under the provisions of Subparagraph 1) of Paragraph 2 of Article 7 of Administrative Regulation no. 24/2001 of 22nd October *Organisation and Operation of the Fire Services Bureau*, Subparagraphs 5) and 6) of Article 17 and Subparagraph 7) of Article 18 of the *Provisions Supplementary to Statute of Leadership and Management*, **the Commissioner of the CB has the authority to request the complainant to observe the normal office hours and sign in and out.**

4. Certainly, **for the Commissioner of the CB, when making such decision, there must be a sensible reason and free from being "injustice" and "malicious", or else it will constitute a violation of "principle of equality" and "principle of good faith" embodied in Articles 5 and 8 of the *Code of Administrative Procedure* respectively.**

5. It could be seen from the above data, especially the sign in and out record provided by the CB and the statements of the related personnel, indicating that the leadership and chiefs have to abide by its internal guidelines and sign in and out at normal working hours.

6. In other words, the existence of the violation of "principle of equality" and "principle of good faith" has not yet been found.

7. **In the above circumstances, this complaint is not substantiated at this stage.**

* * *

X. The Commissioner purposely picked on the complainant and ordered the guard at the Central Fire Station to record the time-in and time-out of the complainant

(1) About the complaint

1. The complainant expressed to the CCAC that: "*(...) The complainant found out from what was said among the colleagues afterwards that starting from the first day of his work in the Central Fire Station, the Duty Officer (commonly called the guard) of the Fire Station received an order from the superior to proceed with daily registration of the hours of entry and exit of the complainant and submit the records to the superior everyday. However, according to the attendance guidance of the CB, it is not necessary for the guard to register the hours of entry and exit of those personnel of the CB who are subject to normal business hours since the attendance of the respective staff is monitored by the superior through means of signing the registration book. According to the knowledge of the complainant, in general, the guard would only proceed with registration under the following situations: departure of staff for personal reasons, departure of staff using the vehicle of the CB for the provision of external services, entry of visitors into the area of the CB, entry of staff of the CB who did not serve in the Central Fire Station, or entry of staff to the workplace during vacation. He added that according to the attendance guidance, it is not necessary for the guard to register the entry and exits of those personnel with ranking equivalent or superior than the division*

level. Therefore, the complainant thought that he was being 'picked on' by the Commissioner by adopting such measure." (See overleaf of P. 3).

2. The complainant also reported the following: "*On the other hand, when the complainant ceased serving as the Deputy Commissioner on 1st September 2011, the superior changed the order and requested the guard to proceed with the registration of the time-in and time-out of all staff subject to normal business hours. However, given the large number of staff covered and according to the complainant's knowledge, after the guard had expressed the difficulties in the execution of the same order, the superior made alternation to the respective measure and commanded the guard to register only the entry and exit of the high ranking officials in the Central Fire Station. Since there are only a few high ranking officials (the complainant is one of them) in the Central Fire Station and the complainant knew that such measure was not applied to other operation stations, thus, he considered the measure was targeting at him*." (See overleaf of P. 5).

(2) Related facts and statements

1. According to the data available, the complainant began to perform his duties in the Central Fire Station on 27th September 2010 (See P. 81). The relevant attendance records could be seen in Annex 11.

2. **The complainant stated that the Commander of the Central Fire Station, H, Divisional Officers, K, L and M could serve as witnesses in this case (See overleaf of P. 3 and P. 14).** Thus, the CCAC has requested the above persons to provide statements.

3. In addition, the CCAC has also sought information with regard to the procedures and formalities relating to the control of attendance from the current and former staff of the CB.

4. Listed below is the content of the statements provided by the related persons:

Name	Statement
H	As instructed by **T**, **H** has arranged the staff responsible for registering the entry and exit of personnel and visitors (i.e. the "guard" at the entrance) to register the entries and exits of the complainant (including the starting and finishing time, and other in and out times). The record was faxed to **T** at the end of the work on the same day. **H** expressed that such measure was applied to the complainant only throughout the complainant's period of service at the operation station. **H** also pointed out that normally the "guard" at the entrance needed to take registration of visitors (time of arrival and departure and reasons for visits) in the past and give out the registration card, as well as to register the time of exit and re-entry of colleagues who were excused from work for personal reasons during working hours. However, **T** requested **H** to arrange the respective staff to register any exit and entry time of the complainant and fax the record to **T** on the same day (See P. 457). There are internal guidelines regulating situations of absence from work for personal reasons during working hours. The guidelines stated that it is not necessary for personnel that are equivalent or superior to departmental level to fill in any forms. However, it came to **H**'s knowledge that for those who are exempted from filling in the forms as described in the guidelines may be excluded depending on the situations and the decision is made by the Commissioner. With regard to whether the complainant needs to fill in the form, **H** has no idea. For those who needed to leave the workplace for the provision of external services, they will wear field assignment card under normal circumstances (See P. 457 and its overleaf) According to the understanding of **H**, those leadership personnel with ranking that are equivalent to chiefs (department head) or above may leave the workplace during office hours without following the above procedures, the "guard" at the entrance will not take the initiative to stop them upon entry or exit during office hours (See overleaf of P. 457).

K	**K** expressed that during emergencies, normally **K** will be responsible to inform the Commander of the Station of the operation unit verbally. After obtaining the verbal permission from the Commander of the Station, the staff concerned may leave the workplace for personal reasons during working hours, the "application form for absence due to personal reasons" could be submitted afterwards. For foreseeable situations, the staff should submit the "application form for absence due to personal reasons" 3 days in advance and they could only leave the workplace for personal reasons during working hours after the permission is granted (See P. 438).
L	**L** pointed out that after August 2010, he was ordered by the then Commander of the station, **H**, and later by the assistant Commander of the station, **V** (Deputy Divisional officer of 1st class) to inform the "guard" that is on duty to register the time of entry and exit of the complainant (back then there were only three high ranking officials, **H**, **V** and the complainant). Subsequently, in February or March 2011, the then Commander of the station, **P**, had ordered **L** to request the "guard" who was on duty to register the time-in and time-out of all staff. **L** had responded that given the large number of people involved, there would be a long queue during the peak hours of entry and exit which could jeopardize the order at the site. After re-affirming that the measure was not feasible, the Commander changed to request the registration of the time-in and time-out of high ranking officials only. At that time, the high ranking official included the Chief of the Fire Services Training School, the Commander of the station **P**, **V** and the complainant (**L** expressed that such measure had never been adopted by other stations). Subsequently, Divisional Officer of 1st class, **N**, was appointed the Commander of the station, after **N** assumed the post of Commander, he/she ordered **L** to "verify more specifically, check again more accurately and write more precisely" the time of entry and exit of the complainant. **L** said that such measure was only applied to the complainant and had not been adopted by other stations. **L** emphasised that concerning the attendance taking of staff, the present mechanism of signing the registration book could record the time-in and time-out of the staff, it is not necessary to the "guard" to do a separate registration (See P. 428 and overleaf).

M	**M** said that soon after the complainant was being transferred to the Central Fire Station, **M** was instructed that the "guard" needed to record the hours of entry and exit of the Deputy Commissioner. Subsequently, it was requested that such measure should apply to all personnel serving at the Central Fire Station, given the large influx of people at the same time during the peak hours; it was difficult to implement such measure. Following the opinions expressed by the staff concerned, it was decided that the officer at the entrance needed to record the hours of entry and exit of the high ranking officials only. The measure was still in force at the time of making the statements. At that time, there were only two high ranking officials assigned to the Central Fire Station - the complainant and the Commander of the Station. **M** just took care of the implementation of the relevant measure in accordance with the instruction of the Commander of the Station without thinking of the reasons for adopting such measure or its rationality. (See P. 431).
N	**N** revealed that he/she was transferred to the Central Fire Station as Commander of the Station in June or July 2011. The former Commander of the Station **P** mentioned to **N** about the special measure there, which was the "guard" needed to register the time of entries and exits of the senior Fire Services officials at the Central Fire Station. **N** added that at present, the Chief Fire Services (the complainant) and **N** himself/herself are the only senior Fire Services officials serving at the Central Fire Station. **N** also said that when he/she was the Commander of the Fire Station at Areia Preta, with high ranking Fire Services officials stationing there as well, but the above-mentioned order was not implemented. The officer on duty would announce "Commander of the Station returned to the Station" or "Commander of the Station departed the Station" through the intercom speaker when **N** returns or leaves the Station".

	(Staff of the CCAC asked **N** whether **P** had explained the reasons for the implementation of the aforementioned special measure of attendance registration at the Central Fire Station) **N** expressed that **P** did not explain the reasons, saying only that it was an order from the superior. (Staff of the CCAC asked **N** that after **F** took over the position of the Commander of the Operation Department of Macao, was there any instructions to continue the implementation of these measures) **N** said that **F** had not given him/her any indication for the continuation of the aforementioned measures. However, since **N** had not received any orders to cease these measures, therefore, the implementation of these measures continued. **N** added that in his opinion, upon assuming the position of the Commander of the Operation Department of Macao, **F** should have discussed with **T** about the "hand over" of tasks, thus, **N** believed that **F** should be aware of the existence of such special measures of attendance registration. **N** recalled that when first took over the position of the Commander of the Central Fire Station; he/she had reminded the "guard" to continue the measure previously applied, in particular the registration of the hours of entry and exit of the high ranking officials. It was because he was afraid that during the change of leadership, the guard at the entrance would overlook and fail to register. Finally, **N** added that according to unofficial source of information that he received, the reason for the implementation of the aforementioned special measures to monitor the attendance at the Central Fire Station was because someone's unwillingness to abide by the established monitoring mechanism and sign in and out on the registration book. (See P. 528 and overleaf of P. 529).

A	(The staff of the CCAC asked **A** the procedures that should be taken if it was needed to leave the workplace during working hours for personal reasons.) **A** responded that it was necessary for him/her to inform the Commissioner by phone, he/she could only leave the service after obtaining the permission from the Commissioner. Meanwhile, **A** would record the time of departure and return to the workplace in the relevant individual profile, which would be submitted to the Secretariat and Reception Division within one to two months. **A** also expressed that upon his exit or re-entry to the workplace (Sai Van Lake Fire Station), he would not go through the formality of registering the time of exit and entry. **A** only noticed that the "guard"at the Station would salute to him, however, he did not know that the officer at the entrance would record the time of exit and entry. (See P. 404).
G	(The staff of the CCAC asked **G** the procedures that should be taken if it was needed to leave the workplace during working hours.) **G** responded that for personnel with the ranking of the division head or department head that report directly to the Commissioner of the CB, they had to inform the Commissioner directly before leaving the workplace. It was not necessary to explain to the guard at the entrance upon departure, but the guard would record the time of entry and exit of the vehicles of the CB. Regarding supervisory level staff who are not directly subordinate to the Commissioner of the CB (including **G**), they need to inform their direct superior (who was the Chief of the Operation Department in the case of **G**), and put the remark "absence from work due to external services" on the respective day of the "registration sheet". In case of leaving the workplace for personal reasons, those personnel with the ranking of division head or department head that report directly to the Commissioner, they only needed to give reasons to the Commissioner and it was not necessary to explain to the guard at the entrance upon departure. For supervisory level staff who are not directly under the Commissioner (including **G** and all other personnel of the CB), it was necessary

	to fill in the "absence from work for personal reasons" application form which is subject to the approval of the head of the department. The staff needed to show the approved "absence from work for personal reasons" application form to the guard at the entrance. The guard would mark the departure time on the form as well as the time of re-entry when the staff concerned returned to the service. In principle, the supervisory personnel and other general staff who are not directly under the Commissioner needed to make up the hours for their "absence for personal reasons", unless otherwise specified (e.g. follow-up medical consultation) (See P. 470 and its overleaf)
C	**C** said that when he/she was the Chief of the Fire Services Training School (supervisory level), if he/she knew in advance that he needed to leave the workplace for personal reasons, he/she would have to proceed the formality of application and registration during exit and re-entry like other non-supervisory level staff. In case of unexpected circumstances to leave the workplace for personal reasons, since **C** and the Commissioner of the CB worked in different locations, he/she would inform the Commissioner to obtain his approval. Then he/she would take the initiative to give the details to the "guard" (given that the "guard" would generally be a fireman on the base of hierarchy, thus it is not possible to require the superior to give details of where he is going from the sense of hierarchy). The officer would then register and announce through the microphone. It is likely that staff in the telephone room of the Station would also make its registration. It was necessary to submit the application form subsequently after returning to the service. With regard to supervisory personnel leave the workplace for the provision of external services, it is not required to wear the "field assignment card" or to inform the officer at the entrance. However, the "guard" would record it as usual since it is their responsibility to record all entries and exits of all people at the Station during office hours. **C** stated that the "guard" would not proceed with the registration of the time of entry and exit of staffs during the shift change (i.e. the beginning and end of normal office hours and lunch break) due to the large flow of people that has made this task impossible. (See overleaf of P. 475).

D	(The staff of the CCAC asked **D** the procedures that should be taken if it was needed to leave the workplace during working hours for personal reasons.) **D** responded that it was necessary to fill in the application form for absence from work for personal reasons and submit it to direct superior. After obtaining the approval, it was required to hand the certificate of approval to the "guard" when leaving the workplace in order to verify and register the time of exit. Likewise, he/she had to register the time of re-entry at the entrance when he/she returned to the workplace. On the other hand, in case the exit for personal matters took place before the beginning of working hour, since it was not possible for the "guard" to make any registration of the time exiting the workplace, therefore, the staff concerned needed to make statement for such circumstances. (See P. 480). (The staff of the CCAC asked **D** whether the "guard" of the Headquarters at the Sai Van Lake would record specifically the time of entries and exits during normal office hours of the "high ranking officials" stationing at the Station.) **D** expressed that he was not aware of such situation. In fact, due to the large flow of staff entering and exiting the Headquarters during the beginning and end of office hours, it was infeasible to register every count of entry or exit (See P. 482).
E	With regard to leaving the workplace during working hours for personal reasons, it was necessary to seek approval from the superior through filling in and submitting the "absence from work for personal reasons" application form. **E** added that in case of unexpected circumstances, he would obtain permission from **T** verbally and subsequently submit the "absence from work for personal reasons" application form after returning to the workplace. (See P. 486).

	The "guard" of the Headquarters of Sai Van Lake would not record the entries and exits of the staff during the beginning and end of normal business hours and lunch break due to the large flow of people. In addition, **J** was not aware of the situation that the "guard" would record specifically his/her entries and exits during office hours. In fact, his/her attendance was being monitored through the aforementioned mechanism of signing in and out on the registration book. (See P. 490).
J	**J** stated that in case of foreseeable situations that absence from work during working hours for personal reasons was needed, it was necessary to fill in the form prescribed in the internal guidelines and submit the application in advance. He could only leave the workplace after obtaining the permission from the competent authority. When leaving the workplace, **J** needed to show to the "guard" the document of approval and the latter would register the time of departure and subsequently report to the respective competent authority for approving the exit. (See overleaf of P. 490).
	F claimed that if staff needed to leave the workplace during normal office hours for personal reasons, it was necessary to fill in and submit the "absence from work for personal reasons" application form to the direct superior (head of division / head of department / Commissioner) for approval. Supervisory level staff had to undergo the same procedures. The applicant should present the form during exit and re-entry and hand it to the "guard" to register the time of exit and re-entry on the form (See P. 494 and overleaf of P. 495).
F	According to **F**, all workers on duty at the entrance of all stations were required to record the time of entry and exit of all people (including staff of the CB) and vehicles (...). However, it was not necessary to record the times of entries and exits of staff at the beginning and end of normal office hours and at lunch time, since there was other monitoring mechanism implemented to oversee the staff's attendance. (See overleaf of P. 495).

	F claimed that he/she did not make any specific request to the officers at the entrances of the stations that he/she administered (including the Central Fire Station) to record the time of entry and exit of the "high ranking officials" stationing there, nor did he/she receive such instructions from anybody. (See overleaf of P. 495, **F** was appointed as Chief of Operation Department of Macao on 1st March 2011).

5. When providing the statement to the CCAC, the Commissioner reported the following: "*(...) The cause of the incident was the dissatisfaction of the complainant regarding his name not being placed on the top of the registration sheet. Feeling undermined and dignity impaired, the complainant refused to sign the registration sheet. Subsequently, the then Chief of Operation Department of Macao, **T**, and the personnel responsible for monitoring the attendance of the Command, **R**, told the Commissioner. Back then, the Commissioner had expressed that they could drop down the time of entry and exit of the complainant according to the record. **T**, in turn, asked if he could register the time of entry and exit from the recorded video. The Commissioner responded that in the meeting that he had with the complainant, the latter said that: 'I will not sign in and out, the Commissioner can review the recorded video and the registration record made by the officer at the entrance.' Thus, the Commissioner said it was alright to do so, but needed to pay attention to the protection of privacy. The Commissioner added that based on what he could recall, the complainant had expressed his rejection of sign in and out in writing, expressing that if the Commissioner wanted to know about his attendance, he could consult the respective registration or watch the video*." (See overleaf of P. 685).

6. The Commissioner also said that: "*No instruction was ever given to **T** to request the "guard" of the Central Fire Station to record specifically the time of entry and exit of the complainant. Nevertheless, he knew nothing about the issue of the "guard" of the Central Fire Station being instructed to record specifically the time of entry and exit of the complainant. He added that according to his knowledge, the "guard" has always been recording the time of entries and exits of all people at the Fire Services Bureau, whilst acknowledging that it was difficult to make individual*

record of the time of entry and exit at the beginning and end of normal office hours due to the large influx of people." (See overleaf of P. 685).

7. The Commissioner expressed that: "*If **T** had given instruction to the "guard" to record specifically the time of entry and exit of the complainant, the then Deputy Commissioner, without the approval of the Commissioner, **T** could have been suspected of slight usurpation of functions and lack of respect for the superior. However, he felt understandable that the relevant approach of **T** was merely for the purpose of his functions and it could also be the misunderstanding of **T** with regard to the indication of the Commissioner (**T** had asked the Commissioner if he could watch the video)*." (See overleaf of P. 685 verso).

8. When making the statement, **T** expressed the following: "*(...) He had never instructed **H** to request the "guard" of the station to record specifically the time of entry and exit of the complainant. **T** gave supplementary explanation with regard to the complainant, the then Deputy Commissioner, refused to sign in and out on the registration sheet when he was transferred to the Central Fire Station. For this reason, **T** presented the situation to the Commissioner and the latter requested **T** to find out the reason for the complainant's refusal. In addition, **T** was asked to drop down the time of entry and exit of the complainant through the record of the surveillance system placed at the entrance of the Central Fire Station. **T** expressed that at that time the Commissioner did not request him to order the officer at the entrance of the operation station to record specifically the time of entry and exit of the complainant. On the other hand, the complainant stated that he had requested **H** to provide the existing data regarding the registration of entry and exit of personnel made by the officer at the entrance. **T** stated that the data concerned was the record of personnel leaving or re-entering the operation station during office hours*." (See overleaf of P. 759).

9. **T** also expressed that: "*During the start and end of the office hours, given the large flow of staff entering or exiting the operation station, it became unfeasible for the officer at the entrance to register the time of entry and exit of all personnel and they had never made such attempt. Besides, the times of entry and exit of the staff were recorded through signing on the registration sheet*". In addition, **T** denied having ordered the officer at the entrance of the Central Fire Station to register specifically the time of entry and exit of the high ranking fire services officials. (See overleaf of P. 759).

(3) Analysis

The time of arrival and departure being registered specifically

1. First, **regarding the issue filed by the complainant on the alleged specific record of the time of arrival and departure of the complainant, after summarising the information collected and the statements given above, we could conclude the following points:**

On 27th September 2010, the complainant began his service at the Central Fire Station.

According to the record of attendance of the complainant, he had been signing the registration sheet for the period between 27th September 2010 and 15th October 2010 to record his own attendance. From 18th October 2010 to 17th January 2011, the complainant did not record his own attendance through signing the registration sheet (Since the complainant had filed a complaint about the design of the registration sheet); starting from 18th January 2011, the complainant resumed the signing on the registration sheet to record his own attendance.

The "guard" of all stations had never carried out record of the time of entry and exit of the staff at the beginning and end of the normal office hours.

According to the then Commander of the Central Fire Station, **H**, starting from September 2010, the then Commander of the Operation Department of Macao, **T**, requested him/her to arrange the "guard" to record the time of entries and exits of the complainant (the then Deputy Commissioner), including the starting and finishing time and other time of exit and re-entry. The record should be faxed to **T** after work on the same day.

The guards at the Central Fire Station, **L** and **M**, had expressed that they had received instruction from **H** to record the time of entry and exit of the complainant.

Around February to March 2011, **L** and **M** received another instruction (starting from March 2011, **P** was appointed the Commander of the

Central Fire Station while **F** was appointed the Commander of the Operation Department of Macao) requesting them to instruct the "guard" to record the time of arrival and departure of all staff at the Central Fire Station. However, such instruction was infeasible due to the large number of people, eventually it was modified to recording only the time of entry and exit at the beginning and end of the office hours of the high ranking officials.

According to the statements made by **L**, **M** and the Commander of the Central Fire Station at present, **N**, the aforementioned practice still remains in force.

The number of high ranking officials assigned to the Central Fire Station has always been two to three persons only, including the complainant.

Other operation stations were never requested to adopt such measures, except for the Central Fire Station.

The then Commander of the Operation Department of Macao, **F** (who took over the position starting from 1st March 2011), declared that he knew nothing about the implementation of these measures by the operation stations and the personnel that were subordinate to him.

The Commissioner of the CB denied ordering **T** to give the order to the "guard" of the Central Fire Station to record specifically the time of entry and exit of the complainant.

T also denied ordering **H** to request the "guard" of the Central Fire Station to record specifically the time of entry and exit of the complainant or other high ranking officials serving at the Central Fire Station.

2. In short, **according to the data available, the "guard" of the Central Fire Station had indeed performed specific recording of the starting and finishing time of the complainant. At present, such measure of control still applied to two to three high ranking officials assigned to the same station (including the complainant). It is obvious that the measure is applied to the complainant on purpose since it was not adopted by other operation stations, including the Sai Van Lake Fire Station where a number of leadership and chiefs perform their**

functions. On the other hand, there were staff of the CB who claimed that the order of such measure originated from the leadership and supervisory personnel of the CB, however, the Commissioner, the then Commander of the Operation Department of Macao, T, and the Commander of the Operation Department of Macao at present, F had all denied giving such order.

3. **Given the above situation, whether it is the misinterpretation of the staff regarding the job requirements of the leadership and chiefs, or someone has not told the whole truth? The CCAC has taken investigative measures; however, a precise answer could not be obtained.**

4. Nevertheless, the issue deserving our attention lies in the legality of specific record of the time of entry and exits of the complainant.

5. Indeed, it is stipulated in Paragraph 7) of Article 18 of the *Provisions Supplementary to Statute of Leadership and Management: "Under the situations that compliance with the applicable laws, the Commissioner, when carrying out the responsibilities to allocate the respective human resources management of the department, is entrusted with the following powers without prejudice to any other powers that are assigned to them: (...) 7) adopt or propose adoption of methods or measures to ensure the monitoring of attendance of staff from the angle of optimising the organisation resources and improving the quality of services*".

6. However, at the same time, Clause 3) of the same article stipulates that leadership and chiefs have the responsibility to "*establish measures to prevent the occurrence of detrimental acts of personal and professional dignity of workers*."

7. In fact, just as described in Point 2) of the *Code of Conduct of Leadership and Chiefs – Obligations and Liabilities in case of Violation: "Leadership and chiefs must abide by laws, administrative regulations and other normative acts in the exercise of their powers, and relate to their subordinates with justice (...)*".

8. **Thus, in this case, the measure of attendance control applied to the complainant could not cause any offense to his dignity, and should be**

fair and just and comply with the principle of good faith. (Article 8 of the *Code of Administrative Procedure*).

9. It is stipulated in Article 79 of the *Statute of Personnel of the Public Administration of Macao that: "employees shall accept the monitoring of their duration of work through means of signing the registration book or mechanical or electronic equipment*". Indeed, the complainant is still complying with the rules of the CB of signing the registration book to register his attendance.

10. **Since there is already an established and consistent method for the monitoring of attendance, the time of entry and exit of the complainant should not be specifically recorded by the "guard" unless there is strong evidence of falsification of attendance registration. This is because such measure does not have any legal basis and it will produce the perception that the time registered by the complainant on the registration book is not trustworthy and questionable, thus offending the dignity of the complainant and violating the rule of good faith.**

11. **For this reason, the CB should take prompt and explicit rectification concerning the current situation.**

Absence from the workplace during working hours for personal reasons

12. With regard to situations of absence from the workplace during working hours for personal reasons, according to the content of the statements given above, some supervisory level personnel stated that after obtaining the permission from the superior or the Commissioner of the CB, it was also mandatory to register their departure by the officer at the entrance; some said that they would not take the initiative to register at the entrance, however, the officer at the entrance would register the time of exit and re-entry; some expressed that the officer at the entrance would not proceed with any registering or recording.

13. In fact, according to the information provided by the CB, the *Guidelines Regulating the Entry and Exit of Various Stations of Staff of the Fire Services Bureau* was issued in May 2008. The scope of its application described in Article 2 includes: "*The Guidelines are applicable to the*

following situations of staff entering and exiting various stations of the CB: a) the provision of external services; b) extra paid shift; c) when off-duty or on holidays; d) absence from workplace during working hours for personal reasons." (See P. 18 of Annex 8).

14. On the other hand, point 4 of Article 3 of the *Guidelines Regulating the Entry and Exit of Various Stations of Staff of the Fire Services Bureau* also stipulates:

"Procedures regarding the entry and exit of personnel at various stations of the CB during working hours for personal reasons (same as the mechanism currently in force):

a) To be temporarily absent from work for personal reasons, the staff shall present to the "guard" the approved and signed "Absence from work for personal reasons application form" by the immediate superior (see the model in Annex 4);

b) The "guard" shall fill in the actual time of departure of the staff and sign for confirmation on the "Absence from work for personal reasons application form". The "guard" can only allow the staff to leave the station after returning the form to the staff for his/her own custody;

c) If the staff returns to the operation station before the end of the working period of the same day, both parties shall repeat the procedures described above;

d) After returning to the workplace, the staff concerned shall submit immediately the "Absence from work for personal reasons application form" to the immediate superior or his/her delegate to sign on it and calculate the actual time of absence. In case of discrepancies, the applicant must state briefly the reasons on the supplementary column and sign;

e) After the completion of all procedures, the "Absence from work for personal reasons application form" shall be submitted to the Secretariat and Reception Division for archiving after being submitted to and approved by the immediate superior;

f) In special cases and the staff is unable to present the approved

"Absence from work for personal reasons application form", it should then proceed with the rules and procedures stipulated in Clause e) of Paragraph 1 of Article 3 ("Under the situation that a staff is unable to present the 'field work permit', the "guard" shall report such occurrence to the immediate superior. The latter will be responsible for contacting the chief of the department of the staff concerned. The staff concerned is allowed to leave the station after the verification. In such case, the "guard" should register briefly the identification information of the staff concerned and through whom the situation is verified.") (See P. 19 of Annex 8).

15. Article 4 of *the Guidelines Regulating the Entry and Exit of Various Stations of Staff of the Fire Services Bureau stipulates: "In case of breach of these guidelines regarding the entry of exit of various operation stations, the "guard" shall report immediately such occurrence to the duty-officer so that the latter could inform the superior in accordance with the established procedures and forward the case to the subordinate unit to which the staff concerned belongs for follow-up."* (See P. 19 of Annex 8).

16. Although it is stipulated in Article 5 of the *Guidelines Regulating the Entry and Exit of Various Stations of Staff of the Fire Services Bureau that: "The Guidelines is not applicable to official with ranking of division head reporting directly to the Commissioner or above, unless otherwise determined by the Commissioner.*" (See P. 19 of Annex 8, emphasis added). However, according to the statements given above, certain officials with the ranking of division head (who directly report to the Commissioner without a departmental level in between) or department head also act in accordance with the guidelines.

17. Given the above, the charge is not substantiated so far regarding the complaint that "*the Commissioner specifically adopt the measures on attendance monitoring merely targeted at the complainant since according to the guidelines on attendance, for those personnel with ranking of division head of above, they are exempted from being registered by the 'guard' the time of entry and exit*".

* * *

XI. The long-term reservation of the video recording that contains the record of entry and exit of the complainant by the Commissioner targeting merely the complainant

(1) About the complaint

1. The complainant claimed that: "*The Commissioner ordered the staff of the Control Centre to register and save the time of entry and exit of the complainant through the video surveillance system at the Central Fire Station. Since the surveillance system was installed for security purpose and for monitoring the performance of services provided by emergency vehicles of the CB under the Performance Pledge, it is never used for monitoring the attendance of personnel of the CB, thus, the complainant believes that such approach of the Commissioner was taken against him. In addition, in the appraisal of the complainant compiled by the Commissioner in May 2011, the Commissioner questioned the complainant's observance of the duty of assiduity on the basis of video recording of more than 6 months ago. According to the knowledge of the complainant, such video recording will be erased automatically 3 months after its creation; therefore, he believes that such approach is a result of the Commissioner's persecution targeting at him only. The complainant had asked in person the Commander of the Control Centre,* ***W****, that who gave him the order, the latter expressed that the order was given to him by the Commissioner himself*." (See P. 3).

(2) Related facts and statements

1. According to information, the relevant video recording was provided by the Chief of Resources Management Department, **T**, to the Commissioner (See P.s 102 to 110 of Annex 2).

2. When providing the statement to the CCAC, **T** pointed out that: "***T*** *expressed that there is a Control Centre at the Headquarters at the Sai Van Lake where the entry and exit of people and vehicles could be observed and recorded. On the other hand, all operation stations have their own video surveillance system to view and record the entry and exit of people and vehicles at the stations.", "****T*** *stated that the above video surveillance system is intended primarily to monitor the exits of fire engines and*

*ambulances to oversee whether their time of dispatch could comply with the time stated in the Performance Pledge. On the other hand, in case of detection of anomalies in terms of attendance, the relevant recording would also be accessed in accordance with the internal procedures. When necessary (e.g. in case of disciplinary proceedings), such video recording would be duplicated to be attached to the file." "**T** expressed that the data captured and recorded on the video surveillance system at all operation stations of the CB are retained for a minimum of 3 months and a maximum of 6 months since the old data will be covered by new data automatically. When come across special situations, such as irregularity in the time of dispatch of fire engines or ambulances, or anomalies of attendance of staff, the relevant video recording shall then be duplicated." "**T** expressed that the Commissioner had not ordered (him) to keep the record of entry and exit of the complainant during the aforementioned period, including the relevant video recording." "**T** added that it has been the practice of the 'guard' of the Central Fire Station to record the time of entry and exit of people (including staff of the CB and visitors) and vehicles; **T** stated that when he was the Commander of the Operation Department of Macao, he would review the relevant registration sheet to see whether there were staff leaving the workplace during working hours. If any anomaly is discovered, he would watch the relevant video recording to verify; **T** said that if the staff concerned serves in his department, he would know whether the staff had obtained the approval and he would handle the case in accordance with his scope of power, if the staff concerned does not work in his department, he would then notify the superior of the staff about the occurrence." "**T** expressed that according to the record of the 'guard', during the period that the complainant performed duties at the Central Fire Station, **T** found out a number of times that the complainant had left the Central Fire Station during office hours. As a result, **T** would report such fact in writing or verbally to the Commissioner every time. Moreover, with the consent of the Commissioner, **T** also duplicated the video recording of the complainant leaving the workplace during office hours and submitted it to the Commissioner of the CB*." (See P. 233 and overleaf).

3. On the other hand, the CCAC had also invited the Commander of the Control Centre, **W**, to provide statement. **W** pointed out that: "*(The staff of the CCAC asked **W** the function and purpose of the surveillance system) **W** expressed that the main function is to monitor the dispatch of*

*emergency vehicles under the Performance Pledge of the CB, adding that the images captured by the same system may also be used as evidence when requested by the CB or other government departments." "**W** stated that in accordance with the Personal Data Protection Act (the CB has established the Personal Data Protection Unit and guidelines were formulated by the Unit), the CB imposed a shelf life of 3 months for video recordings. Since the media is stored by means of computer hard disk, the computerised surveillance system is equipped with automatic programming and it will erase automatically the video recording that reaches the 3 months period. To the knowledge of **W**, such period will not be extended under normal circumstances since the feature will activate automatically. The only exception to this rule is the situation where a case has been established and the information of video recording within the period of time concerned was preserved through duplication on compact disc attached to the respective file. In such circumstance, the video recording for a particular period of time will then be preserved beyond the time limit set. With regard to the proceeding of preservation by means of duplication on compact disc, there will be document for record and the Commander of the Operation Department of Macao has the competence to authorise the recording of images on compact disc." "In addition, **W** expressed that there is a network that connects the computer system of the Public Security Forces Affairs Bureau(DSFS) to some of the computers in the Control Centre of the CB, enabling the access and control of DSFS to such computers, including copying the data in the computers (such as video recording)." "**W** expressed that there had been internal cases that video recording was needed to verify the attendance of certain staff; if the video data of the period of time concerned is already erased, then it will use the testimony to verify the attendance of certain staff instead*." (See overleaf of P. 464 and P. 465).

4. **W** also expressed that: "*In mid-September 2010, (...) he had received a verbal instruction from the then Commander of Operation Department of Macao, **T**, saying that the Commissioner had ordered **W** to consult the video recording to check the time of entry and exit of the two Deputy Commissioners for the previous three months (i.e. starting from 21st June). **T** said that he and **W** were the only people who knew about such order and requested **W** not to disclose it to anyone else." "After consulting the video recordings, **W** had to put together a list of "time of entry and exit in question" attached with the DVD with the related video recordings and submit to **T**.*

*Such information needed to be submitted to **T** periodically." "**W** expressed that after going through the video recording of June to September 2010, **T** gave **W** a verbal instruction that it was no longer necessary to drop down the time of entry and exit of the Deputy Commissioner **S**, but continue to register the time of entry and exit of the complainant until 4th May 2011." "**W** expressed also that he meet with the Commissioner in early October 2010 and it was confirmed that the order to review and record the time of entry and exit of the two Deputy Commissioners was given by the Commissioner." "As far as what **W** could recall, during the period of 21st June 2010 to 4th May 2011, around 20 to 30 counts of irregularities of entry and exit of the complainant were detected." "**W** expressed that the approach of reviewing the video recording is often applied to the checking of the in and out of fire engines; it was seldom adopted for the monitoring of the entry and exit of staff. Prior to the checking of the record of the two Deputy Commissioners mentioned above (around two years ago and could not recall the exact date), there was a case concerning an instructor of a disciplinary proceedings who had obtained the permission to access the record of entry and exit of a Divisional Officer of 1st class. However, the instructor could only get to consult the video data but he could not make it to duplicate the video recording on the DVD since it just reached the 3 months period and the relevant data of video recording was automatically erased*." (See overleaf of P. 465).

(3) Analysis

1. After reviewing the statements given above, the following conclusions could be made:

2) The Control Centre at the Sai Van Lake Fire Station (headquarters) of the CB can observe and record the entry and exit of people and vehicles at the various operation stations. In general, the shelf-life of the video recording is 3 months.

3) The above video surveillance system is intended primarily to monitor the exits of fire engines and ambulances to oversee whether their time of dispatch could comply with the time stated in the Performance Pledge. The data collected through the same system may also be used as evidence for investigation when requested by the CB or other government departments,

including the investigation of irregularities in the attendance of staff.

4) The "guard" of the station would register the time of entry and exit of people and vehicles at the operation station during officer hours, which would be consulted by the then Commander of the Operation Department of Macao to check whether there were staff who left the workplace during working hours

5) During the routine process of attendance supervision, the said Commander found that the complainant drove a vehicle and left the operation station during officer hours, therefore, he reported the case to the Commissioner.

6) The Commissioner ordered the Commander to instruct **W** to consult the video recording with the previous time of entry and exit of the complainant and another Deputy Commissioner and submit periodically the record of "time of entry and exit in question to the Commander.

7) Later on, the Commander instructed **W** that it was no longer necessary to drop down the time of entry and exit of the other Deputy Commissioner, but continue to register the time of entry and exit of the complainant and such measure ceased on 4th May 2011.

8) According to **W**, around 20 to 30 counts of irregularities of entry and exit of the complainant were detected.

2. **Given the above-mentioned points, it was owing to the problems existing in the attendance of the complainant that the Commissioner had ordered the subordinates to keep specifically the video recording of the entry and exit of the complainant. For this reason, it does not appear that there is any irregularity in such approach.**

* * *

XII. The complainant felt offended illicitly due to his registration record was subject to the approval of the Commander of the Central Fire Station, a position hierarchically inferior to his

(1) About the complaint

1. The complainant said to the CCAC that: "*During the period that the complainant performed duties at the Central Fire Station, the registration book was signed and approved by the Commander of the Central Fire Station which was the original practice. However, the ranking of the complainant is superior to the said Commander, therefore, the complainant felt offended unlawfully.*" (See P. 4).

(2) Related facts and statements

1. In the Order no. 19/CB/2010 issued by the Commissioner of the CB on 24th September 2010, it pointed out that: "*1. Regarding the temporary change of workplace for the Deputy Commissioner, (the complainant) to the Central Fire Station, the termination of this measure will be notified through a separate order in a timely manner and in accordance with the actual needs of the work; 2. Given that the workplace is in the Central Fire Station, in order to better facilitate the administration work, the aforementioned Deputy Commissioner shall comply with the general regulations to sign in and out at the start and finish of the office hours; (...)*" (See overleaf of P. 81).

2. According to the data provided by the complainant, after he had started working at the Central Fire Station, he was verbally notified by the Commander of the Operation Department of Macao that he needed to sign on a registration sheet which subsequently would be approved by the Commander (whose ranking is Divisional Officer of 1st class). The registration sheet should be submitted to the Commissioner within 10 minutes after the completion of the registration of the complainant. (See P. 107).

3. The complainant deems that the above measure of registration of attendance is in breach of the stipulations of the law, therefore, he asked the Commander to report in written form. (See P. 107).

4. The Commander of the Operation Department of Macao completed the report on 28th September 2010. It pointed out that: "*Based on the instruction and arrangement of the superior, after the conducting*

the drills of separation during an influenza pandemic, the following arrangements would be made for the two Deputy Commissioners: 1. The Deputy Commissioner (the complainant) will be transferred and perform duties at the Central Fire Station. (...) To include the name of the Deputy Commissioner, (the complainant) in the attendance registration sheet at the Central Fire Station for signing purpose. With regard to the approval of the registration sheet, it will continue to be carried out by the Commander of the Central Fire Station. 2. The Deputy Commissioner ***S*** *(...) regarding the approval of the registration sheet, it will continue to be carried out by the Commander of Operation Department of Taipa and Coloane*." (See overleaf of P. 108).

5. In the opinion of the complainant, the term "superior" used in the above report refers to the Commissioner, since the Commissioner is the only person that is superior to the complainant, the other Deputy Commissioner and the Commander. (See P. 107).

6. The complainant filed an objection to the Commissioner on 8th October 2010. It pointed out that: "*(...) Your Excellency, the Commissioner, has ordered the Commander of the Operation Department of Macao to inform me that I need to sign in and out on the same registration sheet as the other fellow staff/team members and the sheet would eventually be approved by the Commander of the Central Fire Station in Macao,* ***H****, a Divisional Officer of 1st class. (...) According to the long established attendance taking procedures of the CB, when the registration sheet is signed by all personnel who are obliged to register, it will be signed and approved by a militarised personnel with the highest ranking and longest serving period, so as to carry out the duty of supervision. As the Deputy Commissioner of the CB and Deputy Fire Commissioner, I am required to sign on the same registration sheet for the general team members and the sheet will be approved by militarised personnel with a ranking inferior to me. Besides the violation of the provisions concerning the subordination of the military hierarchy in the EMFSM, such procedures of attendance taking also undermine the dignity of the leadership of the CB*." (See P. 66).

7. The Commander of the then Operation Department of Macao completed a report on 11th October 2010. It pointed out that: "*I hereby report to Your Excellency regarding the internal drills of separation during an influenza pandemic during the period of 27th September to 3rd October this year.*

In terms of work arrangement, the two Deputy Commissioners were arranged to perform duties at the Central Fire Station and the Taipa Fire Station respectively in line with the existing attendance mechanism, the Commissioner had given instruction that the two Deputy Commissioners had to sign in and out also. However, in handling the implementation of such measure, there were certain deficiencies attributable to me. I did not take care of the details and follow up the model of the relevant registration sheet and followed the approach adopted in the past and let the registration sheet to be approved by the same person-in-charge as before. The above issue stems from the lack of detailed consideration on my part, thus, it is necessary to review and identify the irrational practices. It is noted that at the time of organising the drills of separation, I had a heavier workload and time is pressing, I failed to take a detailed consideration of the actual implementation. It was in this context that such error occurred." (See overleaf of P. 67).

8. On the other hand, regarding the controversy surrounding the phrase "As instructed by the superior", the Commander of the Operation Department gave the following explanation in the aforementioned report: "*Given that time is pressing, certain errors were detected regarding the content in the report that I drafted and submitted rashly on 28th September. For example, the use of the phrase 'as instructed by the superior' is actually referred to the necessity to sign in and out by all staff. However, I mistakenly included the part about the approval of the registration in the scope of the respected instruction in haste. In fact, the measure of sign in and out is only a continuation of the established practice and such error is caused merely by my own carelessness*." (See overleaf of P. 67).

9. On 14th October 2010, the then Commander of the Operation Department of Macao drafted the proposal no. 1195/DOM/2010. It pointed out that: "*(...) 2. In organising the above-mentioned contingency measures, particularly the attendance registration of the staff, I included the Deputy Commissioner, the complainant, in the registration sheet and followed the approach adopted in the past and let the registration sheet to be approved by the same person-in-charge as before. The above issue stemmed from the lack of detailed consideration on my part, thus, it is necessary to review and identify the irrational practices. 3. After reviewing the respective irrational practices, I hereby would like to propose to Your Excellency that correction would be made to the registration sheet in question. The*

name of the Deputy Commissioner, the complainant, will be moved to the top of the registration sheet for the staff of the Central Fire Station and the Commander of the Central Fire Station could only approve the attendance of staff whose ranking is inferior to the Commander at the Central Fire Station." The Commissioner of the CB also made an order on 14th October 2010 and agreed with the above proposal. (See overleaf of P. 58).

10. On 15th October 2010, the then Commander of the Central Fire Station, **H**, prepared the report no. 928/Q/2010. It pointed out that: "*I hereby report to Your Excellency, in compliance with the instructions of Your Excellency, at 09:05 am on 15th October this year, I took the attendance registration book to the Deputy Commissioner's office and asked him (the complainant) to register on it. The Deputy Commissioner expressed he was not refusing to sign in or register his attendance on the registration book, he only believed that such method of attendance taking should not be determined by his inferior (the Commander of the Operation Department of Macao). Besides, the same Commander had prepared a report which appears that he had suggested another form of taking the attendance to the superior.*" (See P. 62).

11. On 18th October 2010, the Commander of the Central Fire Station, **H**, prepared the report no. 935/Q/2010. It pointed out that: "*I hereby report to Your Excellency, in compliance with the instructions of Your Excellency, at 09:10 am on 18th October this year, I took the attendance registration book to the Deputy Commissioner's office and asked him (the complainant) to register on it. The Deputy Commissioner expressed again that: with regard to the related issue, the reason for not signing was already given last time on 15th October. He also ordered that it is not necessary to go to his office and ask him to sign on it again for the same matter.*" (See overleaf of P. 62).

12. On 18th October 2010, the Commander of the Operation Department of Macao drafted the report no. 133/DOM/2010. It pointed out that: "*(...) The Deputy Commissioner (complainant) asked me if I was the one who ordered the Divisional Officer of 1st class, **H**, to take the new template of timesheet that was approved by order of the Commissioner of 14th October to the Deputy Commissioner, the complainant for signing, and my answer was yes. The Deputy Commissioner expressed immediately that staff with lower ranking should not give work instructions to a higher category and*

manifested his dissatisfaction. (Another paragraph) *Regarding this issue, I needed to explain to Your Excellency, the Commissioner, the reason is because all staff who come to the service to work must sign the registration book, therefore, I asked the official with the highest ranking of the station, Divisional Officer of 1st class,* ***H****, to deliver the revised registration sheet to the Deputy Commissioner (the complainant) for signing and also inquired the Deputy Commissioner (the complainant) was there any possibility that he had forgotten to sign. However, the Deputy Commissioner confirmed that he has not been signing the sheet and he should not be signing according to the law.* (Another paragraph) *Besides, the Deputy Commissioner (the complainant) stated to me that he did not know why I did that since I was not involved in the entire conflict. He also pointed out that he was aware of many wrongdoings committed by me, for example, the incident that I was being investigated by the Public Security in Zhuhai before and the occasion that I sent the jeep for fire services to buy the Mark Six lottery ticket, and many other incidents of inappropriate behaviour of me that the Deputy Commissioner (the complainant) had got hold of. He expressed that their disclosure could cause great impact. In this regard, I have to give explanation to Your Excellency, the Commissioner. I went to Zhuhai for a drink and relaxation during my holidays and it happened that the Public Security came to the site to conduct routine inspection. I was requested to cooperate and assist with their investigations. After the investigations, it was believed that there was not any irregularity and I departed Zhuhai. Besides, I took the jeep and dropped by the magazines stand along the way, I just checked out the magazines there instead of buying the Mark Six lottery tickets and what happened was I did not get to buy any magazines. Moreover, I intended to explain to the Deputy Commissioner (the complainant) about the signing of registration book in the morning on 15th October. However, when I heard the Deputy Commissioner telling me the abovementioned incidents, I felt threatened. For this reason, I did not make any explanation to the Deputy Commissioner (the complainant) on 15th October or afterwards*." (See P. 64 and overleaf).

13. On 19th October 2010, the Commander of the Operation Department of Macao notified the content and submitted the above mentioned report prepared by **H** to the Commissioner of the CB; the latter entered an order "I acknowledge" on the report on 19th October 2010. (See P. 61 and overleaf).

14. On 21st October 2010, in the Order no. 22/CB/2010 of the Commissioner of the CB, it pointed out that: "*After ascertaining the situation with the Commander of the Operation Department of Macao, the Chief Fire Officer, and according to the written reports prepared by him, it is shown that the aforementioned negligence indeed existed. Nevertheless, he explained that the occurrence was actually happened during the drills in preparation for the outbreak of 'serious infectious diseases', and confessed frankly the lack of consideration of the details in the execution of the measures while the drills were being conducted*." (See overleaf of P. 66).

15. On 5th November 2010, the complainant drafted the report no. 18/GAC/2010, which states that: "*1. After my transfer to the Central Fire Station starting from 27th September 2010, given the irregularities in the new procedures of attendance taking, I filed an objection to Your Excellency, the Commissioner on 8th October 2010. 2. For this reason, I stopped signing the aforementioned registration sheet. Nevertheless, in order to comply with the procedures for attendance monitoring, I asked the secretary of the Commissioner to give me the old registration sheet so I could register my time of entry and exit on it. Base on the usual procedures in the past, the registration sheet would be submitted to Your Excellency, the Commissioner for approval via the secretary. 3. However, on 18th October this year, the secretary informed me about the order of the Commissioner that it is not necessary to continue to carry out such procedures, and the registration sheet will no longer be given to me to register. 4. I hereby would like to inform Your Excellency, the Commissioner, that I have already produced a registration book at the Central Fire Station to register my time of entry and exit everyday by myself. The relevant registration book would be kept at the Registry so that the Commissioner could consult it anytime when necessary.*" (See P. 65).

16. With regard to the report no. 18/GAC/2010 of the complainant mentioned above, the Commissioner made an order on 18th November 2010: "*According to the report no. 133/DOM/2010 of 18/10/2010 prepared by the Commander of the Operation Department of Macao, it is clear that the issue is acknowledged. (The complainant) should give report of the work in accordance with my order no. 18/CB/2010 and ought not to coerce the subordinates*." (See overleaf of P. 65).

17. Regarding the aforementioned issue, the Commissioner of the CB states in the "Report of Performance Evaluation of Leadership Personnel" no. 20/GAC/2011 of 6th May 2011 that: "*By the Order of the Commissioner dated 14th October 2010, the model of the attendance registration sheet was modified (...). On 15th October 2010, when the complainant was handed the respective registration sheet by the relevant official, he refused to sign it, saying that the format of attendance registration was changed and he has not yet received the relevant notification (…). It came to my knowledge through the report of the Chief Fire Officer,* ***T****, that the complainant had phoned him earlier to express his dissatisfaction with the respective mechanism. According to the same report, it is also known that the complainant spoke to* ***T*** *with a threatening tone, causing the latter dared not to face him directly. Judging from the above information, there are reasons for believing that the complaint is aware of the modification of the registration sheet. However, the complainant did not register on the registration sheet in accordance with my order. Instead, he has created for himself another registration book during that period and recorded his time of arrival and departure on his own. He also claimed that the Commissioner could consult it at anytime if necessary. This is a complete ignorance of the superior and the system (...). When I requested him to comply strictly with the respective attendance taking mechanism by signing the registration sheet, an objection was immediately filed. The complainant only started to sign the registration sheet in accordance with my previous order when I responded to his objection by stating that such measure is a legal requirement and a duty entrusted to me to fulfil*." (See P. 17).

18. In the "pleadings" submitted to the Judicial and Disciplinary Committee on 31st May 2011, the complainant objected and claimed that: "*Subsequently, in order to avoid continuous conflicts and debates with the Commissioner of the CB, I complied with the order made by the Commissioner to provide my services based on the normal office hours and signed in and out after my transfer to the Central Fire Station. It was only during the period when the objection I filed was under process within my service there that I did not sign in and out on the particular registration sheet because I believed that it is against the stipulations of the law to let someone with lower ranking to approve my attendance. Meanwhile, I had been submitting to the secretary of the Commissioner the former registration sheet, however, I was notified later on by the secretary that the Commissioner had ordered*

the secretary not to accept the registration sheet anymore. The Committee can verify the veracity of the above allegations through hearings with the then Commander of the Central Fire Station and a Divisional Officer of 1st class ***H****, the three duty officers, the team members who registered my attendance and the secretary of the Commissioner. Regarding the issue raised by the Commissioner about the failure of complying with the order of the Commissioner to sign the registration sheet after I was transferred to the Central Fire Station, I have already given a reply with detailed explanation to the Commissioner (...)*" (See overleaf of P. 93. Emphasis added).

19. According to the information provided by the complainant, the content of aforementioned written explanation submitted by the complainant to the Commissioner mainly included the followings (See P. 107 and overleaf):

    1) On 15th October 2010, when the Commander of the Central Fire Station handed and requested the complainant to sign the amended registration sheet with the column for him to sign being placed above the Commander of the Station, expressing that the relevant order is made by the Commander of the Operation Department, the complainant refused to register on the registration sheet on the ground that the personnel of lower rank could not give order to the superior.

    2) Only until the complainant received the Order no. 03/CB/2011 of the Commissioner, then he realised that the relevant registration sheet was already approved by the Commissioner.

    3) The complainant questioned why the Commander of the Operation Department did not follow the normal administrative procedures and provide the complainant with the above order of the Commissioner concerning the approval of the registration sheet.

20. On the other hand, the Commissioner of the CB has responded to the written explanation in the previous paragraph through Order no. 07/CB/2011 of 20th April 2011, which states: "*(...) 3. After reviewing the justifications given by the Deputy Commissioner, the Complainant, regarding his refusal to register the time of attendance on the registration sheet, I have the following thoughts towards the entire issue: (...) Your actions reflected your lack of trust in the subordinates that you should have. Is it possible that a department head will deliver a false order of the*

superior? In case you really doubt about it, you could speak and confirm with me directly. It is unnecessary to take such troubles in ordering other officials to submit reports for explanation and evidence. Has the complainant ever considered that by doing so, it may not only damage the good relationship and harmony among colleagues, but also a waste of administrative resources unnecessarily? From a pragmatic point of view, such conduct should be avoided." (See overleaf of P. 112).

21. According to the statement provided by **H** to the CCAC, **H** pointed out that: "*There were changes to the usual procedures established at the Central Fire Station for signing the registration sheet after the arrival (around August 2010) of the complainant. The Commander of the Operation Department requested **H** to add his name on the registration book at the Central Fire Station. **H** thought that it was not right because by doing so, it seemed like the superior would be "monitored" by the subordinates. Therefore, **H** expressed immediately his opinions to **T**. However, **T** responded by saying 'just do whatever being told by the superior' and instructed **H** to take the registration book to the complainant to be signed by him. At the beginning the complainant refused and stated that he had indicated clearly to the Commander of the Operation Department that base on his ranking, it should be handled in accordance with the model of signing for the Command (there is specific registration sheet for Commissioner level personnel). According to the guidelines of the CB, the monitor of attendance should be carried out by the upper rank to the lower categories and not vice versa. Despite the several refusals of the complainant, **H** continued to act in accordance with the instruction of the commander of Operation Department to deliver the registration book to him to register and communicate the situation to the Commander of Operation Department. **T** ordered **H** to 'continue to act in the same way' regardless of the reaction of the complainant, and to 'prepare written report whenever he refused'. In case **H** was busy, he would send his assistant to deliver the book for registration. Later on, **H** followed the instruction of the Commander of the Operation Department and put the name of the complainant to the top of the registration sheet to differentiate it from the others. For the first few days of the adoption of this measure, he did the registration (Everyday the colleague responsible for managing the registration book would wait for the arrival of **H** to give him the registration book. Then **H** would deliver it to the complainant in person. Subsequently, **H** would fax it to the Commander of the Operation Department after registration by the complainant. There was one occasion*

that the registration sheet was not faxed by 09:05 and a subordinate of the Commander of the Operation Department called and asked about the situation). A few days later, the complainant told ***H*** *that it was no longer necessary to send him the registration sheet since he had already communicated with the Commander. Afterwards,* ***T*** *ordered* ***H*** *to report the details of the complainant failing to register on the registration book in writing to the superior. After a period of time, the complainant created his own registration book and signed in and out at the start and end of office hours, leaving it at the office of* ***H*** *after it was being signed. When* ***T*** *learnt about it, he manifested his dissatisfaction to* ***H*** *and told* ***H*** *that he should not provide any assistance to the complainant.* ***T*** *also warned* ***H*** *about the kind of undesirable consequences he would be facing if this situation was brought to the attention of the Commissioner and requested him to report the situation to the superior in writing. (****H*** *pointed out that* ***T*** *had ordered previously (…) 'No staff at the Central Fire Station is allowed to work for the complainant or listen to his order.')* ***H*** *had expressed to* ***T*** *that since the complainant was his superior and therefore he must work in accordance with his instructions and execute his orders.* ***T*** *responded: 'Do as I say. No need to care about other things. Otherwise you will face the consequences when the Commissioner knows'.* ***H*** *commented that* ***T*** *was always afraid of getting into trouble and dared not to disobey the orders of the superiors. According to the perception of* ***H****,* ***T*** *was only executing orders issued by someone that is superior to the complainant*." (See overleaf of P. 456 and P. 457).

22. **H** gave the following information as well when providing the statement to the CCAC: "*The complainant had told* ***H*** *that a subordinate has no competence to oversee the attendance of the superior. He asked* ***H*** *to consult* ***T*** *since the relevant measure had deficiencies in itself. After* ***H*** *communicated with* ***T****,* ***T*** *told* ***H****: 'Do not meddle in the affairs of others. Just execute the order of the superior and write a report to the superior if he refuses to register'. Thus, in compliance with the instruction of* ***T****,* ***H*** *had produced several reports, among them were the two reports date 15th October 2010 and 18th October 2010 (See written statements – Annex 1 and Annex 2).* ***T*** *was dissatisfied since it was written on the reports the phrase 'in obeying the instruction of Your Excellency'.* ***T*** *felt that* ***H*** *was 'putting him on the spot' and an argument was caused between the two parties. At the end* ***T*** *accepted the relevant reports.* ***H*** *expressed that he did not know whether the measure of requesting the complainant to register*

on the 'registration sheet' had been authorised by the Commissioner of the CB." (See P. 458 and overleaf).

(3) Analysis

1. **Given the above, it is certain it is inappropriate for the Commander of the Central Fire Station to endorse the attendance registration of the complainant, otherwise, the Commissioner of the CB would not agree with the proposal of the Commander of the Operation Department to amend the model of the respective registration sheet.**

2. **The aforementioned issue indicates that there were indeed problems within the internal communication of the CB at that time. For example, since the amended registration sheet was approved by order of the Commissioner, how come the relevant information was not clearly transmitted to the complainant. On the other hand, with the registration sheet being amended, the problem of "staff of lower rank endorses the attendance of the superior" no longer exists. Since the Commissioner had clearly notified the complainant of the necessity to register his attendance, under such circumstances, even the complainant had doubts about who actually approved the format of the registration sheet, he should have sought clarification from the Commissioner**.

3. Regarding the aforementioned issue, an adviser of the Office of the Secretary for Security points out in the analysis report: "*The crux of the issue is whether the complainant acknowledged precisely the requirement of the Commissioner to register his attendance, particularly when such demand was made by way of order of the Commissioner. According to the data available, the registration sheet was delivered to the complainant for him to register by the Commander of the Central Fire Station,* ***H****, who was a Divisional Officer of 1st class. Since certain deficiencies were found in the format of the sheet (...), it is understandable to raise doubts on the part of the complainant particularly when it concerns the supervision exercised by the lower category staff to the senior staff. Besides, based on the overall analysis of the opinion paper no. 01/CMD/2010 (...), the documents drawn up by the Commander of the Operation Department (Chief Fire Officer) on 28th September 2010 (...) and the report on 11th October 2010,*

it appears that the signing of the registration sheet by staff was decided by the Commissioner of the CB. However, these two documents written by the Commander of the Operation Department (Chief Fire Officer) generate confusion and constitute a disregard for the principle of good faith. (New paragraph) Nevertheless, regarding the issue of signing the registration, the refusal expressed by the complainant to sign on the original model of registration sheet is mainly related to the internal handling procedures and the timely notification of information within the CB (...)" (See overleaf of P. 5 of Annex 1).

4. **So far, it is not seen that the above opinions contradict with the analysis carried out by the staff of the CCAC.**

* * *

XIII. Before being substituted by the complainant, the Commissioner would always convene meetings with the staff to request them not to report their work to the complainant during the period of substitution

(1) About the complaint

1. The complainant expressed to the CCAC that: "*In accordance with the law, in the absence of the Commissioner due to business trip or personal holidays, it would be substituted by the Deputy Commissioner with a longer serving period – i.e. the complainant. However, before the start of his absence, the Commissioner would always convene meetings with the staff to require them not to report their works or convey what has happened within the CB to the complainant during the period of the substitution by the complainant.*" (See P. 4).

(2) Related facts and statements

1. In the "written report" submitted to the Judicial and Disciplinary Committee on 31st May 2011, the complainant pointed out that: "*(...) Starting from the beginning of last year (2010), whenever the Commissioner is absent due to business trip overseas or personal holidays, I would be the*

substitute Commissioner. However, prior to the start of the substitution, the Commissioner would always convene meetings with all leadership and chiefs, telling them not to give details or report their works to me during that period despite the fact that I would be the substitute Commissioner. (Although I did not take part in the meetings, the information was given to me by those officials who attended the meetings.) For general matters, it was only necessary to inform the Deputy Commissioner, ***S****, and let him sign all the documents as well. When came across special matters, they were required to inform the Commissioner directly. In recent substitutions, the endorsement of duty-related orders was also assigned to the Deputy Commissioner,* ***S****. For this reason, my several substitutions in the past were only in name but not in deed (...).*" (See P. 95 and overleaf).

2. According to the minutes of the Judicial and Disciplinary Committee on 13th June 2011, one of the members of the Committee, **S**, said at the meeting that: "*Upon the completion of the substitution, the complainant did not make any report on the status of the work during the period of substitution. According to him, it was because the Commissioner did not assign any tasks to him; as a result, there was nothing to report to the Commissioner. The Deputy Commissioner,* ***S*** *explained that according to the Commissioner, there were conflicts between the complainant and some department heads. Therefore, the Commissioner has made such arrangements for* ***S*** *to work with the chiefs and then give details to the complainant. The Deputy Commissioner,* ***S*** *said that he has been reporting to and submitting the documents to the complainant, during the periods that he was the substitute Commissioner. The Deputy Commissioner,* ***S****, expressed that there was one occasion that he has received a phone call from the Secretary for Security asking for the complainant. When* ***S*** *told him about it, he said that he was already aware of the issue and it could not be revealed to* ***S*** *since it was confidential and could only be taken care of at the highest hierarchical level. This shows that there was definitely a need for the complainant, to give details of his works to the Commissioner.*" (See overleaf of P. 12 and P. 13 of Annex 1).

3. As regards to the allegation concerning the meetings called by the Commissioner before the beginning of the substitute of position by the complainant, in which the Commissioner requested that nobody could give report of their work to the complainant during the period of substitution, the CCAC requested a number of supervisory level staff, past or present,

to provide statements for clarification, which are listed in the below table:

Name	Statement
A	**A** expressed that given the sensitive nature of the content of the activities of the Technical Department, such as field inspection and approval of fire service installation plans, therefore, it was determined by order of the Commissioner that **A** is required to report to the Commissioner only for the affairs within the department. In the absence of the Commissioner (for example, annual leave or business trip), the Commissioner has also delegated to **A** the powers to sign official letters and make decisions on matters within the department through the above-mentioned order. On the other hand, **A** expressed that the Commissioner did convene meetings prior to the substitution of the complainant as Commissioner and requested the chiefs and relevant personnel to report their works to the other Deputy Commissioner instead of the complainant. The Commissioner did not explain the reason for the request. Besides, **A** never heard that the above-mentioned decision by the Commissioner was due to the bad relationship between the complainant and certain department heads (See P. 405 and overleaf).
G	According to **G**, sometimes the Commissioner would convene meetings to request the chiefs and relevant personnel not to report their work to the complainant. They were told to report to the Commissioner directly through phone call or to the other Deputy Commissioner without given the reason; **G** also said that he was not always aware of the absence of the Commissioner, when **G** called the Commissioner (**G** was the Chief of the Services Division for more than three years prior to March 2011. The division is directly under the Commissioner. At that time he was subordinate to the Commander of the Operation Department, so it is not necessary anymore to contact the Commissioner directly), he/she was told by the secretary that the Commissioner was on holiday and he/she could call the Commissioner directly or contact the other Deputy Commissioner if necessary; **G** added that the Commissioner

	maintained a good relationship with the complainant in the past. The Commissioner told the supervisory personnel that they could contact and report to the complainant all issues that arose from their work regardless of their relevance during the period that he was the substitute Commissioner or in normal days. The Commissioner had also mentioned a number of times to **G** (even publicly to officials of various categories in the CB) that he/she could contact the complainant directly for any matters, adding that the complainant would be his successor when he retired. However, after the 10th Anniversary of the handover of Macao, the attitude of the Commissioner changed completely and the relationship between him and the complainant became worse and worse and eventually the complainant became a "figurehead" in the CB (See P. 471).
C	**C** expressed that there were such meetings. After the completion of the security task of the celebrations of the 10th Anniversary of handover of Macao, the Commissioner had mentioned once or twice in the regular meetings (at that time the complainant was no longer required to attend the meetings) that when the complainant was the substitute Commissioner, all the chiefs and relevant personnel were not allowed to report to the complainant with regard to their work. If necessary, they could contact the Commissioner directly and his mobile would always be on and reachable. At that time the Commissioner just gave the instruction without stating the reasons (See P. 477).
D	**D** expressed that there were two occasions in the two to three months before September 2010 that the Commissioner demanded the supervisory personnel not to report their work to the complainant, or come into contact with him. If there was anything that needed to report, it should be reported to the other Deputy Commissioner. **D** expressed as well that the Commissioner did not explain the reasons for such requirement. However, **D** felt that the Commissioner was causing the complainant to become a "figurehead" deliberately; **D** expressed further that it was not heard that the above-mentioned measure of the Commissioner was due to the bad relationship between certain supervisory personnel and the complainant (See P. 481).

E	When came across the complainant served as the substitute Commissioner, the Commissioner did not convene meeting every time before the start of the substitution and request the chiefs and relevant personnel not tot report their work to the complainant. This situation only occurred after the "annual leave" incident, for example, the leadership meeting on 8th September 2010, the Commissioner indicated very clearly that even though the complainant was the substitute Commissioner, they need not to report their work to the complainant and the latter could not sign any document on his behalf. The documents should be submitted to the other Deputy Commissioner for signature when necessary. In case of special circumstances, they could contact the Commissioner by phone (**E** pointed out that after a particular drill of influenza pandemic/after the complainant started to exercise his duties at the Central Fire Station, despite being the Deputy Commissioner, the complainant was not informed to attend the leadership meetings). **E** stated also that about August 2010 during one occasion that the complainant took over as substitute Commissioner, the CB held a technical meeting on fire safety with the Beijing authorities. Before the commencing of the said meeting, the complainant called a leadership meeting with to ascertain the situation. Subsequently, when the Commissioner resumed his duties, he convened another leadership meeting (in which the complainant did not attend) and indicated that during his absence, no one is authorised to call any meeting and the documents should be signed by the other Deputy Commissioner if there is any (See overleaf of P. 486).
J	**J** recalled that the Commissioner has indicated to the department heads who directly subordinate to him before his absence (such as business trip or annual leave) that they should report to the other Deputy Commissioner regarding their work during the period of his absence. The said Deputy Commissioner would in turn report to the complainant who was serving as substitute Commissioner; **J** expressed that the Commissioner did not state the reason for such requirement and he/she has not heard that the above-mentioned measure was due to the discord between the complainant and some of the chiefs (See overleaf of P. 491).

F	With regard to the issue that when the complainant was still the Deputy Commissioner, before he acted as the substitute Commissioner, the Commissioner would always convene meetings to request the chiefs and relevant personnel not to report the affairs of their work to the complainant, **F** responded that the issue could be divided into different stages. At the early stage, everything is normal. However, starting from 2011 (**F** could not recall the concrete date), it occurred that the Commissioner called a leadership meeting before the complainant took over as substitute Commissioner, and expressed that "something went wrong" within the Directorate. He also indicated that during his vacation, all situations that should be reported to the Commissioner or documents to be signed by the Commissioner should be first submitted to the other Deputy Commissioner, who, in turn, would decide whether it should be brought to the complainant or not depending on the situation. Although the Commissioner did not specify the "problem" existing within the Directorate, from the expressions of the Commissioner, **F** felt that there should be "conflict" between the Commissioner and the complainant. Knowing that there has always been a clear hierarchy within the CB where the subordinate has to obey the orders of the superior, couple with the fact that the complainant has always been the "trusted" person of the Commissioner, thus, when the above-mentioned situation happened, it caused people to have such speculation (See overleaf of P. 495).
T	(The staff of the CCAC asked the Commander of the Operation Department, **T**, that during the period of the complainant was still the Deputy Commissioner of the CB, when it is needed for the complainant to act as the substitute Commissioner, would the Commissioner express clearly every time before the substitution that nobody was allowed to report to the complainant or inform him the affairs happened within the CB during the period of substitution. If that is the case, did the Commissioner give any reason.) **T** expresssed that there is no such case. If came across matters that are within the competence of the complainant when he was the substitute Commissioner, **T** would report to him as usual (See P. 234).

O	Starting from the second half of 2010, when the complainant served as substitute Commissioner, the Commissioner of the CB would give **O** the instruction that if he/she came across any issues with his/her work, he/she could call the Commissioner directly or report to the other Deputy Commissioner, **S**; **O** expressed also that during the period that the complainant acted as substitute Commissioner, **O** did not submit the documents to the complainant for decision or approval since the complainant's office is at the Central Fire Station which is far away from the Headquarters at the Sai Van Lake. As a result, the documents were submitted to the other Deputy Commissioner for decision or approval (See P. 526).

4. When providing statements to the CCAC, the staff of the CCAC asked the Commissioner of the CB whether he had summoned meeting and gave order to request all staff not to report their work to the complainant before the substitution of the complainant as the Commissioner; the Commissioner stated: "*Such situation did exist. The Commissioner explained that it was because during his absence, all matters, including those within the competence of the Deputy Commissioner,* ***S****, would be first submitted to the latter and subsequently delivered to the complainant. Besides, if it was urgent, then the staff could contact the Commissioner directly or consult the complainant, the substitute Commissioner. The Commissioner expressed that the adoption of these procedures was because he had already noticed the emotional problems of the complainant at that time and his performance of work was affected. He also added that after he had resumed his duties, the complainant did not report to him in person concerning the issues happened during his absence and just handed the documents to the Secretary. Subsequently, the complainant did not even hand in the documents he had handled during the period of substitution upon the completion of substitution*." (See P. 686).

(3) Analysis

1. After analysing the above-mentioned statements, objectively it is believed that the claim of the complainant is true, i.e. "the Commissioner would always convene meetings before the start of his absence and express clearly

that nobody is allowed to report their works or convey what has happened within the CB to the complainant during the period of the substitution by the complainant.

2. It is worth noting that it is defined in Articles 17 to 19 of the "*Provisions Supplementary to Statute of Leadership and Management*" the powers of the Commissioner in areas such as general management, human resources management, as well as management of facilities and equipment of the Commissioner in the government department.

3. On the other hand, the powers of the Commissioner of the CB are also regulated in Article 7 of the Administrative Regulation no. 24/2001.

4. It is stipulated in Article 43 of the *Code of Administrative Procedure* that: *"1. Except as stipulated by specific law, in case of absence, vacancy or impediment of the holder of the office, it shall be substituted by the legal substitute; in the absence of legal substitute, it shall be substituted by the personnel of the entity or administrative authority assigned by the person being substituted. 2. Carrying out duties as substitute includes the exercise of powers delegated or sub-delegated to the person being substituted."* (Emphasis added).

5. In other words, in this case, the complainant shall be conferred with the powers of the Commissioner as described in the aforementioned Articles 17 to 19 of the "*Provisions Supplementary to Statute of Leadership and Management*" as well as Article 7 of the Administrative Regulation no. 24/2001 during the period of substitution as the substitute Commissioner.

6. **Thus, the request of the Commissioner of the CB in demanding the chiefs and supervisory personnel not to report their work directly to the complainant during the period that the complainant served as the substitute Commissioner is obviously a violation of Article 42 of the *Code of Administrative Procedure*.**

* * *

XIV. The Commissioner demanded the staff of the CB to prepare reports of "denigration" against the complainant, so that he could give a lower grade to the complainant in the appraisal

(1) About the complaint

1. According to the information provided by the complainant, the complainant considered that the reports of "denigration" against him mainly includes the following:

   1) According to the report written by the Chief Fire Officer, **U**, on 6th March 2010, (The Commissioner entered the order "Acknowledge" on 8th March 2010), **U** stated that when he was the Chief of the Resources Management Department in January 2010, the complainant asked him to say to the Chief Fire Officer, **S**, that "*If you do not want to renew the appointment as Head of the Department, you may fill in the declaration for that purpose*" (see P. 71). Besides, according to the understanding of the Commissioner, the complainant, starting from late 2009 (during the period that is close to the 10th Anniversary of the return of Macao), the complainant has been trying to make the then Commander of the Operation Department, **S**, a "figurehead", making **S** feel awkward and emotionally disturbed (See P. 16).

   2) **U** pointed out also in the above-mentioned report dated 6th March 2010 that because he failed to act in accordance with the instructions mentioned above given by the complainant, **U** was often rebuked unreasonably by the complainant (see P. 71). For example, the complainant scolded him loudly at the Spring Dinner of the CB held on 8th February 2010, complaining about the failure to mention at the party that the gifts for the lucky draw were contributed by the complainant and the defects he spotted at the party. Although **U** apologised to the complainant, the latter kept on berated him. Regarding this incident, **U** submitted a report to the Commissioner on 12th February 2010 and the Commissioner issued the order of "I acknowledge" on the same day (see overleaf of P. 71).

   3) **S** drafted a report on 8th June 2010 (he was the Chief of Resources Management Department at that time) stating that in the promotion ceremony of principal firefighters on 7th June 2010, given the large number of people, it became necessary to change the usual arrangement

and the firefighters needed to be arranged in horizontal rows. **S** had sought approval for the respective arrangement from the superior through internal notification but he never received any response. When addressed the issue to the complainant, the latter said that he has lost the relevant internal notification; nevertheless, he claimed that he had already consulted the Commissioner and the intended change could be made. Thus, **S** began to organise preparations for the promotion ceremony accordingly. However, **S** only came to know on the day of the ceremony from the conversation with the Commissioner that the Deputy Commissioner (the complainant) had not taken the matter to the Commissioner's attention. For this reason, **S** was reprimanded by the Commissioner. The Commissioner also entered the order of "I acknowledge" on the aforementioned report (See P. 53).

4) The Deputy Divisional Officer of 1st class of the Support Unit for the Command Department, **R**, prepared a report on 10th August 2010, claiming that he had witnessed a number of times that the complainant publicly criticized the errors committed by two Chief Fire Officers with their work at public areas within the CB, "it would be felt that the tone used was carrying a certain degree of humiliation". The Commissioner entered an order of "I acknowledge" on 2nd September 2010" (See P. 74 and 75).

5) The Deputy Divisional Officer of 1st class, **X**, prepared a report on 6th October 2010, stating that the complainant had told him several times that the Commissioner should stop being personal against him, "*otherwise he would fight back and 'reveal the secrets', then the Commissioner has to pay a bigger price. The emotion was very instable and agitated*". The Commissioner gave the order of "I acknowledge" on 8th October 2010" (See P. 76).

(2) Related statements

1. In the statement provided by the Commissioner to the CCAC, it is stated that: "*Given that **U** did not submit the document for renewal of **S**, as a result, **U** was scolded and accused publicly by the complainant after the Spring Dinner or Chinese New Year Eve Dinner in 2010 that 'he is not capable of doing anything'. The Commissioner was there at the scene and tried to mediate. He told **U** not to take it too seriously since such emotional reaction of the complainant might be a result of too much drinking. On the*

*other hands, the Commissioner asked the complainant to try to understand the situation of **U** because of his illness. However, it resulted that the complainant requested **U** to communicate with him in writing concerning all business matters thereafter.*" (See P. 684)

2. The Commissioner expressed as well that: "*In May 2011, when the Commissioner was preparing to draft the report (no. 20/GAC/2011), the complainant apologised verbally to the Commissioner again (only the Commissioner and the complainant were there at that time) and admitted that his emotional status was not good. Even if he said earlier that he 'would reveal the secrets', in fact 'there is no such thing, the Commissioner has no secret to reveal'; therefore, the Commissioner believed that the complainant had admitted the contents of the respective report. With regard to the report of **X** written on 6th October 2010, due to the seriousness of the incident, the Commissioner told **X** that if it was true, **X** should submit a written report. In addition, **X** told the Commissioner that he had talked to **R** about the respective situation, the Commissioner had verified it with **R** but not with the complainant*." (See P. 686)

(3) Analysis

1. With regard to the above accusations, the complainant has refuted in the written statement submitted to the Judicial and Disciplinary Committee, however, the Judicial and Disciplinary Committee has not proceeded with any further clarification concerning the above issues.

2. First, there is no information showing that the content of the respective reports is "fabrication", or the Commissioner had ordered the staff to "fabricate" such facts to "denigrate" the complainant.

3. However, all the events referred to in points 1) to 4) **happened before 18th August 2010**.

4. As explained above, according to the stipulations in Article 14 of the "*Fundamental Provisions of Statute of Leadership and Management*" and Article 8 of the "*Provisions Supplementary to Statute of Leadership and Management*", as well as the regulation and requirement under the Order of the Secretary for Security no. 4/SS/2009, the Commissioner of the CB

should comply with the law and conduct performance evaluation of the complainant **for the period of 18th August 2010 to 17th April 2011** to be included in the Leadership Performance Appraisal Report (Report no. 20/GAC/2011) prepared by the Commissioner, which proposes the termination of the appointment of the post as Deputy Commissioner of the complainant.

5. Thus, **for the Commissioner to include those charges as basis to appraise the performance of the complainant for the period of 18th August 2010 to 17th April 2011, objectively speaking; it does not comply with the stipulations and requirement of the law**.

6. Besides, the Commissioner of the CB produced on 20th April 2010 the Leadership Performance Appraisal Report for the appraisal of the complainant for the period of 18th August 2009 to 17th April 2010. It is written in the report that the complainant "*could satisfy the requirements of his functions and it is proposed to renew the appointment*." (See P. 3 and overleaf of Annex 8).

7. **The events referred to in the documents mentioned in points 1) and 2) happened between January and March 2010. In other words, if such events were proved to be true and would affect the renewal of the appointment as Deputy Commissioner of the complainant, the Commissioner should have included them in the Leadership Performance Appraisal Report for the period of 18th August 2009 to 17th April 2010 mentioned in the above point, but the Commissioner failed to do so.**

8. On the other hand, **regarding the "undue" behaviour carried out by the complainant in the exercise of his functions as referred to in the aforementioned documents in points 1), 3) and 5), there is no evidence to indicate the adoption of other investigative measures of the Commissioner to verify the actual existence of such acts, in particular, there is no hearing of the complainant concerning the aforementioned incidents.**

9. **It should be noted that although the Commissioner has indicated that the complainant had asked his apology by the threat of claiming that**

"he would reveal the secrets", we have not seen any document that would support this alleged fact.

10. **The Commissioner, in deeming the incidents in the aforementioned points 1), 3) and 5) as facts under the condition that no hearing of the complainant had been held, has already violated the "principle of participation" as defined in Article 10 of the *Code of Administrative Procedure*, i.e. "*The bodies of the Public Administration, when forming a decision that is related to private individual and associations whose object is the defense of their interests, should ensure the participation of the private individual and those associations, notably through the hearing pursuant this Code*."**

11. Given the above, the Commissioner of the CB considered the aforementioned events referred to in points 1) to 5) as facts and used them as the basis for the evaluation of work performance of the complainant for the period of 18th August 2010 to 17th April 2011; such act does not comply with the stipulations of the law.

* * *

XV. The claim of the Commissioner that the complainant has violated the Administrative Regulation no. 14/2002 of 12th August and the Order of the Secretary for Security no. 38/SS/2002 has no legal basis

(1) Related facts

1. In order to ascertain the situation of the everyday use of the vehicle of the CB by the complainant, **Y**, a fireman who is responsible for providing transportation service to the complainant, was asked to testify on 25th March 2011 by the Commissioner. The content of the testimony includes: "*The Commissioner asked **Y**: Your function in the CB is a driver and you have been responsible for providing the transportation service for senior officials in the CB, especially the Deputy Commissioner, the complainant, is it?* (Another paragraph) ***Y** replied: Yes, but not as frequent lately.", "The Commissioner asked **Y**: According to the information, the Deputy Commissioner asked you to use the vehicle of the CB to take him to work*

or to return home very often in the past, is it true? (Another paragraph) ***Y*** *replied: Yes, but more often it is for business missions, certainly there are cases that I send him to work or send him home." "The Commissioner asked* ***Y****: Do you know that according to the law (Order of the Secretary for Security), the vehicle for personal use and the allocation of a driver to provide transportation service between home and work is only granted to Commissioner level officials, Deputy Commissioners are not entitled to this right?* (Another paragraph) ***Y*** *replied: I just follow the instruction given and perform my duties according, other matters are not my concern.*" (See P. 76 of Annex 2)

2. In the Leadership Performance Appraisal Report of 6th May 2011 (Report no. 20/GAC/2011), the Commissioner stated that the complainant "*always asked the driver of the CB to pick him up to work and send him home, as well as send him to restaurants for meals using the vehicle of the CB without obtaining my permission. These acts constitute a disciplinary offense and a violation of law, in particular the order made by Your Excellency, the Secretary on the vehicles for personal use*." (See overleaf of P. 16 of Annex 2)

3. According to the information, the Chief of the Service Division of the CB, **Z**, has put together the report no. 56/DS/2011 of 5th May 2011, in which the records of the usage of the vehicle and driver of the CB by the complainant to and from non-working locations outside normal office hours between January to December 2010 were listed (See P.s 34 to 36 of Annex 2).

4. To this regard, the Commissioner of the CB gave an order on 6th May 2011, claiming that the complainant "*has violated the legislation on the use of service vehicles and the Order of the Secretary since he asked the driver to serve him using the vehicle of the CB during non-office hours without the permission of the superior.*" (See P. 34 of Annex 2)

5. According to the information provided by the CB (See P. 67 to 75 of Annex 2), Article 7 of the Administrative Regulation no. 14/2002 of 12th August *Acquisition, Organisation and Use of Vehicles of the Macao Special Administrative Region* and the Order of the Secretary for Security no. 28/SS/2002 are the legal basis for the complainant to be allocated with service vehicles when took up the position as the Deputy Commissioner (Operations).

6. Article 7 of the Administrative Regulation no. 14/2002 stipulates:

"1. Given the operational needs arise from work in public entities, in particular those public entities with the duties of investigation or inspection, albeit non-police nature, could provide general services vehicles to specific working staff for long-term use.

2. The vehicles permanently assigned under this article cannot be used for traveling in a personal nature.

3. The allocation of general services vehicles for long term use is granted by special authorisation; for general services vehicles of entities as described in Paragraphs 1), 2) and 5) of Article 1, it should follow the charters, statutes or internal regulations of those entities."

7. For the purpose of the stipulation of the aforementioned regulation, the Secretary for Security issued the Order no. 38/SS/2002, requesting that all government departments under its purview (including the CB) to comply with the above regulation strictly. It also requests the leadership of the departments to submit to the Office of the Secretary for Security a reasoned proposal for the assigned vehicle for long term personal use. The proposal should include "*the identification of the personnel to be allocated with the vehicle" and "explain the reason why the purpose of the provision of the vehicle as specified in the proposal could not be achieved with the general service vehicles (to be driven by a driver) of the department*" (See P.s 74 and 75 of Annex 2).

8. In order to abide by the above-mentioned Order of the Secretary for Security, the CB proposed a number of leadership and chiefs to be allocated with "general service vehicle for long term use" through the proposal no. 276/DGR/2002 of 26th September 2002, with which the Commissioner agreed. It was mentioned in the proposal that the reason for the Deputy Commissioner of the CB to be allocated with "general service vehicle for long term use" was "*the necessity to represent the CB in attending meetings, ceremonies or festivals, etc, outside the work place. The time of the events varies and often the entry of private vehicles to the venue of the meeting or ceremony is restricted, therefore, it is needed to be allocated with general service vehicle for long term use. Besides, given the specific functions of these personnel, which are different from civilians, they are*

required to carry out surveys and inspections. Under such condition, in order to avoid the leaking of the time and location, it is necessary for them to drive the vehicles themselves to conduct surveys and random inspections, so as to better supervise the activities inside and outside the CB." (See P. 71 of Annex 2)

9. In addition, regarding the situation of the Deputy Commissioner (Operations), it was pointed out in the aforementioned proposal no. 276/DGR/2002 of 26th September 2002 that the reason for the allocation of "general service vehicle for long term use" is because "*the officials who are responsible for operations are in great need to return as soon as possible to their posts, sometimes even go directly to the scene to lead and support relief operations*", "*Given being always stand-by and without a fixed schedule, it is difficult to designate a driver to be responsible for the service in addition to their normal functions. From our experience, during emergency situations, those drivers who are on duty also need to perform their duties outside due to the relief and rescue operations that suddenly occurred. As for those 'stand-by' drivers, they still have not returned to the operation station that they belong to, therefore, the aforesaid officials have great need to drive the vehicles themselves in order to get to the work locations promptly*." (See P. 72 of Annex 2); The Secretary for Security issued an order and agreed the above-mentioned proposal on 30th September 2002 (See P. 70 of Annex 2).

10. When making the statement, the Commissioner expressed to the CCAC that: "*In the CB, apart from the Order of the Secretary for Security indicating that aside from the Commissioner being allocated with vehicle for personal use and the Deputy Commissioner and certain other chiefs could use the vehicles for official purposes, there was no other relevant written order of the same nature; he expressed that only the Commissioner can have vehicle for personal use, the usage of vehicles by other leadership and chiefs is restricted to official purposes. Certainly, the above Order of the Secretary also pointed out that personnel concerned may drive the vehicle back and forth the residence and the workplace. He added that the Deputy Commissioner is assigned a driver to drive the vehicle of the CB which is intended solely for official purposes. In case of private trips, such as travelling between residence and workplace, the vehicle concerned shall be driven by him. He expressed that other than the Order of the*

Secretary mentioned above, there is no other written document concerning the instructions for the use of vehicles of the CB." (See overleaf of P. 683)

(2) Analysis

1. It could be seen from the content of the above proposal that other than the Commissioner of the CB, other leadership and chiefs of the CB (including the complainant) are allocated with "general service vehicle for long term use" base on the specific characteristics of their duties. **The vehicles should be driven by the interested parties themselves only, even when carrying out their duties**.

2. However, according to content of the "factual statement" of **Y** (a driver) taken by the Commissioner of the CB, the order made in the report no. 56/SD/2011 of 5th May 2011, as well as the statement provided by the Commissioner to the CCAC, **with regard to the use of vehicles by the complainant for service purposes, the Commissioner allowed the staff of the CB (drivers) to drive the "general service vehicle" which is assigned to him for long term use to provide the transportation service that he needed in order to carry out his official duties**.

3. Nevertheless, it is worth noting that **the Commissioner allowed the staff of the CB (drivers) to drive the said "general service vehicle for long term use" to provide transportation service for the complainant for the purpose of public functions. Since no specific definitions were made on "public functions" and "personal usage" in the Order of the Secretary for Security or the instructions within the CB, there is no legal basis for the Commissioner to accuse the complainant for requesting the staff of the CB (drivers) to provide transportation service for the travelling between his home and the workplace**.

4. This is because, although it is stipulated in Paragraph 2 of Article 7 of Administrative Regulation no. 14/2002 that: "*The vehicle permanently assigned under this Article cannot be used for traveling in a personal nature*." However, the term "personal nature" was not further defined in the respective regulation.

5. In fact, the same situation occurs in the use of public service vehicle by

the Commissioner as according to Sub-paragraph 13) of Paragraph 1 of Article 8 of Law no. 7/2002 of 22nd of July, the Director of public services has the right to be assigned with service vehicle for personal use. However, according to the provision of Paragraph 2 of the same article, "*when the use of vehicles for personal use is to meet the needs of transportation service due to personal matters", "the vehicles could only be driven by the holder (i.e. the directors of services*)". Similarly, Law no. 7/2002, as well as its complementation, the Administrative Regulation no. 14/2002, do not specifically define the meaning of "personal nature".

6. Nevertheless, according to the *Handbook for the Management and Use of Vehicles of Public Entities* issued by the Public Administration and Civil Service Burear[44] (SAFP), there is a concrete explanation of "personal nature" in relation to Paragraph 2 of Article 8 of Law no. 7/2002, i.e., "***for the application of the provisions of the relevant law, the normal route between home and the workplace, including the interruption of lunch, is not considered as using the vehicle for private purposes.***" (See P. 248. Emphasis added)

7. Similarly, regarding the provision of Paragraph 2 of Article 7 of Law no. 14/2002 ("*The vehicle permanently assigned under this Article cannot be used for traveling in a personal nature*"), the SAFP has also made the follow explanation, "*in addition*, ***the above provisions regarding the normal route between home and the workplace is also applicable to holder of vehicle for long term use.***" (See overleaf of P. 248. Emphasis added)

8. Give the above, **under the circumstances that the Order no. 38/SS/2002 of the Secretary for Security did not make any definition of the term "personal nature" that is different from the above-mentioned definition made by SAFP, coupled with the fact that the CB did not formulate any internal regulation on the use of service vehicles, there is no legal basis in objective terms for the Commissioner to accuse that**

[44] Uner current Organisation Law of the Public Administration and Civil Service Bureau (Administrative Regulation no. 24/2011 of 8th August), or the old Organisation Law of the Public Administration and Civil Service Bureau that was repealed (Decree Law no. 23/94/M of 9th May), the Public Administration and Civil Service Bureau is entrusted with the responsibility to interpret and unify the application of the general regimes of public administration.

the request of the complainant to be picked up and dropped off by the staff of the CB (driver) between home and the workplace does not fall into the category of official matters and a violation of the "legislation of the use of service vehicles" and the Order no. 38/SS/2002 of the Secretary for Security.

* * *

XVI. The Commissioner claimed that the complainant has violated the stipulations of the EMFSM without going through any disciplinary proceedings

(1) Related facts

1. In the Leadership Performance Appraisal Report of 6th May 2011 (Report no. 20/GAC/2011), the Commissioner listed several irregular acts of the complainant with some of them taking place more than a year ago. At the end of the report, the Commissioner of the CB pointed out that the acts committed by the complainant "*have clearly violated the following provisions: a) Subparagraphs a) and d) of Paragraph 2 of Article 6; Subparagraph c) of Paragraph 2 of Article 7; Subparagraphs a), b) e) and Item 1 of Paragraph 2 of Article 8; Subparagraph a) of Paragraph 2 of Article 9; Paragraph 1 of Article 10; Subparagraphs c), d) and e) of Paragraph 2 of Article 11; Subparagraphs f) and h) of Paragraph 2 of Article 12 of the EMFSM approved by Decree Law no. 66/94/M of 30th December* (See P. 18).

(2) Analysis

1. It is worth noting that Article 250 of the *EMFSM* stipulates:

   "*1. If a superior is not conferred with disciplinary powers by this Statute or the degree of disciplinary powers conferred is insufficient, it is a duty to promptly report all disciplinary offences committed by his inferior or subordinate that comes to his knowledge.*

   2. The report should be lodged to the immediate superior of the reporter

in direct and confidential way, so that the superior can carry out or give instructions to initiate the relevant procedures, or deliver the report to the competent authority in the same manner.

3. Prior to the reporting of the disciplinary offense, the superior should seek to clarify the details featuring the act of violation mentioned, and conduct hearing of the offender whenever appropriate and possible."

2. At the same time, Article 267 of the *EMFSM* stipulates:

"1. Upon receipt of testimony, report or complaint, the competent authority to initiate disciplinary proceedings should make decision immediately whether to pursue disciplinary responsibility or not.

2. If the above-mentioned competent authority deems that it is not necessary to pursue disciplinary responsibility, it should give order to file the testimony, report or complaint.

3. If the competent authority referred to in Paragraph 1 deems that it is necessary to pursue disciplinary responsibility, it shall initiate or give order to initiate the disciplinary proceedings.

4. In the case of the signs of indicted offence match up with the abstract penalty that exceeds its jurisdiction, though the competent authority deems that disciplinary proceedings should not be raised, it shall submit the matter to the authority with the corresponding competence to make decision for such purpose."

3. In fact, "*the disciplinary proceedings are all means and acts of proceedings adopted by Administrative Authority to evaluate the disciplinary validity of a particular fact or to assess whether or not a certain department is functioning properly. It aims to adopt measures to rectify the deviations that could affect or disturb the normal achievement of objectives and interests of the Administrative Authority." "In summary, it is the beginning of the approaches to clarify or rectify the potential (even though it is only probable) situations that might break the harmony of the system"*[45]*; besides, "the request of bearing of disciplinary liability can only be done through the procedure itself – to commence disciplinary case, so as to*

[45] *Manual of Disciplinary Law* (2nd edition), P. 99, Manuel Leal-Henriques, Legal and Judicial Training Centre

identify facts, find out the relevant person to be held responsible and guarantee the rights pertaining to this defense are established."[46]

4. **Therefore, when the Commissioner of the CB received the report that mentioned the "misconduct" at work or disciplinary violation of the complainant, the Commissioner should make decision on the initiation of disciplinary proceedings, or, if he thought he had no jurisdiction to initiate such disciplinary proceedings, the relevant matters should be reported to the Secretary for Security, so that the Secretary could decide whether or not to initiate the disciplinary proceeding in accordance with the law.**

5. **It is worth noting that prior to the establishment of facts through relevant disciplinary proceeding, the Commissioner of the CB has no legal basis to accuse the complainant of violating the stipulations of the *EMFSM*.**

* * *

XVII. The complainant was assigned to the job of compiling the *Administrative Guide of the Fire Services Bureau*, but was given no administrative support despite of having made a written request

(1) About the complaint

1. The complainant said that he was assigned to the job of compiling the *Administrative Guide of the Fire Services Bureau*, but was given no administrative support by the Chief of Resource Management Department, **T**, despite of having made a written request (see P. 5).

(2) Related facts and statements

1. After the complainant's fixed-term appointment as Deputy Commissioner was ceased by an order issued by the Secretary for Security, the current Deputy Commissioner **S**, issued Order no. 11/CB/2011 on 1st September

[46] *Manual of Disciplinary Law* (2nd edition), P.. 105, Manuel Leal-Henriques, Legal and Judicial Training Centre

2011, which requested the complainant to start working in the Resource Management Department directly under the Chief **T**. The order indicated that "*The Complainant… His duty is to compile the Administrative Guide of the Fire Services Bureau. The said staff has to conduct analysis and survey on the internal administration of the subunits of the CB and describe the relevant procedures by words and flow charts with clear legal basis…*" Meanwhile, the order also indicated the steps and timeline of the task (See P. 136-137).

2. On 26th September 2011, the complainant made report no. 13/DGR/2011, which indicated: "*… I asked the Chief of the Material Section of the Central Fire Station, Divisional Officer **AA**, for assistance, but **AA** stated that I could not directly request them to provide support as instructed by his superior (Chief of Resource Management Department) during a meeting, so I hereby request you, the Chief of Resource Management Department, to verify, in written form, if what **AA** has said is true. If not, **AA** has violated the EMFSM…*" The complainant added, "*…Based on my analysis, this time the superior ordered me to compile the part of the administrative guide relating to the Resource Management Department (according to my understanding, it should be work instruction). In order to effectively accomplish the task, support and participation by the chief of every division under the department are necessary. Therefore, I hereby tell you that, when doing this job, I will, at any time, ask the chief of every division under the department to present at meetings and participate in the job. Since the time given by the superior is very limited, as a Chief Fire Officer who is under the Chief of Resource Management Department, I should have the power to give instructions to the staff under this department. Therefore, I will, through orders and notifications, soon, inform the relevant division chiefs to commence their works as soon as possible to avoid delay of the progress so as to meet the deadline set by the superior.*" (See P. 141-142)

3. Information shows the Chief of Resource Management Department **T**, the complainant, Divisional Officer of 1st Class **P**, Deputy Divisional Officers of 1st Class **BB** and **CC** had a meeting on the said issue on 28th September 2011.

4. The CCAC invited these members to give statements as shown in the following table:

Name	Statement
T	When the complainant was working under the Resource Management Department, he thought that he could still give instructions to the staff members. He also intended to call for a meeting with the staff members of the department about the task of compiling the guide. Therefore, during the meeting, **T** wanted to explain to the complainant that he was subordinate to **T** and had to provide support to **T**, while other staff of the department (including those whose positions were lower than his) were not his subordinate. Therefore, if the complainant needed assistance from other staff, he could raise the request to T in written form and **T** would provide cooperation as much as possible. The complainant should neither give instruction to them nor convene a meeting with them directly. (See P. 234 and overleaf)
BB	During the meeting… **T** reiterated that the complainant was directly subordinate to **T**; therefore, he should directly report to **T** and should neither directly contact the staff of the Resource Management Department nor give any instruction to them. In fact, before the meeting, **T** had already gathered the supervisory staff of the department and gave them the relevant instruction. (See P. 424 and overleaf) According to **BB**'s understanding of the *EMFSM*, it is subordinates' duty to obey their superior. Since the complainant was a Chief Fire Officer, all fire-fighters whose ranks were lower than Chief Fire Officer had the duty to obey him. Therefore, when **T** made the request that "the complainant should neither directly contact the staff of the Resource Management Department nor give them any instruction, **BB** was 'confused'. It is because: According to what **BB** knows, Chief Fire Officer **E** also does not bear any supervisory position under the Operational Department of Macao, but he/she is not forbidden to have any direct contact with the staff of the department or give them any instruction. Moreover, according to **BB**'s understanding, for the requests made by the superior under other subunits or in other functional areas, the subordinates have no duty to provide information or support. However, in the complainant's case, **BB** was "confused" about the instruction since they were under the same department. (See P. 425)

CC	A meeting (lasting for around 30 minutes) was held at the meeting room at the 3rd floor of the Sai Van Lake Fire Station in a morning. Since the appointment of the complainant as the Deputy Commissioner had just been terminated and he was assigned to work under the Resource Management Department, the meeting focused on the nature of the complainant's duties and the arrangements about his works. **T** pointed out that the complainant would only be responsible for studying of strategies and there would be no hierarchical relationship between the complainant and the remaining staff of the department. He would only directly report to **T**. During the meeting, **T** told the complainant that he should not give any instruction directly to the staff of the department. If needed, the complainant should contact **T** first. (See P. 435)
P	The meeting was convened by **T** and **P** was requested to present at the meeting, of which the minutes were taken. As remembered by **P**, the meeting was rather controversial. The purpose for the meeting was to clarify the position of the Chief Fire Officer (the complainant, former Deputy Commissioner of CB) in the department after he was assigned to work under the department in early September 2011 and the matters about the operation of the department. **T** stated that the staff of the department should be subject to **T**'s instructions only. Since the complainant was not the Chief of the department, he had no power to give instructions to the staff. If needed, the Chief Fire Officer could tell **T** and **T** would give instruction to the staff. As to the arrangements of works of the department in the future, **T** clearly pointed out during the meeting that, for example, if the complainant had to get any information related to his work, give order or instruction to the staff of the department or mobilise manpower, he should notify **T** and **T** would handle the matter. According to **P**'s understanding, personal contact between the complainant and the staff was not a topic of the discussion during the meeting. (See overleaf of P. 453 and P. 454)

5. On 19th October 2011, **T** issued Order no. 09/DGR/2011, which indicates, "*According to Order no. 11/CB/2011 issued by the Deputy Commissioner, Chief Fire Officer (i.e. the complainant) has been assigned to work under Resource Management Department to assist me in the works of studying and all jobs assigned to him have to be directly reported to me. However, he does not follow the said order and irregular situations really exist. I explained to him again the relevant arrangement during the meeting on 28th September 2011 in order to enable him to make correction and prevent similar cases from happening again.*" (See P. 143-144)

6. On 27th October 2011, the Chief of Resource Management Department issued Order no. 11/DGR/2011 to request the complainant to finish the said work by the deadline given. (See P. 145)

7. For this issue, on 3rd November 2011, the complainant made report no. 46/GAC/2011 to request the superior for a written response of whether he could instruct other staff to participate in his works and whether he could directly contact them. He also stated that he would not commence the work until a reply was given. (See P. 146)

8. On 7th November 2011, the complainant made a request to the Chief of Resource Management Department **T** for the minutes of the meeting held on 28th September 2011 (See P. 24 of Annex 22, in which "on 28/10/2011" should be a typo error)

9. On 7th November 2011, the complainant made report no. 51/GAC/2011, which indicates, "*According to Order no. 11/DGR/2011 issued by the Chief of Resource Management Department on 27th October 2011 ("2001" in the original text, which should be a typo error), I hereby list the details about the functions and duties of every subunit under the Resource Management Department."* (See P. 25-29 of Annex 22). At the end, the complainant points out that, *"According to the instruction given by the superior, I have listed the duties and scope of competence of every subunit of the Resource Management Department. If the drafting of the guide for all subunits of the department is required to get started, it will be necessary to convene a meeting with the heads of all subunits in order to know what kind of guidelines they have already had and what is missing but necessary. The work will be done according to the degree of importance and urgency.*

Therefore, I suggest the Chief of Resource Management Department convening a meeting with the heads of all subunits of the department (because he has given me a verbal instruction that I shall not give any orders to the staff of the department directly) so that the compilation of the administrative guide can continue." (See P. 29 of Annex 22)

10. On 30th November, the complainant received the minutes of the said meeting, which indicates:

"T: 'The purpose for having this meeting with the three colleagues and the complainant is to discuss the works of DGR (Resource Management Department). I have told the complainant that there is no hierarchical relationship between the complainant and the staff of the department. All his works have to be reported to me only. If he needs any help, he should tell me.'

The Complainant: 'For the works related to the department assigned by the Chief of DGR, can I convene any meeting with the supervisors under the DGR?'

T: 'No.'

The Complainant: 'Can I give any order to the staff of DGR? Or can I call them to consult about the works?'

T: 'No, because in the department, you do not have any hierarchical relationship with other staff and you only have to report to me. Therefore, you shall not give any order to them, but they shall treat you with due respect under the provisions of the Rules of Salutes and Honour.'" (See P. 382 and P. 30-31 of Annex 22)

11. On 30th November 2011, **T** issued Order no. 14/DGR/2011, which indicates, "*As to report no. 51/GAC/2011 submitted to me by the complainant on 7th November 2011, I hereby reiterate that, according to Order no. 11/CB/2011 issued by Deputy Commissioner on 1st September 2011… This shows the fact that Chief Fire Officer (i.e. the complainant) is not within the regular personnel structure of the Resource Management Department, therefore, there is no hierarchical relationship between the complainant and any staff of the subunits under the department. In this sense, he has*

no power to give any order or instruction to the staff working under me. If he needs any assistance, he should make a request to me and I will handle the matter. For the job of compiling the Administrative Guide of the Fire Services Bureau, I have told the complainant how to commence the work through Orders no. 01/DGR/2011 and no. 09/DGR/2011. However, the complainant still has not taken any positive action in response to the Orders. It was not until I, through Order no. 11/DGR/2011 on 27th October 2011, instructed the complainant to finish the work that he submitted a document on 7th November 2011. When I read the document thoroughly, I discovered that the document was over 90% the same as the content of Administrative Bylaw no. 24/2001. At the same time, the said document did not indicate any information related to the Registration Unit under the department. (Another paragraph) Hence, in conclusion, since the day he knew that he was assigned to compile the Administrative Guide of the Fire Services Bureau (on 1st September 2011) until now (7th November 2011), Chief Fire Officer (i.e. the complainant) has been ignoring the superior's orders and instructions and making up excuse to stall off his works. Finally, in order to evade disciplinary liabilities, he muddled through the task by copying regulations. The behaviour has reflected his negative attitude and indications that he may lose his interest in his works… Since 1st September 2011, I have, many times verbally or in writing, told the complainant to pay attention to his attitude and make adjustment, but the complainant has not shown any improvement in both attitude and work. As I do not wish to adopt the ultimate method (disciplinary system) to improve the complainant's situation, I warn him again and again to have a thorough self-reflection…" (See overleaf of P. 388)

12. On 30th November 2011, **T** issued Order no. 18/DGR/2011, which indicates, "*As to Chief Fire Officer (i.e. the complainant)'s question of whether he can order the staff of the department who are not subordinate to him to provide support, I have given the reply again and again through Orders no. 01/DGR/2011, 09/DGR/2011 and 14/DGR/2011 and the meeting held on 28th September 2011. However, the complainant still neither follows the orders from the superior nor properly works on the project assigned by the superior, showing his negative attitude to the relevant work. However, as the Chief of Resource Management Department, I am responsible for warning him to adjust his attitude as soon as possible in order to accomplish the task assigned by the superior.*" (See P. 59 of Annex 22)

13. On 6th December 2011, the complainant filed a complaint against **T** to Deputy Commissioner of CB, **S**, according to Article 253 of *EMFSM*. In the complaint letter, the reports he submitted to **T** and the Orders issued by **T** were cited. At the end, the complainant points out, "*As to the job of compiling the Administrative Guide of the Fire Services Bureau, Chief Fire Officer **T** tried to make things difficult to me, especially for the matters about manpower. As the annex of Order no. 11/CB/2011 issued by your Excellency, the Deputy Commissioner, also clearly indicates that the Administrative Guide of the Fire Services Bureau will be passed to every department in order to gather opinions, the work involves every department. However, according to **T**'s Order, since I do not bear any supervisory positions, there is not any hierarchical relationship between me and all staff of the Resource Management Department. I consider that the Order does not accord with the EMFSM, because under Articles 50 and 53, as a Chief Fire Officer, I have the power to give instruction and order to militarised staff whose ranks are lower than me. However, it is inconceivable that **T** clearly told me that I shall not contact any staff of the department without giving me any proper reason. In general, if the superior requests the subordinate to effectively accomplish a task, reasonable support should be given in order to have the job done effectively and completely. On the contrary, **T** instructed me not to request for assistance from the staff of relevant department and even not to contact them to gather information. Such behaviour has constituted violation of EMFSM and contradicted the objective of the task. For the said reason, I have never effectively worked on the task as instructed by your Excellency. (Another paragraph) Therefore, I would like to lodge a complaint against Chief Fire Officer **T** under Article 253 of EMFSM*." (See P. 9-10 of Annex 22)

14. On 12th December 2011, Deputy Commissioner **S**, through an Order, requested **T** to submit a report in response to the said complaint within seven days.

15. On 14th December 2011, **T** made report no. 21/DGR/2011, which indicates, "*Regarding the task of making the Administrative Guide of the Fire Services Bureau assigned to the complainant as mentioned in his complaint, it is necessary for him to have a meeting with the chiefs of all subunits of the Resource Management Department. For this matter, I have given him*

reply through four Orders (Orders no. 01/DGR/2011, no. 09/DGR/2011, no. 14/DGR/2011 and no. 18/DGR/2011) and one meeting (see the minutes of the meeting held on 28th September 2011). In particular, in Order no. 09/DGR/2011 and the meeting on 28th September 2011, I clearly told the complainant the relevant arrangements." "According to the report on 6th September 2011, report no. 13/DGR on 26th September 2011, report no. 46/GAC/2011 on 3rd November 2011, no. 51/GAC/2011 on 7th November 2011 submitted by the complainant and the meeting on 28th September 2011, apart from the need for support from the supervisors/staff members of the department, the complainant neither mentioned any information about the department he would need for the compilation of the summary of the part of Resource Management Department of the Administrative Guide of the Fire Services Bureau, nor did he tell me about any practical direction of the research. Meanwhile, the department and its subunits have their respective duties, so it is very difficult for me to satisfy his request for support from the supervisors/members of the department whenever he wants. If the complainant does his work with a positive attitude, I will try the best to help him whenever he has any problem." "As for the complainant's statement in his complaint that 'under Articles 50 and 53 of the EMFSM, as a Chief Fire Officer, I have the power to give instruction and order to militarised staff under me', I gave him a clear reply during the meeting on 28th September 2011. However, I would like to reiterate that the appointment of the complainant as the Deputy Commissioner was ceased on 1st September 2011. At the same time, he has not been assigned to any supervisory position but only the job to assist me in studying and planning. In other words, the complainant does not have any hierarchical relationship with the staff of the department. Therefore, the complainant shall not give order to them so that normal operation of the department will not be hindered. If the complainant encounters any problems about his work, he shall tell me and I will do the best to provide assistance." "Regarding the assignment to the complainant to work on the summary of the part of Resource Management Department of the Administrative Guide of the Fire Services Bureau, I think it is an appropriate decision. Since the complainant has not been appointed to the position as the Deputy Commissioner as well as any other supervisory positions, his emotional instability is understandable. It takes time to adapt to new working environment. Therefore, I assigned to him the task that he would be familiar with – to draft the summary of the part of the department. In fact, the complainant had held the posts of the Chief of Resource Management

Department for one and a half year and the Deputy Commissioner in charge of the supervision of Resource Management Department for five years, he should have a very thorough understanding of all the duties of the department. Therefore, there will be no difficulty for him to finish the work." "Regarding the complaint filed by the complainant against me, what I have done is based on law, the job duties and the reality. There are no illegalities and irregularities. Therefore, in accordance with Paragraph 6 of Article 253 of EMFSM, I hereby request your Excellency, the Deputy Commissioner, to take disciplinary action against the complainant in the event of failure to prove his accusation against me." (See P. 35 of Annex 22)

16. On 21st December 2011, Deputy Commissioner **S** issued Order no. 16/CB/2011, which indicates, "*Regarding Chief Fire Officer (i.e. the complainant)'s written complaint against the Chief of Resource Management Department, Chief Fire Officer T, following investigation and viewing of all relevant information, I hereby make the following decisions: (Another paragraph) 1. The complaint is only about disagreement about work and does not involve any impairment of the complainant's rights. In fact, the complaint does not accord with Paragraph 1 of Article 253 of EMFSM. This means the complaint is unjustified." "2. Regarding the issues about the work of following up the Administrative Guide mentioned by the complainant, obviously Chief Fire Officer **T** deliberately made things difficult for him, especially support of manpower. For the complainant's statement that under Articles 50 and 53 of the EMFSM, as a Chief Fire Officer, he has the power to give instruction and order to militarised staff whose ranks are lower than him,* ***I agree with this point of view. However, my interpretation is different.*** *Article 50 stipulates that senior officers 'mainly perform the duties of control, leadership or supervision, or studying and planning.' In the case, the complainant is directly subordinate to the complainee. In other words, the latter is empowered to be the controller and leader of the former. Therefore, the complainees' instruction that the complainant shall perform the duties to do research and planning is appropriate. the complainant's viewpoint is one-sided and he has misinterpreted the relevant provision. This has also reflected that the complainant has, subjectively, negative attitude to his superior (the complainee) and the job assigned."* (emphasis added) *"3. Another ground for the complaint is Article 53 of EMFSM, but it is only about the relationship between the respective functions and the titles and points out*

the scopes of duties. It should be interpreted in conjunction with Article 50. (Paragraph 2 of Article 50 has been amended by Article 4 of Law no. 2/2008.) [47]*" "4. For the complainant's accusation that the complainee has made things difficult for him and refused to give him support, especially manpower, the statements in the complaint and relevant information show that the complainant did not make any concrete request for support to the complainee regarding the work. He only repeatedly stressed that the complainee did not provide any support and thus making him unable to work on the compilation of the Administrative Guide of the Fire Services Bureau. The ground for the complaint is unreasonable. Therefore, I think that the complainant has to have a self-reflection." "5. According to the information gathered through the investigation and analysis, the complaint is groundless in both rational and legal senses. Therefore, the objective of the complaint is unjustified." "6. In view of the complainee's request for the complaint's liability as mentioned in point 5 of the report he submitted (no. 21/DGR/2011) and Paragraph 6 of Article 253 of EMFSM, 'disciplinary action should be taken against the complainant in the event of failure to prove the accusations.'" "7. Considering the importance of team spirit that militarised staff should bear in mind, I decide to impose light punishment on the complainant – reprimand – under Article 258 of EMFSM. In order to avoid impairment of the accused's rights and interest, I hereby order the accused, Chief Fire Officer (i.e. the complainant), to present at the meeting room of the Command of Sai Van Lake Fire Station for the hearing and defense*." (See P. 36 and 37 of Annex 22)

17. Meanwhile, in the complaint dated 9th December 2011, the complainant also pointed out, "***T***, *through Orders no. 14/DGR/2011 and no. 18/DGR/2011, pointed out that under Order no. 11/CB/2011 issued by the Deputy Commissioner, I do not have the power to give orders or instructions to the staff under the department regarding the work on the Administrative Guide of the Fire Services Bureau. If I need any help, I can make a request to* ***T***. *Also, for the job of compiling the Administrative Guide of the Fire Services Bureau,* ***T*** *said he had told me how to commence the work through Orders no. 01/DGR/2011 and no. 09/DGR/2011. He also said that the document was over 90% the same as the content of Administrative*

[47] There is an error in the text. It should be "*Annex C referred to in Paragraph 2 of Article 53" instead of "Paragraph 2 of Article 50*" in the text.

Bylaw no. 24/2001, and that I have been ignoring superior's orders and instructions and making up excuse to stall off his works. In order to evade disciplinary liabilities, I muddled through the task by copying regulations. The behaviour has reflected my negative attitude and indications that I may have lost my interest in my works. Therefore, he has reminded me about it several times. (See Orders no. 14/DGR/2011 and no. 18/DGR/2011 of Annex 6)" *"Regarding the fact that* ***T*** *made things difficult for me when I was working on the Administrative Guide of the Fire Services Bureau, especially the request for manpower, the situation that 'If I need any help, I can make a request to T' never existed.' I have never got any support." For this case, I have filed a complaint to Deputy Commissioner* ***S*** *against* ***T*** *on 7th December this year. Moreover, regarding the accusation that I submitted a document which was over 90% the same as the content of Administrative Bylaw no. 24/2001, my response is, it is necessary to list the duties of the department as provided by the law. In order to list the specific instructions of each duty, data provided by every related subunit, such as personnel, structure and the instructions from relevant bodies (Public Security Forces Affairs Bureau, Financial Services Bureau and Pension Fund, etc.), equipments and facilities is required.* ***T*** *kept evading my request and finally disapproved it. As a result, I only have few resources. I cannot contact any colleagues and what I can only do is to view the notice board to get the information about the CB (the information disclosed on the notice board is not complete). The way I am treated is worse than other colleagues in general.* ***T****'s intention is obvious*." (See P. 44 of Annex 22)

18. In response, **T** made report no. 22/DGR/2011 on 14th December 2011 under Deputy Commissioner **S**'s Order. The contents are basically the same as report no. 21/DGR/2011. (See P. 76 of Annex 22)

19. On 27th December 2011, Deputy Commissioner **S** issued Order no. 17/CB/2011, which indicates, "…*Following investigation and analysis, it is found that the complainant has misunderstood the essential meaning of his own rights and duties. The complaint has nothing to do with impairment of his rights and interest. In other words, it does not accord with Paragraph 1 of Article 253 of EMFSM." "The complainant's statements and the complainee's reports of defence have clearly shown that the latter only performs his duties in accordance with law and there was not any irregularity or inappropriate act*." (See P. 80 of Annex 22)

(3) Analysis

1. To conclude the above information, this complaint focuses on two issues. **The first one is that as a Chief Fire Officer, does the complainant have the power to give instruction to the staff of the same department (Resource Management Department) whose ranks are lower and convene a meeting with them? The second one is that did the complainant get inadequate and insufficient manpower and resources for the project of making the summary of the part of Resource Management Department of *Administrative Guide of the Fire Services Bureau*?**

2. **First, whether the complainant, as Chief Fire Officer, has the power to give instruction to staff of the same department (Resource Management Department) whose ranks are lower and convene a meeting with them is the core of the dispute between the complainant and T as well as the main basis for his complaint to Deputy Commissioner S.**

3. According to Order no. 11/CB/2011 issued by Deputy Commissioner **S**, "*Chief Fire Officer **T** is Chief Fire Officer (i.e. the complainant)'s superior. Therefore, all works assigned to the complainant have to be reported to **T** and the complainant is accountable to **T**.*" The work on *Administrative Guide of the Fire Services Bureau* is one of the tasked assigned to the complainant.

4. Meanwhile, Article 49 of *EMFSM* states, "*1. Each professional position or function shall correspond with the competence consistent with its due responsibility. 2. Militarised staff shall perform their professional functions and duties which correspond with their positions, specialties and professional qualifications as designated by law.*"

5. Article 50 of *EMFSM* states, "*Officers of senior ranks mainly perform the duties of control, leadership or supervision, or studying and planning*." (In Portuguese version, it is "*O oficial das carreiras superiores desempenha essencialmente funções de comando, direcção ou chefia e de estudos e planeamento*.")

6. According to Paragraph 2 of Article 66 of *EMFSM*, Chief Fire Officer is one of the senior ranks.

7. Article 53 of *EMFSM* states,

"1. Militarised staff of FSM shall perform their functions under the Commands and its corporate subunits and bodies of FSM according to their respective positions.

2. The title and specific duties of each position are based on the structure of the corporate bodies and organs of the FSM where the position is placed in and also Annex C of the Statute."

8. According to Annex C of *EMFSM*, Chief Fire Officer can be the chief Commander/supervisor of a subunit of 1st rank or equivalent. Also this position can perform the duties of studying and planning.

9. Paragraphs 2) and f) of Article 194 of *EMFSM* state, "*The basic principles of discipline are: …e) obey the superior's order immediately, faithfully and completely; f) obey the superior and senior when performing one's duties*."

10. Sub-paragraph 5) of Paragraph 1 of Article 21 of *Provisions Supplementary to the Statute of Leadership and Management clearly states, "1. Notwithstanding any other powers they are conferred upon, the Leadership and Managerial Staff, for their responsibility to manage their respective subunits, have the following powers in compliance with applicable laws: …(5) to strictly and effectively manage the manpower, property and technological resources allocated to the respective subunits and effectively use the resources with an aim to simplify and speed up the procedures…;*" (emphasis added)

11. According to the above provision, in the case, the complainant, as a Chief Fire Officer, might be appointed as Commander or chief of any subunit of CB. In such case, he might exercise the duties as leader or supervisor to manage his subordinates. However, since he is not assigned such duty, he may perform the duties of studying and planning unless he is assigned any other special tasks.

12. Therefore, the Chief of Resource Management Department has the power to organise and mobilise his subordinates, while the complainant, in fact,

does not have the power to give instructions or orders to them to work on any new project, to mobilise the manpower or to request them to put their works aside and have a meeting.

13. According to Order no. 11/CB/2011 issued by Deputy Commissioner **S**, **T** is the hierarchical superior of the complainant. Therefore, the complainant has to report the progress of the work on the *Administrative Guide of the Fire Services Bureau* to **T**. If the complainant needs any support of manpower or information for the work, he has to make a request to **T** and obtain **T**'s approval.

14. Therefore, **as to the fact that T said the complainant should neither call for a meeting with the staff of Resource Management Department nor give them order to participate in the work of making the administrative guide unless the complainant has obtained his approval in advance, there is no illegalities existing.**

15. **Moreover, practically speaking, every member of Resource Management Department, in general, has already had jobs assigned by the department chief and they have to obey his orders. If there is another member that may order them to attend a meeting or assign them other tasks, difficulties will be caused, making the management chaotic.**

16. However, although the complainant does not have the power to call for a meeting with the staff of Resource Management Department at any time and order them to assist in his work, one point is true, that the complainant should be given sufficient support of manpower and information for his job of compiling the administrative guide, such as all working instructions existing within the department and the right to contact the staff of the department in order to understand the operation of the department. Otherwise, the *Administrative Guide of the Fire Services Bureau* may be impractical.

17. It is worth noticing that according to the information, especially the minutes of the meeting on 28th September 2011, when the complainant asked, "Can I give any order to the staff of DGR? Or can I call them to consult about the works?" T replied, "No, because in the department, you

do not have any hierarchical relationship with other staff and you only have to report to me. Therefore, you shall not give any orders to them…"

18. The above conversation objectively reflects **that the complainant was not allowed to consult the staff about the works without the Department Chief's permission unless prior approval was given.**

19. In fact, **what the Department Chief did is not reasonable. Is it practical for the complainant to make a written request to the Department Chief whenever he wishes to contact the staff of the department and consult them about the works? Obviously, this request is unrealistic.**

20. Moreover, in report no. 51/GAC/2011 dated 7th November 2011, **the complainant already clearly requested T to call for a meeting with the supervisors under the department. The purpose was to know which working instructions existed and which were missing, so that he could work on it according to the degrees of urgency.**

21. However, **in response to the complainant request, T, in Order no. 14/DGR/2011 issued on 30th November 2011, did not clearly point out the reason why the request was considered unreasonable or infeasible and the alternative solution.**

22. It is worth emphasising that regarding the complaint against **T** filed to Deputy Commissioner **S**, **T** stated in no. report 21/DGR/2011 on 14th December 2011, "*the complainant neither told me what kind of information he needed for the task of compiling the Administrative Guide nor anything about the direction of the study.*" However, as mentioned above, in report no. 51/GAC/2011 dated 7th November 2011, the complainant **already clearly requested the Department Chief to arrange a meeting with the supervisors under the department. The purpose was to know which working instructions existed and which were missing. In this case, T's explanation was groundless.**

23. **This objectively shows that T did not provide the complainant with due support of manpower and resource for the making of the Administrative Guide.**

24. **According to our analysis above, the complaint that T did not provide due support of manpower and resource is not groundless. Therefore, Deputy Commissioner S pointed out in Order no. 16/CB/2011,** "*According to the information gathered through the investigation and analysis, the complaint is groundless in rational and legal points of view. Therefore, the objective of the complaint is unjustified." "In view of the complainee's request for the complaint's responsibility as mentioned in point 5 of the report he submitted (no. 21/DGR/2011) and Paragraph 6 of Article 253 of EMFSM, 'disciplinary action should be taken against the complainant in the event of failure to prove the accusations*.' " **This conclusion raises doubts and has to be reviewed.**

25. Moreover, **S** pointed out in Order no. 16/CB/2011 that, "*The complaint is only about disagreement about work and does not involve any impairment of the complainant's rights and interests. In fact, the complaint does not accord with Paragraph 1 of Article 253 of EMFSM, so the complaint is unjustified*."

26. Paragraph 1 of Article 253 of *EMFSM* states:

"1. Militarised staff has the right to lodge a complaint against his/her superior only about the acts that have impaired their rights and interests."

27. In fact, **the core of "complaint" submitted by the complainant to Deputy Commissioner S is that the complainant, as a Chief Fire Officer, is not allowed by T to give instructions and orders to and even contact the staff of Resource Management Department whose ranks are lower than him. This is about whether the complainant's rights and interests as a Chief Fire Officer has been illicitly impaired by T. Therefore, S's conclusion is controversial indeed.**

28. Finally, in the case, the complainant was assigned to the work of making the *Administrative Guide of the Fire Services Bureau* and start with the part of Resource Management Department, including all functions of the department and their details (see P.368, Order no. 1/DGR/2011 by the Chief of Resource Management Department). Objectively speaking, since the duties of the department and its subunits are stipulated by Administrative Bylaw no. 24/2011 (*Organic Law of Fire Services Bureau*),

it is not inappropriate for the complainant to cite the contents of the bylaw in report no. 51/GAC/2011 when performing the duty under Order no. 1/DGR/2011 (However, the duties of Registration Section is missed out by the complainant and this is a defect).

29. Moreover, according to existing information, **T** also did not clearly tell the complainant about the concrete requirements for the work, especially the so-called "details". Is it necessary to assign such work to a Chief Fire Officer?

* * *

XVIII. The complainant thinks that the workplace allocated by the Chief of Resource Management Department is not suitable to be a workplace and the latter requested him to sign a verification form for room reception. The complainant considers that this is unprecedented and groundless in a legal sense.

(1) About the complaint

1. The complainant told the CCAC that a room at the Central Fire Station which has been fallen into disused for a long time was allocated to him for working. The room was filled by a bad odor and therefore was not suitable for working. Moreover, the Chief of Resource Management Department **T** requested him to sign a verification form for room reception. The complainant considers that this is unprecedented and groundless in a legal sense. (See P. 5)

(2) Related facts and statements

1. On 2nd September 2011, the complainant submitted an application to **T** for a suitable workplace for the reason that the one allocated to him was filled by a bad odour and therefore was bad to his health. (See P. 148)

2. Later, **T** arranged staff members to carry out deodorisation in the room. Finally, **T** gave the complainant another option, room no. 106A. (See P. 149)

3. However, the complainant thought that the room (106A) was located in the basement and was unventilated, dark, muggy and disused. (See P. 5)

4. Regarding the arrangement, **T** issued Order no. 04/DGR/2011 of 26th September 2011, which indicated, "*On 2nd September 2011, Chief Fire Officer (i.e. the complainant) told me that room no. 211A at Central Fire Station was filled with odour and would affect his health. In order to solve the problem, I immediately arranged the staff of the Resource Management Department and the Department of Service to clean the room (including the ceiling and the tubes of air conditioner). At the same time the windows and the door of the room were opened for ventilation. As checked by Divisional Officer of 1st Class **P**, Deputy Divisional Officer of 1st Class **CC** and me on 7th, 21st and 22nd September, I think that the situation has been largely improved. Moreover, I gave the complainant another option – a room that is not filled with strange odour, no. 106A. I have requested the complainant to choose the suitable one, fill in the verification form in Annex 1 and switch to the new room within two days.*" (See P. 149) In the verification form for room reception, the complainant was requested to fill in which room he chose and whether he was satisfied with the environment. If not, he had to fill in the reason. (See P. 150) the complainant thought that this was unprecedented and groundless in a legal sense. Therefore, he refused to do so and would write another report on the matter about the room. (See P. 5)

5. On 3rd November 2011, the complainant wrote report no. 49/GAC/2011, which indicated, "*…Since I was discharged from the duty as Deputy Commissioner on 1st September 2011, I have been switched to room no. 211A. However, after I moved to the room, I felt that there was a strong odour which made me sick. Subsequently, I notified the superior of the situation in a report. Although the Chief of the Resource Management Department said that it had been improved after several times of visit, I insisted that the odour still existed and might be bad to health. I requested the department chief to issue a written instruction that strange odour did not exist in the room. Later, you, the Chief of the Resource Management*

Department, provided me an alternative, room no. 106A, and ordered me to move to the new room in two days through the said Order. (Another paragraph) In order not to be accused of violating the order given by the superior, I visited room no. 106A, which seemed not to be filled with any strong odour despite of the fact that it was muggy and unventilated. However, I could only choose room no. 106A between them. It is located at the basement of the office building and there are not any colleagues working near the dark room. In fact, I am not happy with it, since there are plenty of rooms at the fire stations and, as a Chief Fire Officer, I should have been provided a suitable workplace. I do not understand why the superior allocated a remote room located at the basement and fallen into disuse for many years to me. (Another paragraph) Moreover, regarding the room verification form, it is my first time to see such document. I do not know whether other colleagues also have to fill in this form when they are provided new workplace. If not, why am I the only person who has to fill in this form? I hereby express my dissatisfaction with the new workplace. I hope that the superior will allocate to me a normal room which is near other staff and has not been fallen into disuse for many years and I also hope that the superior will consider my suggestion." (See P. 154)

6. According to Chief of Resource Management Department **T**'s statement to CCAC, "…*When the complainant's fixed-term appointment as Deputy Commissioner was terminated on 1st September 2011, **T** offered him two options for his workplace – room no. 211A and no. 221A (smaller) on the same floor as his former workplace (the former office of Deputy Commissioner at Central Fire Station). After site visit, the complainant chose no. 211A. The said rooms are in a building of the Central Fire Station. The remaining rooms on the same floor are being used by the Welfare Association of CB." "In the past, the two rooms were used as storage of equipments and have not been used as office for many years. Before offering him the options, **T** already sent staff members to clean up the rooms." "After the complainant moved to room no. 211A, he told **T** that the room was filled with bad odour. Then **T** requested the staff of the responsible subunit to clean up and ventilate the room, but the complainant still said that there was an odour. Then **T** arranged another clean-up. However, the complainant insisted on moving to another room and stated that he only wanted to have a workplace without any odour. Then **T** gave*

him another choice (room no. 106A, which was odourless). After a site visit, the complainant said that the room was odourless and agreed to move to the room. However, recently the complainant was dissatisfied with his workplace again. Room no. 106A has windows and the complainant could leave the facility through the Museum of CB, so the room should not be considered to be in the basement." "The purpose of filling in the verification form is for archiving and knowing whether the complainant was satisfied with the room. If not, the document will serve as the reference for improvement. ***T*** *did not request any staff of his department to sign such document, but added that if the same situation occurred, this measure would be needed." "Since the complainant was not satisfied with the workplace,* ***T*** *was searching for another option*." (See P. 234-235)

7. As the complainant stated that same staff members of the Central Fire Station, **K**, **L** and **M**, could give proofs of the complaint, the CCAC requested for their statements.

8. Their statements are as follows:

Name	Statement
K	There are two buildings at the Central Fire Station at Estrada do Repouso, which were known as "Administrative Building" (the workplaces of the Commissioner and the leading and management personnel of CB) and "Operation Building" of the Operation Team (workplace of fire-fighters). In December 1995, all the services in the "Administrative Building" and the workplaces of the Commissioner and the leading and management personnel of CB (including the complainant, who was the Deputy Commissioner at that time) were moved to the Sai Van Lake Fire Station. Therefore, the "Administrative Building" has been vacant for five to six years. Before the complainant's fixed-term appointment as Deputy Commissioner was terminated in August 2011, the CB allocated to him a room on the second floor of the "Administrative Building" at the Central Fire Station (**K** did not remember the room number, so he/she was not sure whether it was room no. 221A or not). The room used to be an office for leadership and has been vacant for five to six years. (See P. 438) Since the "Administrative Building" has been vacant for five to six years, the air-conditioning system has been out of order. Therefore, the complainant's workplace on the 2nd floor had no air-conditioning. As **K** remembered, in June or July, **K** went to the complainant's room and gave him two fans. Since the weather was hot and there was no air-condition, the room was muggy and hot. After the complainant's appointment as Deputy Commissioner was terminated on 1st September 2011, the CB allocated to him a room located in the basement of the "Administrative Building" (**K** did not remember the room number, so he/she was not sure whether it was room no. 106A or not). Since all the services in the "Administrative Building" were moved to the Sai Van Lake Fire Station, the room was used as storage of fire equipments, fire distinguishers and other materials. Therefore, it was inevitable that there was a chemical smell in the room.

	The building where the two rooms are situated has been vacant for a long time. The water tank no longer worked and neither the air conditioner did. Also, there was a chemical odor in the room which was used as storage of equipments and materials in the basement. Therefore, **K** thought that the said two rooms were not suitable to be used as workplace. (See overleaf of P. 438)
L	After the appointment of the Chief Fire Officer (the complainant) as Deputy Commissioner was terminated, he did not move out from the office of Deputy Commissioner immediately, but the washroom reserved for Deputy Commissioner exclusively was locked (the officer was an en-suite room and the room number of the washroom was 218A but **L** did not remember the room number of the office). The key was put in an sealed envelop (signed by the Chief of Resource Management Department **T**), which was handed by the Commander of fire station to the Duty Officers of teams A, B and C, who would keep the key. If necessary, the envelope should be opened only with the authorisation of the superior in response to the Commander's request. A week later, the complainant was arranged to move to a room situated in front of Estrada de Coelho do Amaral (**L** forgot the room number, but pointed out that the former workplace of the complainant was at the end of the corridor, while the new workplace was in the middle). As **L** knew, the room did not serve as office but served as storage of goods "to be discarded" "for many years". After the walls of the room were repainted and before he moved to the room, **L** once entered the room and considered that the room was filled with a "bad smell" and was "noisy" (because it was close to the road), so it was not suitable to be an office. However, it might be suitable if it was deodorised. The complainant has moved to the room in the basement of the former "Administrative Building" which was formerly used by the Finance Section. As **L** knew, all the rooms in the basement were used as storages. There was no staff working there except the complainant. Therefore, **L** thought that the room was not suitable to be an office. (See P. 428)

M	Since there is a rotation of personnel of Operation Teams every two years, **M** shifted back to the Central Fire Station around one year ago. Before that, **M** shifted to another fire station for two years after two years of service at Central Fire Station. When **M** was serving there, he knew that the complainant had sequentially used three rooms as his office (the first one was the office of Deputy Commissioner, the second one was in the basement and the third one was on an upper floor) after he was sent to Central Fire Station. The building where the rooms are situated has been vacant, despite of the fact that a room near the exit was used by the Welfare Association of the CB. **M** was not clear about the actual use of the building. **M** was once at the doorway of the complainant's workplace in the basement, but he/she did not notice whether there was a strange odour or not. However, since the room is located in the basement and there is an abandoned garden outside the doorway and the surrounding rooms has also been vacant, it is not unusual to have a bad smell. According to what **M** knew when serving at the Central Fire Station, the room that the complainant was using at that time was not in the basement and therefore it was bright in the room. However, when **M** was serving at the Central Fire Station, the room was unused. **M** recalled that after he/she shifted from the Headquarters to the Sai Van Lake Fire Station, the room fell into disuse. If there is no other rooms available, using the room in the basement as office is understandable. On the contrary, if there is any room available, the room is not a suitable place for working. At the moment, the complainant's workplace was okay. (See overleaf of P. 431)

9. Meanwhile, in the complaint letter sent by the complainant to **S** against **T** on 9th December 2011, he mentioned, "*Chief Fire Officer **T** stated that he had provided three options (221A, 211A and 106A) for my new workplace starting from 1st September in Order no. 19/DGR/2011 of Resource Management Department, and that my attitude toward the options were negative and indecisive. Regarding the matter of choosing room no. 106A, **T** also stated that I was disrespectful to the superior's order and*

*refused to fill in the verification form. Although **T** was not satisfied with my behaviour, he would make another arrangement given that I had just been discharged from the duty as Deputy Commissioner and I might not be able to adapt to the new working environment in a short time. (See Order no. 19/DGR/2011 in Annex 11) (Another paragraph) 1. Regarding the matter about allocation of workplace, I have reported the situations in report no. 49/GAC/2011. **T** has distorted the facts. The truth is that the conditions of both of the rooms (211A and 106A) are bad. Both are remote and have fallen into disuse for many years. One of them is even filled by very bad smell and it is impossible to stay in the room. Therefore, between the two rooms I could only choose the one whose conditions are less bad (106A), but I never showed any satisfaction. Therefore, on the first day after the room was allocated to me, **T** sent Division Officer of 1st Class CC to request me to fill in the verification form immediately, but I refused to do so and said that I would report to the superior a period of time after the change of my workplace. The reason for not filling in the verification form is that there is not enough space for me to completely report the situation. Therefore, I have submitted report no. 49/GAC/2011 and believe that my action is reasonable and legal. In the report, I questioned about the reason for allocating to me a room which is remote, situated in the basement and has fallen into disuse as my office. (See report no. 49/GAC/2011 in Annex 12)*" (See P. 45 of Annex 22)

10. In response, **T** submitted a report in compliance with Deputy Commission **S**'s Order. The report indicates that, "*Regarding the matter about allocation of workplace mentioned in the complaint, after the complainant's appointment as Deputy Commissioner was terminated on 1st September 2011, I provided him with two options (rooms no. 221A and 211A at Central Fire Station). Then the complainant verbally informed me that he chose 211A and would move to the room as soon as possible. On 2nd September 2011, the complainant submitted to me a request for another workplace for the reason that room no. 211A was filled by a strong odour and thus was not suitable for working and would damage his health. In order to satisfy his request, I ordered the staff of the Service Division to thoroughly clean up room no. 211A. After the one-week clean-up (including cleaning the floor and the ceiling) and site visit by **CC** and me, I thought that there was a large improvement in the problem of odour and both of us considered that the situation became acceptable. Then I asked the complainant again, but he insisted that it was unacceptable and*

stated that he only wanted a room without strange odour. Later I provided him with another option, room no. 106A. This time the complainant told me that there was no odour in the room and it was acceptable. Finally he chose room no. 106A and soon moved to the room. The complainant mentioned in report no. 49/GAC/2011 submitted on 3rd November 2011 that he was not satisfied with room no. 106A he had chosen because there was no colleague working in the rooms nearby and thus requested for an alternative. For his inconsistent attitude, I showed my understanding and did the best to satisfy his request. Therefore, I agreed to offer him another option. At the same time, I reminded him that I offered him options in advance. After he chose the room he preferred, he had to fill in the verification form sent by me through an order. Both the options chosen and not chosen were required to be filled in the form. The reason for dissatisfaction could also be filled in, so that I could make improvement based on the reason and provide more suitable option for the complainant. However, he chose to disrespect the superior's order and refused to fill in the verification form. Although I am not satisfied with his inappropriate behaviour, taking account into the fact that he has just been discharged from the duty as Deputy Commissioner and may not adapt to the new working environment in a short time, I will do my best to understand and satisfy his changing request to provide another option. The staff of the department will make contacts and arrangements as soon as possible." (See P. 78 of Annex 22)

11. Regarding the aforementioned complaint, on 27th December 2011, Deputy Commissioner **S** issued Order no. 17/CB/2011, which indicated, "*…Following investigation, it is found that the complainant has totally misunderstood the essential meaning of his own rights and obligations. The complaint has nothing to do with impairment of his rights and interests. In other words, it does not accord with Paragraph 1 of Article 253 of EMFSM." "Both the statement of the complainant and the report of defence submitted by the complainee have clearly reflected that the latter only performed his duty according to the law and no inappropriate acts existed*." (See P. 80 of Annex 22)

12. On 4th January 2012, the complainant submitted supplementary materials to CCAC and gave another statement, "*After **T** delivered his statement to the CCAC, he provided the complainant with two new options. One was the room formerly served as reception room when the Central Fire*

Station was serving as the Headquarters of CB. Since the door of the room has a transparent glass door, everything inside the room is visible. The complainant considered that this room was not suitable. Another room is situated on the second floor of the building. The room has windows and is brighter than the one in the basement. However, near the room there is only one room in use by the colleagues, who are the staff of the Welfare Association of CB. The complainant said that he has not moved to the room yet." (See P. 319) Moreover, the complainant also provided CCAC with the photos of his former workplaces. (See P. 508-515)

(3) Analysis

1. To sum up the information above, there are two main points of this complaint. **The first one is that the complainant was not satisfied with the arrangements of his new workplace. The second is that he was not satisfied with T's request for filling in the "verification form for room reception".**

2. First, to conclude the above information, especially the statements given by the staff members of CB, both rooms no. 211A and 106A are not suitable to be a workplace because they have not been used as office for many years but only serve as storage rooms for goods, equipments, fire distinguishers and relevant materials. Thus both of them, especially 211A, are filled by a bad smell, while room no. 106A is located in the basement and therefore the condition of air circulation in the room is not good.

3. In fact, Sub-paragraph 5) of Paragraph 1 of Article 21 of *Provisions Supplementary to the Statute of Leadership and Management states, "1. Notwithstanding any other powers conferred upon them, the managerial staff, in general, has the following responsibility regarding management of the respective subunits in compliance with applicable law: … (5) To strictly and effectively manage the manpower, assets and technological resources allocated to their subunits and optimise the use of the resources…"* (emphasis added)

4. **At the same time, when performing the duty of management, managerial staff shall also comply with the principles provided for in the *Code of Administrative Procedure*, including the principle of good will.**

5. **Therefore, for the allocation of workplace to the complainant, T should have made a reasonable decision after proper consideration instead of arranging him to work in an unsuitable room. Otherwise, T would violate the above mentioned provision as well as impair the complainant's rights and interests (personal right - health).**

6. **Therefore, T's arrangement of complainant's workplace is inappropriate.**

7. **In this case, for the complaint against T, Deputy Commission S concluded that, "…*Following investigation, it is found that the complainant has totally misunderstood the essential meaning of his own rights and obligations. The complaint has nothing to do with impairment of his rights and interests. In other words, it does not accord with Paragraph 1 of Article 253 of EMFSM." "Both the statement of the complainant and the report of defence submitted by the complainee have clearly reflected that the latter only performed his duty according to the law and no inappropriate acts existed.*" Objectively speaking, the conclusion is questionable, since there is no information showing that S has done any site visit to the complainant's offices and requested for any details from other staff (except the complainant and T).**

8. Regarding the complainant's dissatisfaction of **T**'s request for filling in the verification form, first of all, according to the statement made by **T** to the CCAC and his explanation to Deputy Commissioner **S**, the purpose of filling in the verification form was to see if the complainant was satisfied with the workplace. If the complainant was dissatisfied, the reason filled in would serve as reference for improvement. According to Order no. 4/DGR/2011 issued by **T** and the verification form attached, the complainant was allowed to fill in the reason for dissatisfaction with the two options. Therefore, **there is no sign showing any irregularities existing in T's explanation.**

9. However, it is worth noting that the fact that the complainant reported the whole matter of choosing the new workplace expressed his opinions on the rooms he could choose through report no. 49/GAC/2011 is **exactly the purpose of T's request for filling in the verification form. It is only about the method adopted by the complainant, which is not the one designated by T. Since the verification form is not a statutory method,**

there is no illegalities or irregularities existing in the complainant's practice or "disrespect" to the superior's order accused by T.

* * *

XIX. The complainant considered that he was treated unfairly regarding attendance record

(1) About the complaint (1)

1. The complainant told the CCAC that as he worked at the Central Fire Station, the Section Chief responsible for management of attendance record of the Central Fire Station (**AA**) was instructed to fax the attendance sheet to the Headquarters at 9:01 and 14:31 everyday. However, according to the internal attendance guidance record of CB, the fax should be done 15 minutes after the service hours start. Therefore, the complainant considers that the measure was against him. (See overleaf of P. 5)

(2) Related facts and statements

1. **T** made the following statement to the CCAC, "*Everyday the Commander of the Central Fire Station 'closes' the attendance book at the starting time of service hours (9:00 or 14:30). Those who are late will not be able to sign the attendance book and they shall give an explanation. Moreover, the Commander has the duty to fax the timesheet to the Headquarters at Sai Van Lake Fire Station as soon as possible*." (See overleaf of P. 235)

2. On 4th January 2012, the complainant submitted relevant supplementary materials to the CCAC, including a document written by a former Divisional Officer, **AA**, who has retired. (See P. 323)

3. **AA** confirmed to the CCAC that the said document was written by him. At around 18:15 on 1st September 2011, AA received a phone call from **T**, who told him that starting from 2nd September 2011, the timesheet should be faxed to Resource Management Department and the Secretariat and Reception Division (See P. 323 and overleaf of P. 408) at 9:01 and 14:31 everyday. **AA** stated that the said measure caused large pressure on the

personnel of Material Section who were responsible for faxing, because it takes time to walk to the fax machine from where the attendance book was placed. **AA** added that **T** did not state any reason for the instruction. (See overleaf of P. 408)

4. In the document, **AA** stated, "*However, according to the attendance guidance, the timesheet shall be submitted at 9:15 and 14:45 to the superior everyday.*" (See P. 323, it is "14:15" in the original text and it should be a typo error.) However, **AA** told the CCAC that after reading the attendance guidance, he confirmed that the instruction, in fact, did not clearly stipulate the time and it only required them to submit the record to the Reception Section as soon as possible. **AA** personally thought that it was intended to reserve a certain degree of flexibility. (See P. 409)

5. According to the "Attendance Book - Attendance Guidance - (1st updated version)" of 15th February 2011 provided by the CB to the CCAC,

"2. Central Fire Station

(1) Personnel who follow the instruction: All militarised personnel who are off duty and civil personnel working at Central Fire Station during normal or special working hours.

(2) Responsible department:

1) Resource Management Department;…

(3) Clock-in point: …next to the telephone booth to the right of the main entrance of the station…

(4) Supervisory department: Central Fire Station

(5) Rules:

1) …

5) For the personnel who work during normal office hours, the chiefs of the subunits or their substitutes (the staff of the highest rank in the respective subunits among those who have to sign the attendance book)…shall check and verify the attendance

records and fill in related information in the book at 9:00 and 14:30 at the clock-in point. If necessary, they shall fill in the reason in the column of "Remarks" for special cases. Finally, they shall submit the verified attendance book to the supervisory department.

6) Upon receipt of the verified attendance book, the supervisory department shall compile a "table of attendance" (see Annex 2) and fax it to the Secretariat and Reception Division, which will report it to the Deputy Commissioner responsible for administration.

7) Each subunit shall send a staff to the supervisory department to take the attendance book and place it at the attendance checkpoint five minutes before the clock-off time and then collect and submit it to the supervisory department for verification within 15 minutes after the clock-out time.

8) The attendance records shall be submitted by the supervisory department to the relevant department on the next working day." (See P. 69 in Annex 8)

6. One of the columns on the said "table of attendance" is to record unusual situations (e.g. failure to sign the attendance book). (See overleaf of P. 78 in Annex 8)

7. In order to know the attendance recording method and system adopted by CB, the CCAC invited some of the staff members and retired staff members to give the following statements:

Name	Statement
Technical Department	
A	**A** has to sign the attendance book of his department everyday. Five minutes after the working hours starts (9:05 and 14:35), he/she should verify the attendance records by signing in the column of verification (so-called "close the book") (when he was the Chief of Technical Department). (See overleaf of P. 403)

Resource Management Department	
BB	15 minutes before the starting time of working hours (8:45 and 14:15), the staff of Secretariat and Reception Division would place the attendance book at the regular site for the staff to sign in. The attendance book would be taken away (so-call "closed") at the starting time of working hours (9:00 and 14:30). (See overleaf of P. 423)
CC	There is attendance book managed by the Registration Section. Everyday the attendance book is placed next to the lift on the first floor at 8am. At around 9am, the book will be taken to the department chief for verification. (See overleaf of P. 434)
P	Firstly, the Chief of the Documentary Section under the Resource Management Department checks the attendance book for the following day in advance. Then the attendance book will be placed before 9:00 for all staff of the department to sign (include the Department Chief and the Acting Division Chief). After 9:00, the staff responsible will collect the attendance book and submit it to the Department Chief or his/her substitute (e.g. Acting Division Chief) for verification. Subsequently, the Documentary Section will fax the verified records to the Secretariat and Reception Division for archiving (As **P** remembered, many years ago there should be an internal instruction which requires that the fax should be done within five to ten minutes). After that, the attendance book will be kept by the secretariat of the department. If the Department Chief or the Acting Division Chief finds that somebody fails to sign the attendance, he would make a report to the superior on the same day after knowing the details of the situation. Everyday before 13:00, the department will take out the attendance book again for the staff to fill in the clock-out and clock-in time for lunch break. After 14:30, the staff responsible would collect the attendance book and submit to the Department Chief or the Acting Division Chief for verification. Five to ten minutes later, the Documentary Section will fax the verified records to the Registration Division for archiving. If the Department Chief or the Acting Division Chief finds that somebody fails to sign the attendance, he/she would make a report to the superior on the same day after knowing the details of the situation. (See overleaf of P. 452)

	In fact, there are internal instructions of attendance of CB, so the measure taken by every subunit should be consistent or the same. (See P. 453)
Airport Division	
B	The Chief of the Airport Division, **B** and other staff should sign the attendance book to record the clock-in and clock-out time [**B** said that according to the superior's instruction, all supervisory staff have to do it]. Since **B** is in a senior rank, a staff member will hand him/her the "attendance sheet" (there is one attendance sheet each day with standard format. Attendance sheet is filed in a black folder, which is called "attendance book") and he/she will sign it. Since the office of the division is small, the measure is different. Unlike other subunits, the attendance sheet is placed in the "office" of the division for a long time. Before the off-work time, the staff responsible will make the "attendance sheet" for the following day. Since the fire stations, including the Central Fire Station, have sufficient spaces and "common" areas, there are instructions which require that the auxiliary staff that go to work earlier should put the "attendance sheet" in the designated "common" area ten minutes before the office hour starts (**B** was not sure about the exact time). 10 to 15 minutes after the officer hour starts, a staff in general rank (according to **B**, the staff do it in rotation based on the "rotation sheet") will collect the "attendance sheet" and submit it to the chief of the respective subunit for verification. After the Chief (or his/her deputy) signs the attendance sheet, he/she shall fax it to the "General Office" of the CB. As **B** remembered, the internal instruction stipulates that the fax shall be done within 15 minutes after the office hour starts, but the clock-out records do not need to be verified and faxed. (See overleaf of P. 447 and P. 448)

Fire Services Training School	
H	Same as the Central Fire Station, the Fire Services Training School requires staff members to sign the attendance book to record the clock-in and clock-out time. According to what **H** knows, this method is the same as that of other fire stations. Normally, at 8:50 and 14:20 the book is put out for clock-in, while at 9:15 and 14:45 the book will be closed. The colleagues responsible for the task are XXX and XXX at Central Fire Station and Fire Services Training School. (See P. 456)
Operation and Ambulance Division of Taipa and Coloane	
C	Since **C** is currently serving at the Operation and Ambulance Division of Taipa and Coloane and is under the Chief of the Operation Department of Taipa and Coloane, **C** shall notify the secretariat of his working plan for the next day in advance and the secretariat will write it down on the attendance book and place the book on the designated site. On the next day, **C** will sign the attendance book before the starting time of office hour (9:00 in normal case. The book will be closed at 9:00). After verified by the Department Chief, the timesheet will be faxed to the "General Secretariat" of the Headquarters at Sai Van Lake Fire Station and submitted to the Deputy Commissioner for verification. If the Deputy Commissioner discovers any unusual situations, he will request the hierarchical superior of the relevant staff for explanation. When **C** was the Chief of the Fire Services Training School, he/she was in the top position within this subunit. Thus he/she played the supervisory role and was the last one to sign the attendance book. **C** would "close" the book at 9:00 and fax the record to the Headquarters at around 9:10. (See P. 475)

Operation Department of Macao	
E	When **E** was working as the Chief of the Operation and Ambulance Division of Macao (between March 2010 and February 2011), he/she had to work during normal office hours and sign the attendance book. 15 minutes after the normal working hours started, the attendance book would be collected and submitted to the heads of the respective subunits for verification (The superior of Operation and Ambulance Division and **E** was **Z**). (See P. 486)
F	The CB started to adopt the system of signing-in and signing-out in 2003 or 2004 (for civilian personnel). They have to sign the attendance book to record the clock-in and clock-out time. The list of the personnel's names is set in the order based on their ranks. Normally, the attendance book is placed by a staff responsible at the site designated by the respective subunit 15 minutes before the office hours start. At 9:00 and 14:30 the attendance book will be submitted to the chief of the subunit for verification. After they sign the book, it will be faxed to the Command. (**F** is responsible for verification, signing and fax of the timesheets of Operation Department of Macao.) (See overleaf of P. 494)

(3) Analysis

1. **First of all, according to the "Attendance Book – Attendance Guidance (1st updated version)" of 15th February 2011 provided by the CB to the CCAC, we do not find any provisions which clearly stipulate the time limit for faxing the "table of attendance" to the Secretariat and Reception Section, i.e. "*15 minutes after the normal office hour starts*" mentioned by the complainant.**

2. **The followings summarise the statements above:**

   1) For the times to collect ("close") the attendance book, some of the staff said they are 9:00 and 14:30, while some indicated they are 9:05 and 14:35. However, there are also some staff saying 9:15 and 14:45.

   2) It is noteworthy that three staff members of the Resource Management

Department (**BB**, **CC** and **P**) stated that the times to collect the attendance book are 9:00 and 14:30. Subsequently, the attendance book will be submitted to the Chief of the department for verification.

3) As to the time limit for submitting the attendance book to the superior for verification and faxing the timesheets to the Secretariat and Reception Section, none of them said they are 9:01 and 14:30.

4) In other words, the Chief of Resource Management Department **T**'s instruction that **AA** should fax the attendance record to the department and the Secretariat and Reception Section in the Headquarters at Sai Van Lake Fire Station everyday is an exceptional requirement which is different from normal method.

3. Sub-paragraph 10) of Paragraph 1 of Article 21 of *Provisions Supplementary to the Statute of Leadership and Management states "1. Notwithstanding any other powers they are conferred upon, the managerial staff, for their responsibility to manage their respective subunits, are entitled to the followings in compliance with applicable laws: …Conduct effective control of diligence, punctuality and attendance during normal working hours of the personnel under the respective subunits in order to optimize the organisation of resources and quality of service*."

4. Under the said circumstances, **T has the power of and duty for taking measures to monitor the attendance of the staff of the department, including designating the time to collect the attendance book and submit it to him for verification.**

5. Moreover, according to the evidence available, **T**'s instruction that **AA** should fax the timesheet to the department and the Secretariat and Reception Section in the Headquarters at Sai Van Lake Fire Station everyday is an exceptional requirement and the instruction is not implemented until the complainant had been transferred to the department. **However, given that the staff of the department who work at the Headquarters also had to follow the same instruction – that their attendance book is also closed at 9:00 and 14:30 and immediately submitted to T for verification, we believe that there is no sufficient evidence proving that the said instruction has violated the principle of good faith and caused unfairness.**

(4) About the complaint (2)

1. The complainant told the CCAC that *he received an Order from the superior which mentioned that he was late for two to three minutes… The complainant considers that the accusation is irrational and that this measure is against him and is administratively illegal*. (See overleaf of P. 5)

(5) Related facts and statements

1. On 9th September 2011, the Chief of Resource Management Department **T** issued an Order on the complainant's attendance sheet, "*Chief Fire Officer (i.e. the complainant) shall submit to me a report about why he did not sign the attendance sheet in the afternoon of 8th September by 13th September 2011*." (See P. 157)

2. Later, the complainant wrote a report mentioning that "*At noon on 08/09/2011, I came back to the Central Fire Station after lunch and found that the attendant book was not put on the place where it was usually placed. Then I went back to office and called Divisional Officer **AA** of the Material Section, who replied that the attendance sheet had already been faxed to the Chief of Resource Management Department. At that time, I looked at my watch and saw that it was 14:32*." (See P. 158)

3. On 22nd September 2011, Division Officer **AA**, who worked at the Material Section under the Resource Management Department (now retired) received Order no. 22/DGR/2011 from **T**, **requesting AA confidentially to explain why the attendance sheet of 1st September showed that the complainant reached the Central Fire Station at 14:30, but other information showed that he arrived at 14:39.** (See P. 409)

4. On 23rd September 2011, **AA** gave a written reply, which indicated that the relevant attendance sheet was faxed by a colleague of the department and since it happened many days ago, he had already forgotten why there was such a record. (See P. 409)

5. On 4th October 2011, **T** issued Order no. 06/DGR/2011 concerning **the complainant's late coming on 8th September 2011**, which indicates, "*… After I reviewed the video record of staff's entry to the office in the afternoon of 8th September, it is proved that Chief Fire Officer (i.e. the*

complainant) entered the Central Fire Station at 14:34 on 8th September and did not report to me in advance. I consider that the complainant has committed the two following errors: 1. The complainant used to be a holder of leadership and management positions, so he should have understood that it is necessary to abide by the obligation of assiduousness and punctuality. If he expected that he could not come to work on time, he should have notified the superior (me), but he did not do so. 2. From this case I have realised that the time on the complainant's watch is not the same as that of the Control Centre of CB, which is checked with the standard time several times everyday. Therefore, the time it shows should be more accurate comparing to the complainant's watch. It is the complainant's responsibility to check the accuracy of the time on his watch. (Another paragraph) Since it is the first time that the complainant has committed such an error and taking account into his own situation, I only called for the complainant's attention to the problem in order to prevent similar cases from happening again." (See P. 159)

6. On 19th October 2011, **T** issued Order no. 08/DGR/2011 concerning **the complainant's late coming on 8th September 2011**, which indicated, "*On 23rd September 2011, Divisional Officer **AA** submitted the relevant report indicating that since the incident happened long time ago, he has already forgotten about it. **AA** also reported that he strictly follows my instruction and such situation should not have happened in normal sense. In order to further investigate the case, I have reviewed the video record of staff's entry to the workplace in the afternoon of 8th September and found that Chief Fire Officer (i.e. the complainant) entered the Central Fire Station at 14:34. Since **AA** has already forgotten the incident and it is impossible to prove the case objectively and completely, it is unable to take appropriate measures. However, given that it was the first day the complainant was shifted to work under the department, he might not be clear about the attendance recording system and thus the case happened. I hereby call for the complainant's attention to the obligation of punctuality.*" (See P. 49 in Annex 22)

7. In response to the case of **late coming on 8th September 2011** pointed out in Order no. 06/DGR/2011, on 3rd November 2011, the complainant wrote report no. 47/GAC/2011 indicating "… *According to the attendance guidance of CB, the supervision on my attendance should be conducted through the attendance book but not the guard or the Control Centre. Moreover, as far as I know, the reason why I did not sign the attendance*

book despite of coming on time was that the book was collected a few minutes earlier than usual. Therefore, I considered that I came on time on that day." (See P. 162)

8. On 30th November 2011, the Chief of Resource Management Department issued Order no. 12/DGR/2011, which points out that **the complainant went to work late again on 9th November 2011**. It indicates, "*According to report no. 74/DGR/SMAT/2011, Chief Fire Officer (i.e. the complainant) arrived at office at 09:03 on 9th November 2011 without reporting to me. Records show that this is the third time he has come late to work. The first time was on 1st September 2011 on which he arrived at 14:39, while the second time was on 8th September 2011 on which he arrived at 14:34. The complainant also did not report these two cases to me. According to Sub-paragraph c of Paragraph 2 of Article 14 of Decree Law no. 66/94/M, Chief Fire Office (i.e. the complainant), as a militarised staff, should have notified his hierarchical superior of his inability to be on time by the quickest means. Given the repeated irregular situations, I hereby call for his attention again, hoping that he will make improvement to avoid the same from reoccurring*." (See P. 47 in Annex 22)

9. On 9th December 2011, the complainant lodged a complaint to Deputy Commissioner **S** over the accusation of his **late coming in the afternoon on 1st September 2011**, stating that, "*For my coming late for nine minutes (at 14:39) on 1st September 2011, since it was very long time ago, I remember that I did sign the attendance book. As to Order no. 80/DGR/2011 in which Chief Fire Officer **T** states that he reviewed the video record and ordered **AA** to submit a report, I do not have the idea about the purpose. However, the said Order clearly shows that the conclusion based on **AA**'s report is that it is impossible to prove the case objectively and completely (See Order no. 08/DGR/2011 in Annex 22). Despite of my explanation and the report, Order no. 12/DGR/2011 states that it is the previous case of my late coming. This is contradictory."* As to the accusation of **coming late to work in the afternoon of 8th September 2011**, the complainant stated, *"As to the second case occurred at 14:34 on 8th September, my explanation is that the attendance book was collected a few minutes earlier than usual. However, **T** considered that I was late for four minutes only based on the video record of staff entry to the Central Fire Station without investigating into the truth, especially the issue about the accuracy of time (see Order no. 15/DGR/2011 in Annex 3, report no. 47/GAC/2011, the attendance record of the Resource Management Department at Central Fire Station for 8th*

*September 2011, my report submitted to **T** on 12th September 2011 and Order no. 06/DGR/2011). Now it is considered as another case of my late coming. This is, indeed, unfair."* As to the accusation of his **late coming on 9th November 2011**, the complainant stated, *"In the case that I arrived at office at 09:03 (late for three minutes) on 9th November 2011, I only found out through Order no. 12/DGR/2011 issued by **T** on 30th November (three weeks later) that I was warned by **T**. I remember that it was raining heavily and the late coming was caused by traffic jam. Although I was in front of Kiang Wu Hospital at 8:30, I ended up being late for a few minutes to the Central Fire Station. In that morning, Divisional Officer **EE**, who was responsible for collecting the attendance book, called me and asked where I was. I replied that I was around but facing a traffic jam. Finally, when I drove to the Central Fire Station, the attendance book had already been collected. At that time, I checked the time of my arrival with the colleagues on duty and they replied that it was 09:03. Normally, when a staff of CB is not able to arrive on time, his/her superior will request for a report as soon as possible. However, this time **T** never mentioned the case. As a result, I thought that **T** had realised the traffic jam caused by heavy rain and thus he did not ask me for the reason for coming late. Three weeks later, he criticised my late coming and gave me the warning through the said Order without giving me the chance to defend for myself.*" (See P. 43 of Annex 22)

10. On 14th December 2011, **T** made report no. 22/DGR/2011 according to Deputy Commissioner **S**'s Order. The report stated, "*1. As to the cases of late coming mentioned in the complainant's complaint, under normal circumstances, I have to check and verify the attendance records on the attendance book at 9:00 and 14:30 everyday. The first case occurred in the **afternoon of 1st September 2011** when I was not able to verify the attendance records of the staff at Central Fire Station at 14:30. It was not until 14:43 that I received the attendance book and made the verification. At that time, I did not discover any unusual situations. In order to know better the attendance of the staff of my department, I reviewed the video record of staff's entry and found that the complainant arrived at the Central Fire Station at 14:39, but his attendance record shows that the arrival time was 14:30. Since this was an unusual case, I issued an Order to request Division Officer **AA**, who was responsible for the attendance recording, to submit a report. **AA** stated in his/her report that since the case happened a very long time ago, he/she did not remember what happened. Taking into account the fact that it was the first day the complainant was transferred*

to the department to assist me in research works after his appointment as Deputy Commissioner was terminated, it should be difficult for him to adapt to the new position and thus the case occurred. Therefore, I called for his attention to the obligation of punctuality. The second case occurred on ***8th September 2011****. When I was checking and verifying the attendance records of the staff of my department on 14:30, I found that the complainant did not sign his attendance. To better know the situation, I reviewed the video of staff's entry and found that the complainant arrived at the Central Fire Station at 14:34, but he did not notify his superior (me) of his late coming which he had expected. Although such case has happened twice in a short time, taking into account the fact that the complainant had just been transferred to the department to assist me in research works after his appointment as Deputy Commissioner was terminated, it should be difficult for him to adapt to the new position and thus the case occurred. Therefore, I called for his attention to the situation again in order to prevent the same from reoccurring. The third case occurred on* ***9th November 2011****. When I was verifying staff's attendance at 09:00, I found that the complainant did not sign his attendance. To better know the situation, I reviewed the video of staff's entry and found that the time the complainant arrived at the Central Fire Station was 09:34, but he did not take the initiative to notify his superior (me) of his late coming which he had expected. Later, the complainant explained that it was due to heavy rain. Despite of the fact that it is the third time that the complainant has come to work late, given that the complainant has been assigned to work under the department to assist in my researching works after his appointment as Deputy Commissioner was terminated for a period of time but his emotional problem has not yet been solved, I called for his attention again to improve the situation. My conclusion of the complainant's late coming cases is that the complainant, as a Chief Fire Officer who had been the Chief Of Resource Management Department for one and a half year and the Deputy Commissioner overseeing the same department for five years, should understand that he should abide by Sub-paragraph c of Paragraph 2 of Article 14 of Decree Law no. 66/94/M, which stipulates that militarised staff should notify his hierarchical superior of his/her inability to be on time by the quickest means. The way I adopted to handle the three cases is to call for his attention to the situations and improvement, unlike the 'warning' as mentioned in the complainant's complaint. I hope that the complainant will get used to the current environment and new tasks as soon as possible. In my opinion, the way I handled the cases was appropriate*." (See P. 73 and 74 in Annex 1. Emphasis added)

11. Regarding staff's attendance, the CCAC has collected some CB staff's statements as the following:

Name	Statements
AA	(CCAC asked **AA** how to handle CB personnel's late coming) In such case, the staff still has to sign his/her attendance and record the time of arrival in the attendance book. Subsequently, the staff of the highest rank in the name list of the attendance book is responsible for recording the reason for the late coming. If the late comer is that person, he/she shall explain the reason directly to the Department Chief. When a staff comes into work late, the superior will take the initiative to request him/her or the staff of the highest rank in the name list of the attendance book to submit a report to explain the reason. In general, the superior will decide whether or not to take disciplinary action, call for the staff's attention to punctuality or archive the case based on the staff's previous attendance records. (See P. 409)
BB	If the staff who is not able to arrive on time has notified his/her hierarchical superior in advance, his/her late coming will be justified. If not, the case will be considered unusual and the relevant arrival time will be written down in red. Unless the staff can give a reasonable explanation (e.g. showing medical certificate or due to force majeure) to justify his/her late coming, he/she shall submit a report. Then the Department Chief will, by issuing an Order, decide how to handle the case, such as verbal warning to call for the staff's attention. Usually the reason for late coming shall be reported to the hierarchical superior. For example, the Deputy Commissioner shall report to the Commissioner. BB never hears about any case of reporting to another person other than the superior. (See overleaf of P. 423) Those who are late for the first time without justified reason shall submit a report immediately. It is the Deputy Commission who decides how to handle it by issuing an Order. (See P. 424)

L	The working schedule of the staff of Operation Team is different from that of ordinary staff. The working hours start at 10:00 and ends at 10:00 on the next day. Since shift handover takes time, they cannot leave the station until 10:30-10:45. The time spent for shift handover normally is not counted for attendance but considered as overtime. For attendance recording, Duty Officer **L** will take a roll call according to the duty roster. Subsequently, the Duty Officer will sign to verify the record. If somebody comes late, he/she will take a note and notify the superior (the Commander of the station) verbally. The late comer shall give the explanation in written form and the Duty Officer will also make a written report and submit it with the written explanation to the Commander. In general, if the staff comes late for less than 15 minutes, he/she will be given a chance to justify his/her late coming. If the staff comes late again, disciplinary proceedings will be commenced. In the cases of repeated late coming, **L** will submit a report to the superior and the Commander will give opinions to the Department Chief **F**, who will make the decision. **L** has never seen any cases of written warning given due to coming late once or twice, but the Commander once told **L** to verbally warn late comers not to be late again. (See overleaf of P. 427)
M	On-duty members of the Operation Team shall line up at 10:00 for roll call, which **M** is responsible for. If there is absent member, **M** shall make a record and report it to the hierarchical superior (Commander of Central Fire Station, Divisional Officer of 1st class, **N**) immediately. Moreover, **M** has to write a report about the reason for member's absence or late coming. **M** added that if any of them is not able to come on time for roll call at 10:00 due to justifiable reason (e.g. consulting a doctor), he/she has to notify the Control Centre by 09:30 and the Control Centre will notify **M** by faxing the name list and reasons. If there are members who also do not come on time for roll call but whose names are not in the said list, **M** shall make a written record and submit them to the Commander. However, **M** is not clear about how the Commander will handle the case. However, as **M** knows, there are members against whom disciplinary proceedings have been carried out due to late coming for one or two minutes, resulting in a 2-day fine. (See overleaf of P. 430)

CC	After the attendance book is collected, the responsible staff has to report to the Department Chief on which colleagues have not signed the attendance. If the staff who fails to sign the attendance is of higher rank, he/she shall directly report to the Department Chief. Firemen have to notify their hierarchical superior, who will report to the Department Chief. Since **CC** has never been late to work, he/she has never been requested for explanation or warned by his/her superior. (See overleaf of P. 434)
K	When a member of the Central Operation Team is not able to come on time for the roll call, **K** will verbally report to his/her superior (the Commander) immediately. When **K** knows the reason for the late coming, he/she will report it to his/her superior. (See overleaf of P. 437) **K**, who has been serving at CB for several tens of years, has never been requested by his/her superior for justification of late coming or given any written warning for late coming once or twice. However, as **K** knows, there are staff who have been requested for explanation or given written warning for late coming, while the reason is usually "oversleeping". (See P. 438)
B	When **B** finds that there is somebody who does not appear for a roll call, he/she will try to find out the reason for the absence (e.g. dispatching someone to call the absent staff) and make a report with his/her opinion about whether the absence is reasonable (**B** is responsible for giving opinion about late coming of members of the Airport Division, but for other stations, this job is left to the respective Commander). Then the report will be submitted to the Commander of the Airport Division (or the Commanders of other stations), who is to determine whether the absence/late coming is justified (e.g. Occasional oversleeping [once or twice a year] or taking one's child to see a doctor without presenting "doctor's certificate" can be considered justified. However, there is no stipulation about this. Therefore, the supervisory staff can make the decision flexibly according to the situation). Moreover, before going off duty, the staff also have to line up and the Duty Officer will fill in the "off-duty list". Those who are late for justified reason have to compensate for the indebted working time. For the late comers

	without a justified reason, disciplinary proceedings will be initiated against them. For the staff of the Airport Division whose working schedule sticks to normal office hours, **B** is responsible for giving opinions about whether their late coming is justifiable, while the final decision is up to the Division Chief. (See P. 448) Between July 2007 and March 2011, **B** served as the Commander of different stations, responsible for verifying staff's attendance records. As **B** remembers, the case of failure to sign attendance due to late coming has never happened to him. However, he/she has experience of late coming due to traffic jam triggered by heavy rain. The same also happens to many staff. Under such circumstances, the authority will show consideration for them and will not request them for explanation. On the other hand, since the staff of Operation Team do not have to line up until 10:00am, which is not rush hour, late coming due to raining seldom happens. **B** has never encountered such case. If there is such case, he/she will only make a simple report. (See overleaf of P. 448)
P	If there is a staff who fails to sign the attendance book due to late coming, as said before, the Department Chief or the Acting Division Chief (**P**) will verbally report the case to the Commissioner following verification of the timesheet. In general, **P** will ask the staff for the reason of being late. If the case is slight and only happens occasionally to the staff, **P** will verbally warn him/her to avoid reoccurrence. If the staff does not have any improvement despite of repeated warning, or comes late for rather long time, **P** will consider handling the case based on the system of unjustified absence provided by the law – to initiate disciplinary proceedings against the staff. However, since **P** took up the position as Acting Division Chief, case of taking disciplinary action against late comer has never happened in the department. Usually, if **P** expects that he/she may be late, he/she will report and explain it to his/her superior by phone in advance. In fact, **P** has never been late to work, so he/she does not have the experience of being requested for explanation or warned in written form. According to **P**'s memory, when he/she was the Acting Department Chief in the past, a

	Section Chief under the department verbally reported to him/her that a civil staff was late for six to seven minutes. In order to know what happened, **P** requested the staff, via the Section Chief, to submit a written report to explain it. Finally, the staff was not punished as the reason was found justifiable.
H	**H** has never been requested by his/her superior for explanation of being late. Also, as **H** knows, none of his/her colleagues has been warned by the superior in written form due to coming late once or twice. **H** has to sign the attendance book and go to work on time. If he/she expects that he may be late (e.g. traffic jam), he/she will inform the superior by phone in advance. After being transferred from the Central Fire Station, one day **H** was late for over 20 minutes because something happened to his/her daughter at school. When he/she realised that he/she might not be on time, he informed to the superior immediately by phone. Afterwards **H** was requested to submit a written report and proof. The authority will not give written warning for being late once or twice unless the staff always goes to work late. (See P. 458)
C	**C** has to check whether there is any unusual attendance record. If so, he/she will make a simple report about that. For example, the reason for the late coming may be traffic jam or something happened on the way. **C** will also attach his/her opinion based on the severity of the case (**C** considers that coming late for 10 to 15 minutes is normally not a serious case) and the staff's previous attendance record to the report and submit them altogether to the office of the Headquarters. Then the Deputy Commissioner will make the final decision. (e.g. compensation for indebted time or disciplinary proceedings) (See P. 475)

J	If a staff expects that he/she will be late due to some reason, for example, traffic jam, he/she shall inform the superior by phone. At the same time, as the supervisor, **J** will check and verify the timesheet. If **J** finds that someone fails to sign the attendance, he/she will ask the staff for the reason. If it is a case of late coming, **J** will request the staff for a written report and will see if the reason is justified. If yes, **J** will jot down a record on the report and call for the staff's attention. If the staff fails to sign the attendance due to negligence, **J** will verbally advise him/her to pay more attention. If the reason is unjustifiable, disciplinary proceedings may be initiated. (See P. 490)
F	Militarised staff usually arrive at the workplace earlier and late coming seldom happens to them. According to internal regulation, if a staff expects that he/she will not be on time, he/she shall notify the superior immediately of the reason, for example, heavy rain and traffic jam. If the staff cannot do so, he/she shall immediately report and explain to the superior once he/she arrives at the workplace. Then the superior will decide whether the staff has to submit a written report or not. (See overleaf of P. 494)

(6) Analysis

1. To sum up the above information, the core of the complaint is about whether three accusations of late coming are reasonable or not.

2. First of all, it is noteworthy that Article 14 of *EMFSM* states, "*1. The duty of punctuality refers to working during the time stipulated by the regulation. 2. When performing the duty of punctuality, militarised staff shall: a) reach the designated workplace at the time and on the date as stipulated the regulation; b) go to the Command, corporate subunit, agency or service that they are sent to whenever they are called for working or at special requests, especially in the event of serious disturbance of public order, emergency, serious accident, disaster or calamity; c) report to the Command or supervisor by the quickest means in the event of failure to go to work due to some impediments, especially illness or force majeure*." In other words, **it is militarised staff's duty to arrive at their workplace on time.**

Afternoon on 1st September 2011

3. About the accusation of the complainant's late coming in the afternoon on 1st September 2011, the information shows that:

   1) Chief of Resource Management Department **T** received the timesheet at 14:43 on 1st September 2011 by fax.

   2) Although the timesheet of 1st September 2011 shows that the complainant signed the attendance at 14:30, the video record of Central Fire Station shows that he arrived at 14:39.

   3) **AA**, who was responsible for collecting the attendance book, was not able to explain why the record existed since it happened a very long time ago.

4. Although the attendance of the staff of CB (those who stick to normal office hours) is monitored through an attendance book, it does not preclude the CB from checking the authenticity of the records on the timesheet by reviewing objective information in hand, e.g. video record.

5. **Since the objective information available, video record, shows that the complainant arrived at the Central Fire Station at 14:39 and the record on the timesheet is only the information filled in by the complainant, the CCAC is not able to deny T's conclusion that the complainant was late unless the latter is able to give a reasonable explanation.**

6. **Order no. 08/DGR/2011 issued by T mentions that "*it is impossible to prove the case objectively and completely, it is unable to take appropriate measures*." This means it has not been proven objectively and completely that the attendance record was faked by somebody.**

Afternoon on 8th September 2011

7. About the accusation of the complainant's late coming in the afternoon on 8th September 2011, the information shows that the complainant did not sign the timesheet in the afternoon of 8th September 2011. According to the video record, he arrived at the Central Fire Station at 14:34.

8. It is noteworthy that **according to information, the main purpose of the video surveillance system is to monitor whether the departures of emergency vehicles fulfils the service pledge or not. Sometimes it is used for the purpose of evidence gathering by the CB or other services. In this case, the accuracy of the time shown in the record should be reliable.**

9. **Although the complainant stated that his watch showed that he arrived at the Central Fire Station before 14:30 and the attendance book was closed "earlier than usual", this statement is not sufficient to prove that the accusation that he arrived the Central Fire Station late is wrong.**

10. **Therefore, no sign of irregularity is found in T's statement that the complainant was late in that afternoon.**

9th November 2011 morning

11. The information shows that the complainant admitted that he arrived at the Central Fire Station at 09:03 on that day. In other words, the case of late coming is true.

12. The complainant argues that **T** did not request him to submit a report "as soon as possible and that Divisional Officer **EE** had already notified **T** on his behalf."

13. Paragraph 1 of Article 14 of *EMFSM* states, "*1. The duty of punctuality refers to working during the time stipulated by the regulation. 2. When performing the duty of punctuality, militarised staff shall: a) reach the designated workplace at the time and on the date as stipulated the regulation; b) go to the Command, corporate subunit, agency or service that they are sent to whenever they are called for working or at special requests, especially in the event of serious disturbance of public order, emergency, serious accident, disaster or calamity; c) report to the Command or supervisor by the quickest means in the event of failure to go to work due to some impediments, especially illness or force majeure*." In this sense, if the staff cannot arrive at the workplace on time, he/she shall take the initiative to notify the superior.

14. Meanwhile, according to the statements made by the CB staff, some of them also said that they would take the initiative to notify the superior of late coming.

15. Therefore, **the complainant's argument is groundless.**

16. **To sum up, no sign of irregularity is found in T's accusation.**

* * *

XX. The complainant believes the Chief of the Resource Management Department to have picked on him by saying he failed to report for duty after sick leave

(1) About the complaint

1. The complainant revealed the following to the CCAC: "*The Chief of the Resource Management Department pointed out that the complainant failed to comply with the Internal Regulations of the Fire Services Bureau and report for duty to the Chief after his sick leave came to a close. In his response, the complainant stated that the sick leave was followed immediately by his annual leave, and he already reported for duty to his superior on the first day back at work after the annual leave. Therefore, the complainant holds that he has fulfilled the obligation to report for duty. Also, as far as he knows, other CB personnel do not report for duty to their superior in the same situation. The complainant therefore believes that the Chief was just 'picking on' him.*" (See overleaf of P. 5 and P. 6).

(2) Related facts and statements

1. The Chief of the Resource Management Department, **T**, issued Order no. 10/DGR/2011 on 19th October 2011, reading: "*The Chief Fire Officer (i.e. the complainant) was on his 15-day sick leave from 30th September 2011 to 14th October 2011, followed by annual leave between 17th and 24th October 2011 lasting for six working days. According to Subparagraph e) of Paragraph 1 of Article 76 of the Internal Regulations of the Fire Services Bureau, the Chief Fire Officer (i.e. the complainant) was supposed to report for duty to his superior after the 15-day sick leave. Since he failed*

to do so according to the said stipulation and did not even try to ask for my instructions by phone on how to handle the situation, there was definitely irregularity. I hereby give my warning to the Chief Fire Officer (i.e. the complainant) in hopes that he takes note of the problem and corrects it so it will not happen again." (See P. 163).

2. The complainant wrote the report no. 48/GRC/2011 on 3rd November 2011, reading: "*Since my sick leave was followed immediately by my annual leave, and I reported for duty to the superior in the morning of the first day back at work after my annual leave, I already fulfilled the obligation of reporting for duty.*" (See overleaf of P. 163).

3. In reply to the above report, **T** issued Order no. 16/DGR/2011, reading: *"(...) After my perusal, I have the following comment: As the direct superior of the Chief Fire Officer (i.e. the complainant), I have the responsibility to supervise and give guidance on his behaviour at work. (Another paragraph) The report no. 48/GRC/2011 demonstrates that (i.e. the complainant) has had great difficulty in communicating with me. This difficulty stemmed from his unwillingness to communicate with me or accept my supervision. It is a matter of attitude at work. Therefore, I hereby seriously urge the Chief Fire Officer (i.e. the complainant) to have a self introspection on his own attitude at work and communication skills*." (See P. 60 of annex 22).

4. On 9th December 2011, the complainant made a complaint to the Deputy Commissioner of CB, **S**, reading: "*By Order no. 16/DGR/2011, the Chief, **T**, pointed out that I did not report for duty to him after my sick leave that happened between 30th September and 14th October. He even stated that I have had great difficulty in communicating with him, and that the difficulty stemmed from my unwillingness to communicate with him or accept his supervision. Insisting that it was a matter of attitude at work, he urged me to have a self introspection on my attitude at work and communication skills (See Order no. 16/DGR/2011 of annex 7). (Another paragraph) In regard to the said issue, I have already explained in the report no. 48/GRC/2011 that my sick leave was followed immediately by my annual leave, and that I already reported for duty in the morning of the first day back at work after my annual leave. However, the Chief **T** did not mention this information in the Order* (See report no. 48/GAC/2011 of annex 8)." (See P. 45 of annex 22).

5. On 14th December 2011, through the report no. 22/DGR/2011, **T** made a reply pursuant to the order of the Deputy Commissioner **S**, reading: "*With regard to the matter of not reporting for duty to his superior after sick leave mentioned in the complaint of the Chief Fire Officer (i.e. the complainant), it should be noted that he was on sick leave between 30th September and 14th October 2011.* ***Following the performing of "on-call" duties on 15th October (Saturday) and 16th October (Sunday)****, he was on his six-day annual leave between 17th and 24th October 2011. According to Subparagraph e) of Paragraph 1 of Article 76 of the Internal Regulations of the Fire Services Bureau, the Chief Fire Officer (i.e. the complainant) had to report for duty to his superior (me) after his 15-day sick leave. Since he failed to do so according to the said stipulation and did not even try to ask for my instructions by phone on how to handle the situation, there was definitely irregularity. I therefore gave my warning to the Chief Fire Officer (i.e. the complainant) in hopes that he would take note of the problem and correct it so it would not happen again.*" (See P. 76 of annex 22, emphasis added).

6. In reply to the said complaint, the Deputy Commissioner **S** issued Order no. 17/CB/2011 on 27th December 2011, reading: "*(…) After research and investigation, it is clear that the complainant has complete misunderstanding of his own rights and obligations, and the content of the complaint did not involve acts infringing his rights, which means the condition provided for in Paragraph 1 of Article 253 of EMFSM has not been met", "Judging from the facts of the statement of the complainant and the defence report of the complained against, it is obvious that the complained against fulfilled his duty lawfully and there was not any irregularity or inappropriate act as such.*" (See P. 80 of annex 22).

7. Regarding the issue of "reporting for duty", the CCAC inquired a few incumbent or retired CB personnel and chiefs, whose statements are shown in the following table.

Name	Name
Technical Department	
A	According to **A**, back at the time when he/she was the chief (of the Technical Department), whenever his/her subordinates were on sick leave followed immediately by annual leave, he/she would not require them to return to the department and report for duty after the sick leave ended. The subordinates would not be required to inform **A** about the end of sick leave and the start of annual leave by phone call either (See overleaf of P. 404).
DD	According to **DD**, he/she did not encounter the same situation before. However, there was an occasion where a staff was on annual leave followed immediately by sick leave. The staff did actually notifiy **DD** of his/her absence due to sickness by phone. Considering that the staff was sick, **DD** exempted him/her from returning to the department and reporting for duty. With regard to the situation mentioned by the staff of CCAC (i.e. sickness absence followed immediately by annual leave), **DD** considered that according to the provisions in the *Internal Regulations of the Fire Services Bureau*, the staff should return to the department and report for duty after sick leave, as the staff is changing from one state to another (See overleaf of P. 491).
Resource Management Department	
BB	In the opinion of **BB**, when the sick leave is immediately followed by annual leave, the staff does not have to report for duty twice (i.e. once after the sick leave and once after the annual leave). The staff is only required to report for duty after the sick leave (See P. 424 and overleaf). According to **BB**, there is no stipulation expressly regulating that the staff, whose sick leave is followed immediately by annual leave, is obliged to report for duty to his/her superior by phone right after the absence due to sickness. **BB** said doing so by phone might sound more "considerate", but it is not mandatory. Therefore he did not think that not reporting for duty by phone is a disciplinary offence (See overleaf of P. 424).

CC	**CC** said he/she never had the experience of "being on sickness absence followed immediately by annual leave". He/she did not know whether reporting for duty is necessary in this circumstance. In **CC**'s opinion, when the said situation occurs, despite that there is no such obligation to report for duty, he/she will still notify his/her superior of the end of the sick leave and the start of the annual leave (See overleaf of P. 435).
P	According to **P**, he/she has never had the experience of "being on sickness absence followed immediately by annual leave" since he/she started to work in CB. As far as **P** knows, the colleagues of the Operation Department always "report for duty" to the duty officer at the station they work. If the said situation occurs to his/her subordinate, **P** thought that the subordinate should at least notify him/her of whether the sick leave will have to be extended or when it will end, so the superior can understand the state of the subordinate. **P** said he/she personally would not require the subordinate to return to the department and report for duty on the first day of the annual leave (there is in fact no such an internal rule regulating this). Nevertheless, **P** said he/she would remind the subordinate, when the latter is back at work, that timely notification should be given to the department in the future (See P. 454).
Operation Department of Macao	
F	According to **F**, the *Internal Regulations of the Fire Services Bureau* provides that the staff shall return to his/her department and report for duty to his/her superior on the following day of sick leave even though it is an annual leave day. **F** said that, as required by the formal procedure, the staff should show up at the department he/she works for and report for duty to his/her superior in person. When the following day of sick leave is an annual leave day, whether reporting for duty can be made by phone call depends, however, on the decision of the chief of the department according to the situation. **F** said he/she usually accepted that subordinates make phone calls for such purpose, considering that the Commissioner had ordered the chiefs to care about the health of the subordinates and their conditions after sickness. It was to make sure that they are "in good condition" (See overleaf of P. 495).

L	According to **L**, he/she has never encountered the situation of "sickness absence followed immediately by annual leave". Also, since he served the position as a duty officer, he has not seen any colleague who had the same experience. He/she would however consult the superior for advice when having any doubt regarding such matters (See P. 428).
M	According to **M**, whenever such situation happens, the staff of the operation team (including **M** him/herself and other duty officers) have to, after absence from work, report for duty in uniform to the commander and the duty officer of the station they work at before going on annual leave. When the annual leave ends, the staff should report for duty in uniform again. This means that they are required to report for duty in uniform twice. As far as **M** knows, even the civilian personnel have to report for duty to their chief or leader in uniform twice when such situation happens. **M** was not sure whether there was any guideline or ground for such issue (i.e. reporting for duty twice), but this was the usual practice in CB (See P. 431).
K	According to **K**, he/she has never had the experience of "being on sickness absence followed immediately by annual leave" since he/she started to work in CB. **K** said, however, according to the usual practice of the operation team, when the colleagues are absent from work due to sick leave that is followed immediately by annual leave, they have to report for duty to the duty officer of the station they work at on the following day of sick leave (even though the approved annual leave falls on the same day) (See overleaf of P. 438 and P. 439).

W	**W** said he/she never had the experience of "being on sickness absence followed immediately by annual leave". He/she did once go on annual leave on the following day of a work trip though. According to **W**, he/she still went to report for duty to his/her superior on the following day of his work trip (in uniform). According to **W**, when a staff encounters such situation - "being on sickness absence followed immediately by annual leave", he/she should report for duty to his/her superior. Personally, **W** would first ask the instructions from his/her superior regarding whether or not reporting for duty is necessary. Regarding whether it is necessary to inform the superior of the end of sick leave and the start of annual leave by phone, **W** said he would do this by phone (See P. 466).
Airport Division	
B	According to **B**, he/she never had the said experience, and there was no internal rule regulating such issue. In **B**'s opinion, the act of "reporting for duty" is just to inform the superior that he/she is back at work. If the following day of the sick leave is an annual leave day, reporting for duty is unnecessary. As long as the medical certificate is submitted within a statutory period, the staff may enjoy the scheduled annual leave already approved. As for whether the staff is required to inform his/her superior of the end of sick leave and the start of annual leave by phone, **B** said neither the internal rules nor the leadership have such requirement. Given that the annual leave is approved by the competent authority on request, the subordinates will not be required to do so (See P. 449).

Fire Services Training School	
H	According to **H**, when the absence from work due to sick leave is followed immediately by annual leave, the staff is only be required to report for duty to his/her superior when the annual leave ends. Although the staff should give timely notification to the superior about the sick leave, he/she is not required to inform his/her superior of the end of sick leave or the start of annual leave by phone (See overleaf of P. 458).
Operation Department of Taipa and Coloane	
E	According to **E**, when the sick leave is immediately followed by annual leave, the staff does not have to return to the department and report for duty to the superior on the following day of sick leave (which is the start day of annual leave); the staff is not required to inform his/her superior of the end of sick leave or the start of annual leave by phone, due to the fact that he/she is supposed to have made the annual leave application in advance in accordance with the established procedure (See overleaf of P. 487).
Operation and Ambulance Division of Taipa and Coloane	
C	**C** said there is no stipulation expressly regulating this particular situation. However, basing on his/her understanding and the past experience of dealing with such situation that happened to his/her subordinates, **C** believed that the staff who is under the said situation is not required to report for duty in uniform after sick leave or inform the superior by phone. The staff only needs to report for duty in uniform after annual leave following the sick leave. In other words, the staff is only required to report for duty once. In fact, the number of sick leave days is indicated on a medical certificate. Therefore, it is not necessary for the staff to notify the superior again (See overleaf of P. 475 and P. 476)

8. **T** made the following statement to the CCAC: "*The complainant was on sick leave until 14th October and was supposed to stay on call on 15th October (Saturday). Therefore, he should report for duty on 15th October (Saturday). According to **T**, he knew the name of the complainant was not shown on the roster specifying who were to perform on-call duties; however, according to EMFSM, the relevant personnel are obliged to stay on call, which means they may be required to return to work anytime when necessary.*" (See P. 760).

9. When asked by the staff of the CCAC about how he interpreted the provision in Paragraph 3 of Article 76 of the *Internal Regulations of the Fire Services Bureau*, **T** replied: "*The provision states that when the one to whom the staff is to report for duty is not in the work premises, the staff shall be exempted from the obligation to do so.*" However, **T** said that he himself "*was also on call at that time, which means he would be required to return to work anytime, so the complainant should also report for duty to him. Therefore the complainant's situation may not be considered those that may be exempted from the said obligation provided for in Paragraph 3 of Article 76 of the Internal Regulations of the Fire Services Bureau.*" **T** added that "*although he was not in the work premises the complainant could report for duty to him/her by phone call.*"; **T** went further to say that he "*agreed that reporting for duty mentioned in Article 76 of the Internal Regulations of the Fire Services Bureau means that the staff must return to the work premises and report for duty to the superior in uniform. **T** believed that the concerned situation did not make it necessary for both parties (i.e. the complainant and **T**) to return to the work premises to report for duty and to recognise it respectively. It is acceptable that the reporting for duty can be done by phone call." "**T** added that the order he issued was just to remind the complainant that the latter should have informed him by phone call about the end of the sick leave. However, the wording of the order created misunderstanding that the complainant was being criticised for the violation of the provision of Subparagraph e) of Paragraph 1 of Article 76 of the Internal Regulations of the Fire Services Bureau. **T** said he will be more careful with the choice of words in the future.*" (See P. 760).

(3) Analysis

1. According to the above information , the situation of the complainant

between 30th September and 24th October 2011 can be summarised as follows:

1) The complainant was absent due to sickness between 30th September and 14th October 2011;

2) **He remained on call on 15th October (Saturday) and 16th October (Sunday) 2011.**

3) He was on annual leave between 17th October and 24th October 2011.

2. According to **T**, the complainant was supposed to "*remain on call*", which, as **T** understood it, obliges the complainant to be ready for being required to return to work anytime when necessary according to *EMFSM*.

3. In fact, Article 15 of *EMFSM* stipulates:

"1. The obligation of staying on call constitutes readiness of the militarised personnel for the performance of duties, at all times and under all circumstances, even at the expense of their personal interests; given the specific nature of the mission, the militarised personnel should bear in mind that their duties are mandatory and permanent.

2. In fulfilling the obligation of staying on call, the militarised staff shall, in particular,:

(...)

c) Return to the place that he/she is called to without delay and handle any event, even if on annual leave or off duty;

(...)".

4. Paragraph 1 of Article 76 of the *Internal Regulations of the Fire Services Bureau* stipulates:

"1. All the personnel shall report for duty to their superiors when they are under the following situations:

a) Admission to the Force;

b) After promotion;

c) Change of status;

d) Returning to the original department upon completion of a mission lasting for 48 hours or longer;

e) Returning to work after leave, annual leave, in-home recuperation due to illness, convalescence and hospitalisation;

f) Upon the end of disciplinary penalties." (See P. 25 of annex 6).

5. According to the above provision, in this case, the complainant's sick leave ended on 14th October 2011 and he should stay on call on 15th October 2011. **T** said that the complainant therefore had to observe the above provision and report for duty on 15th October 2011.

6. It should be noted that Paragraph 2 of Article 76 of the *Internal Regulations of the Fire Services Bureau* stipulates: "2. *Reporting for duty may be realised in the following ways: b) The chief fire officers (chefes principais) shall report for duty to the Commissioner (Comandante) and Deputy Commissioner (Segundo Comandante)*". In other words, the complainant, who was a chief fire officer himself, should report for duty to the Commissioner and the Deputy Commissioner in accordance with the regulation. However, the Deputy Commissioner **S** issued Order no. 11/CB/2011 on 1st September 2011 and ordered that **T**, the Chief of the Resource Management Department, became the direct superior of the complainant. Therefore, the complainant was supposed to report to **T** on all the jobs assigned to him. It also conformed to the regulation that the complainant reported for duty to **T**. Moreover, the complainant, **T**, the Commissioner and the Deputy Commissioner of CB did not have any objection to this.

7. However, it is noteworthy that, according to Paragraph 3 of Article 76 of the *Internal Regulations of the Fire Service Bureau*, the personnel's obligation to report for duty may be "terminated" in certain situations: "*3. The obligation to report for duty should be fulfilled within 24 hours after the above situations take place. If the one to whom the staff reports for duty has not returned to the work premises within 24 hours after the*

above situations take place, the staff's obligation to report for duty shall cease immediately." (In Portuguese: "*3. A apresentação deve efectuar-se logo que se dê a causa que a motiva; se, porém, não estiver presente no quartel quem a deve receber, cessa esta obrigação passadas vinte e quatro horas.*"); in other words, although a staff is obliged to report for duty to his/her superior, if the superior to whom he/she reports is not in the work premises, he/she is not obliged to do so after 24 hours have passed.

8. In this case, even though the complainant was to report for duty to **T** on 15th October 2011, since **T** admitted that he himself was not in the work premises on that day, the complaint's obligation to report for duty should be "terminated" according to the said provision of the *Internal Regulations of the Fire Services Bureau*.

9. Also, **T also agreed that "reporting for duty" means that the staff must return to the work premises and report for duty in uniform. Therefore, there was no ground that T required the complainant to report for duty by phone. As a matter of fact, the explanation of T contradicted Paragraph 3 of Article 6 of the *Internal Regulations of the Fire Services Bureau* which stipulates that the obligation to report for duty shall terminate if the one to whom the staff reports for duty is not in the work premises. It does not make sense if reporting for duty can be carried out by phone.**

10. **Therefore, there was no legal basis for T to claim that the complainant failed to report for duty according to Subparagraph e) of Paragraph 1 of Article 76 of the *Internal Regulations of the Fire Services Bureau*.**

11. Under this circumstance, the statement of **S** - "*Judging from the facts of the statement of the complainant and the defence report of the complained against, it is obvious that the complained against fulfilled his duty lawfully and there was not any irregularity or inappropriate act as such.*" – **was merely a subjective judgement and conclusion that was not made basing on the law**.

12. At last, it should also be noted that a staff who is on annual leave shall not be required to return to work or report for duty as he/she is not under the prescribed situations.

13. In other words, regarding the situation where a staff is on annual leave that immediately follows sick leave, Subparagraph e) of Paragraph 1 of Article 76 of the *Internal Regulations of the Fire Services Bureau* does not specify that the CB personnel have to report for duty to the superiors immediately after sickness absence.

14. **Therefore, when the *Internal Regulations of the Fire Services Bureau* does not have provision expressly regulating the concerned situation, there is no legal ground to require the personnel to return to CB to report for duty before the commencement of annual leave that immediately follows sick leave, or to claim that not reporting for duty in such situation is a violation of the provision of Subparagraph e) of Paragraph 1 of Article 76 of the *Internal Regulations of the Fire Services Bureau*.**

15. In addition, judging from the statements of different CB personnel, we notice that there has not been any standard or requirement on whether the CB personnel need to "report for duty" or "notify the superiors by phone" when the concerned situation (i.e. sickness absence followed immediately by annual leave) happens. When even some senior CB officers are uncertain about how to handle the concerned situation, doubtless there are quite many problems existing in the management and operation of the bureau.

16. **The CB is therefore recommended to review the provisions of the *Internal Regulations of the Fire Services Bureau* and make necessary improvements on it in appropriate ways.**

17. **In fact, the current *Internal Regulations of the Fire Services (Regulamento de Serviço Interno do Corpo de Bombeiros)* is a Portuguese version approved (*Homologo*) by the former Secretary for Security through Order no. 16-I/99/SAS. CB also stated that the Chinese version serves as reference only. Considering the regulations have been in force for as many as 12 years, the new organic law of CB was already published (through Administrative Regulation no. 24/2001 of 22nd October) and that the career system of the CB personnel has been amended for a few times (through Executive Order no. 13/2005 of 11th April, Administrative Regulation no. 19/2007 of 24th September and Administrative Regulation no. 8/2008 of 28th April), it is necessary**

that CB review the current provisions of the *Internal Regulations for the Fire Services Bureau* and make appropriate improvement on it.

* * *

XXI. The complainant claimed that the Chief of the Resource Management Department did not allow him to drive his own car or use the vehicle of CB to report for duty at the Headquarters

(1) About the complaint

The complainant revealed the following to the CCAC: "*After leaving the position of Deputy Commissioner, sometimes I had to perform the duties as a chief duty officer according to the roster and report for duty to the Deputy Commissioner on the following day at the Headquarters. I once requested to go to the Headquarters by driving my own car, but it was then rejected by the Chief of the Resource Management Department, who said that I had to use the vehicle of CB in such circumstance. Then, when I required to be picked up at where I live by the CB's vehicle, the Chief still rejected it, claiming that the CB's vehicles can only travel between workplaces.*" (See overleaf of P.5 and P. 6).

(2) Related facts and statements

1. The complainant wrote a report on 13th September 2011, reading: "*In the afternoon of 7th September 2011, I made a phone call to you, the Chief, because I had to be at the Sai Van Lake Fire Station at 09:00 to report for duty to the Deputy Commissioner as a chief duty officer. Since you said that chief duty officers may not report for duty there by their own cars, I made a request to you for sending a driver to pick me up to the Sai Van Lake Fire Station from where I live in Taipa on that day (8th September 2011). However, you said it was not possible. I asked the reason but you could not give me an answer right away and said you needed to think about it. Soon afterwards (10-20 minutes later), you called me back saying that the driver could only pick me up at the Central Fire Station with the CB's car. I asked the reason again immediately but you still did not explain*

it clearly. (Another paragraph) *Therefore, I hereby kindly request you to provide a clear explanation in writing, and to give clear instructions, via an order, on transport arrangement for chief duty officers who have to report for duty before and after shift work, so that I am clear about the arrangement and act accordingly.*" (See P. 169)

2. In response to the above application of the complainant, the Chief of the Resource Management Department issued Order no. 07/DGR/2011 on 4th October 2011, reading: "*Regarding the said issue, considering that the Chief Fire Officer (i.e. the complainant) is a staff of this department, the transport service will only be provided for him when the work requires it, from one workplace to another. Furthermore, the Chief Fire Officer (i.e. the complainant) was only to report for duty on an ordinary occasion, rather than to handle an emergency or an important task. Therefore I could not send a driver to pick him up from where he lives in Taipa to the Headquarters to report for duty during non-office hours in the morning of 8th September 2011. I hereby remind the Chief Fire Officer (i.e. the complainant) once again to pay attention to the regulations on the use of government vehicles published by the Public Administration and Civil Service Bureau (SAFP) and the relevant guidelines of CB, particularly those with regard to application for the use of them.*" (See P. 170).

3. According to the report no. 50/GAC/2011 written by the complainant on 4th November 2011, he did not insist that he must be picked up by a government vehicle. It was the Chief who once said that chief duty officers may not drive their own cars to the Sai Van Lake Fire Station to report for duty; also, the complainant pointed out that, as far as he knew, "*in some circumstances, such as when the personnel need to go on work trips that necessitate travelling between their home and the borders, or when they need to go home after consuming alcoholic beverages at work/ official banquets, they usually ask for the permission from the superiors for transport service by CB's vehicles. Such requests are usually permitted*". The complainant went further to point out that he found no provisions in the law, the guidelines of SAFP or the internal regulations of the CB on dealing with the situation he was in (See P. 171).

4. On 9th December 2011, the complainant made a complaint to S, reading: "*By Order no. 17/DGR/2011, the Chief, **T**, pointed out that the transport arrangement for me (i.e. using the vehicle of CB) on 8th September was*

appropriate, and requested me to observe the regulations on the use of CB's vehicles and respect the spirit (i.e. the principle of proportionality). He also warned me that I should pay attention to the regulations on the use of government vehicles published by the Public Administration and Civil Service Bureau (SAFP) and the relevant guidelines of CB, particularly those with regard to application for the use of them (See Order no. 17/DGR/2011 of annex 9). (Another paragraph) *1. The incident was that I was required to go to the Sai Van Lake Fire Station to report for duty by the vehicle of CB on 8th September this year after my shift work as a chief duty officer. Previously, I stated all the details of the incident in the report no. 50/GAC/2011. However,* ***T*** *did not mention all of them in the order and even avoided touching on many of the key points. One was that I myself did not request to be picked up by the CB's vehicle. It was the Chief* ***T*** *that told me not to drive my own car to report for duty. Therefore, it was very reasonable that I requested to be picked up from where I live and dropped off at the Sai Van Lake Fire Station. However, the Chief* ***T*** *still made me drive my own car to the Central Fire Station first where I would then be taken to the Station (the Headquarters) to report for duty before 09:00 by the CB's vehicle. That was totally lack of ground. The Chief* ***T*** *even stated that the CB's vehicles may only travel between workplaces. I responded in the report that under many circumstances, the CB's vehicles do not necessarily only travel between workplaces even for the execution of tasks. Sometimes we do not even have to use the CB's vehicles at all (See the report no. 50/GAC/2011, Order no. 07/DGR/2011 and the report on the regulations of the use of the CB's vehicles by chief duty officers).*" (See P. 45 of annex 22).

5. Pursuant to the order of the Deputy Commissioner **S**, **T** gave an explanation in the report no. 22/DGR/2011 on 14th December 2011, reading: "*5. Regarding the issue of the use of CB's vehicle mentioned in the complaint letter of the Chief Fire Officer (i.e. the complainant), he was performing the duties of a chief duty officer on 7th September 2011 and had to report for duty to the Deputy Commissioner at the Sai Van Lake Fire Station before 17:45 on that day. In the afternoon of that day, the complainant gave me a phone call saying that he would drive his own car from the Central Fire Station to the Sai Van Lake Fire Station to report for duty to the Deputy Commissioner. I immediately rejected his request, for it is not allowed to drive one's own car during working hours. I insisted that CB's vehicles should be used. Then, Lei Pun Chi requested that a CB's driver*

be sent to pick him up from where he lives in the morning of 8th September 2011 and take him to the Sai Van Lake Fire Station so that he could report for duty to the Deputy Commissioner at 09:00. I replied that it was not possible because I could only arrange the CB's car to go from the place where the complainant works (the Central Fire Station) to the Sai Van Lake Fire Station. Subsequently, the complainant made a request to me to send a CB's vehicle to pick him up at 08:30 at the Central Fire Station and take him to the Sai Van Lake Fire Station. I did the arrangement according to his request. I believe that the transport arrangement for him was appropriate." (See P. 76-77 of annex 22).

6. In response to the above complaint, the Deputy Commissioner **S** issued Order no. 17/CB/2011 on 27th December 2011, reading: "(…) *After research and investigation, it is clear that the complainant has complete misunderstanding of his own rights and obligations, and the content of the complaint did not involve acts infringing his rights, which means the condition provided for in Paragraph 1 of Article 253 of EMFSM has not been met", "Judging from the facts of the statement of the complainant and the defence report of the complained against, it is obvious that the complained against fulfilled his duty lawfully and there was not any irregularity or inappropriate act as such*." (See P. 80 of annex 22).

7. **T** made the following statement to the CCAC: "*The position of chief duty officer is usually held by a chief fire officer (there are six currently, including **T**), The chief duty officer on duty is supposed to remain on call between 17:45 (the normal time to get off work) and 09:00 on the following day, which means that he/she must perform duties when there is an emergency in this period; after the shift work is finished, **T** has to give a report on his shift work at the Headquarters and then return to his workplace to resume duties.", "At the time when the complainant was on the way back to the Central Fire Station after reporting for duty at the Headquarters, it was during working hours. Under normal circumstances, CB does not allow the personnel to drive their own cars in this period. Therefore, **T** gave two options to the complainant – one was to ask a friend to give him a ride to the Headquarters (Sai Van Lake Fire Station) to report for duty before working hours and then his department would send a car there to take him back to the Central Fire Station; the other was the complainant showed up at the Central Station earlier (at say 08:35) and he would go to the Headquarters by the car of CB*." (See P. 236).

8. The CCAC listened to some CB personnel about their opinions on the above-said situation. Their statements are shown in the following table.

Name	Statement
A	According to **A**, when his/her shift work as a chief duty officer was completed, he/she would report for duty to the Commissioner and sign his/her name on a book after getting off work. Then he/she would go home and remain on call. On the following day he/she would report for duty to the Commissioner and sign on a book again at 09:00. **A** said he/she drove his/her own car to the Sai Van Lake Fire Station to report for duty to the Commissioner. Since he/she also worked at the Sai Van Lake Fire Station, there was no need to travel back to his/her workplace by car (See overleaf of P. 404).
G	According to **G**, the post of chief duty officer is usually held by a chief fire officer or an acting chief. The chief duty officers are not required to stay in the Headquarters (Sai Van Lake Fire Station), but should remain on call (however, the post of duty fire officer rotates among personnel working in positions ranking from the divisional officers of 1st Class to deputy chief fire officers, who must stay in the Headquarters between 17:45 and 09:00 of the following day and during weekends and holidays. If the following day happens to be a working day, then the duty fire officer needs to work in the morning but can have the afternoon off if nothing special happens. This is the arrangement made through an order by the Commissioner some years ago). **G** was once a duty fire officer only. According to **G**, when being a duty fire officer, during working days, he/she would request the CB's vehicle to take him/her from the fire station he/she worked to the Headquarters, and to take him/her from the Headquarters back to his/her workplace to work on the following day. During weekends or holidays, he/she would usually drive his/her own car to perform shift work at the Headquarters. On the following day when he/she needed to work, he/she would drive his/her own car from the Headquarters directly to the Areia Preta Fire Station.

	Sometimes, **G** would also request the fire station to send a CB's vehicle to pick him/her up from he/she lived to the Headquarters. After the shift work was completed, the CB's vehicle of the fire station would pick him/her up at the Headquarters and take him/her back to the Areia Preta Fire Station or his/her home. Such arrangements depended on whether he/she needed to work on that day (See overleaf of P. 470)
C	(**C** was asked by the CCAC staff if he/she was once a chief duty officer when working for CB, and to briefly explain the duties of this position if so.) **C** said that he/she had not been a chief duty officer because he/she had never held the positions required for being a chief duty officer. However, **C** had been a duty fire officer. (**C** was asked by the CCAC staff about the tasks of a duty fire officer.) According to **C**, when he/she performed the duties as a duty fire officer on a working day, he/she needed to go to the Headquarters to report for duty before getting off work (the relevant instruction required that the Deputy Commissioner be reported to; however, after ordination of fire and security for the 10th anniversary of Macao's handover to China, there was a verbal instruction that only the Chief of the Operation Department would be reported to). The duties of a duty fire officer included patrolling, coordinating and directing fire and rescue tasks at the Control Centre. He/she also needed to, before the end of the shift work at 09:00 on the following day, report for duty and on the happenings during the shift work. **C** said when he/she needed to be at the shift work as a duty fire officer on public holidays, he/she would have to report for duty prior to the end of the working hours on the last working day following the day of shift work. The period of the shift work was from 10:00 to 10:00 on the following day. According to **C**, he/she used to go to the Headquarters to report for duty by the vehicle of CB. However, when it comes to a pubic holiday,

	the choice of means of transportation was left to the duty fire officers. **C** said that he/she would first go to the Operation Department of Taipa and Coloane and put on the uniform and then go to the Headquarters by the vehicle of CB. When the shift work was completed, he/she would head back to the Operation Department of Taipa and Coloane to change back into his/her own clothes before leaving. **C** had also driven his/her own car to the Headquarters to perform the shift work. However, he/she had to park the car outside the Headquarters, due to the fact that the Commissioner only allowed certain designated private cars to be parked inside the Headquarters (See P. 476). **C** also said that when the start day of the shift work of a duty fire officer happened to be a non-working day (e.g. Sunday) and the following day was a working day (e.g. Monday), the duty fire officer on duty may drive his/her own car to the workplace first and then go to the Headquarters at Sai Van Lake to report for duty by the car of CB. After the shift work was finished, the duty fire officer was to return to the workplace by the car of CB. Another way was that the duty fire officer who was on duty may drive his/her own car to the Headquarters and leave it in a public parking space nearby. He/she may then go to the Headquarters to perform the shift duties. When the work was completed at 09:00 on the following day (e.g. Monday), he/she may go back to the workplace by his/her car (See overleaf of P. 476).
D	According to **D**, he/she once performed the duties as a chief duty officer when he was an acting chief; on those days he/she had to report for duty to the leadership before getting off work. Afterwards he/she may go home and remain on call before having to report for duty to the leadership again at 09:00 on the following day. **D** added that he/she was the Acting Chief of the Resource Management Department when he was a chief duty officer. Since he/she also worked at the Headquarters at Sai Van Lake, there was no need to travel back to his/her workplace by car (See P. 480). (**D** was asked by the CCAC staff about the tasks of a duty fire officer.)

	According to **D**, on the day of performing the duties as a duty fire officer, one has to report for duty to the Chief of the Operation Department of Macao at the Headquarters at Sai Van Lake before the end of the working hours on that day. Then he/she would remain on duty. **D** said one should remain on call at the Headquarters, during which he/she would have to patrol all the fire stations, and to conduct on-site coordination and give directions on fire and rescue tasks at the Control Centre in case of emergency. At 09:00 on the following morning, the duty fire officer needs to report for duty to the Chief of the Operation Department of Macao at the Headquarters at Sai Van Lake. **D** said that when both the day of remaining on duty as a duty fire officer and the following day are working days, the duty fire officer is required to go from his/her workplace to the Headquarters to report for duty by the vehicle of CB. After the duties are completed, he/she needs to return to the workplace to work by the vehicle of CB. **D** said that when the day of remaining on duty as a duty fire officer falls on a non-working day (e.g. Saturday) and the following day is also a non-working day (e.g. Sunday), the duty fire officer is allowed to park his/her private car in the Headquarters. Therefore, the duty fire officer on duty may drive his/her own car to the Headquarters and may go home by his/her car when the work is completed. **D** also said that when the start day of the shift work of a duty fire officer happens to be a non-working day (e.g. Sunday) and the following day is a working day (e.g. Monday), the duty fire officer on duty may drive his/her own car to his/her workplace first and then go to the Headquarters at Sai Van Lake to report for duty by the car of CB. After the shift work, the duty fire officer is to return to the workplace by the car of CB. Another way is that the duty fire officer who is on duty on Sunday may drive his/her own car to the Headquarters and leave it in a public parking space nearby. He/she may then go to the Headquarters to perform the shift duties. When the work is completed at 09:00 on the following day (e.g. Monday), he/she may go back to the workplace by his/her car.

	D added that although the personnel are required to use the vehicle of CB in the said situations as much as possible, in practice they are not strictly prohibited from driving their own cars from the Headquarters to the workplace (See overleaf of P. 480).
E	According to **E**, only personnel with the position of chief fire officer are required to take turns to perform the duties of a chief duty officer. From 1st March 2011, **E** started to perform such duties at least once a week and was mainly responsible for serious emergencies. Prior to the on-duty work he/she had to report to the Commissioner (who must be reported to in person through an appointment made at 17:00). On the following day, when the on-duty work was completed, he/she was also required to present the attendance register to the Commissioner for reading and signing. Since he/she was also working at the Headquarters at Sai Van Lake before, there was no problem regarding transport arrangement. As far as **E** knew, the use of the vehicles of CB depended on whether the work requires it and the need of the personnel. The staff who is to carry out a task may use his/her private vehicle when necessary (See P. 486).
J	According to **J**, on the day of performing the duties as a duty fire officer, he/she used to report for duty to the leadership before getting off work on that day, so that the latter would know he/she was the chief duty officer of the day and give him/her directives if any. **J** said that he/she may then return home to rest and remain on duty. At 09:00 on the following day, he/she would report for duty and situations of the previous night to the leadership. **J** added that the post of chief duty officer is held by a chief fire officer. Only when **J** was promoted to be a chief fire officer last year did he/she start to perform the duties as a chief duty officer. Before that he was only a duty fire officer. According to **J**, at the time when he started to perform the duties as a chief duty officer, his/her workplace was already at the Sai Van Lake Fire Station. Therefore, there was no need to travel back to his/her workplace by car after reporting for duty in the morning. (**J** was asked by the CCAC staff about the tasks of a duty fire officer.)

	According to **J**, on the day of performing the duties as a duty fire officer, one has to report for duty to the Chief of the Operation Department of Macao at the Headquarters at Sai Van Lake before the end of the working hours on that day. Then he/she should remain on duty. The duty fire officer should remain on call at the Headquarters, before which he/she has to patrol all the fire stations, and to carry out fire and rescue tasks upon the notification from the Control Centre in case of emergency. At 08:00 on the following morning, the duty fire officer needs to patrol all the fire stations before reporting for duty to the Chief of the Operation Department of Macao at the Headquarters at Sai Van Lake. **J** said that when both the day of remaining on duty as a duty fire officer and the following day are working days, the duty fire officer is required to go from the workplace to the Headquarters to report for duty by the vehicle of CB. After the duties are completed, he/she needs to return to the workplace to work by the vehicle of CB. **J** said that when the day of remaining on duty as a duty fire officer falls on a non-working day (e.g. Saturday) and the following day is also a non-working day (e.g. Sunday), the duty fire officer is allowed to park his/her private car in the Headquarters. Therefore, **J** would drive his/her own car to the Headquarters and go home by his/her car when the work was completed. **J** said that when the day of remaining on duty as a duty fire officer falls on a non-working day (e.g. Saturday) and the following day is also a non-working day (e.g. Sunday), he/she would go to the Headquarters to report for duty by the car of CB on Friday and return to his/her workplace to work afterwards; when he/she was on duty as a duty fire officer on a Sunday, he would drive his/her own car to the Headquarters to perform duties and leave it in a public parking space nearby, because he/she would not be allowed to park the car in the Headquarters. After reporting to the Chief of the Operation Department of Macao at 09:00 on the following day (Monday), he/she would return to the workplace by the vehicle of CB. He/she would usually leave his/her car at the public parking space and go to Sai Van Lake to get it back by a colleague's car.

	J emphasised that he/she had never made a request to his/her department that he/she must travel between the workplaces and where he/she lived by the vehicles of CB (See overleaf of P. 490 and P. 491).
F	**F** said that the post of chief duty officer can only be held by a chief fire officer. **F** was promoted to be a chief fire officer in March 2011 and thus he was required to perform the duties as a chief duty officer since then. The main duties include dealing with emergencies. As a chief duty officer he/she was to report for duty to the Commissioner before 17:30 on the day when he/she was on duty, listen to directives if any (if there is not any directive or anything special, he/she may get off work at 17:45 like a normal working day). He/she was also supposed to report on the happenings during his/her shift work to the Commissioner and present the "book" to the latter for reading and signing. Since **F** worked at the same place as the Commissioner, he/she did not need any transport arrangement for the purpose of reporting for duty to the latter.

(3) Analysis

1. From the above analysis we may draw the following conclusions:

   1) In principle, the Headquarters at the Sai Van Lake is also the workplace of persons who bear the duties as chief duty officers. Therefore, it rarely happens that the said persons have to travel back to their workplaces by car after reporting for duty to the Commissioner.

   2) However, according to the above statements made by the personnel who were duty fire officers before, some of them would return to the workplace to work from the Headquarters by their own cars, and some would request to be given rides between their home, the Headquarters and workplaces (fire stations) by the vehicles of CB.

   3) In other words, in practice, there is evidence that there are CB personnel who travel between workplaces by their own cars (e.g. from the Headquarters to the fire stations) when they are performing duties. There are also personnel travelling between home and workplaces by the vehicles of CB.

2. In this case, doubtless the travelling of the complainant from the Headquarters to the Central Fire Station should be considered exercising his duties.

3. In fact, Paragraphs 1 and 2 of Article 8 of Administrative Regulation no. 14/2002 of 12th August (Acquisition, Organisation and Use of Vehicles of the Macao Special Administrative Region) state: "*1. Special permits for using private vehicles in the exercise of duties, with the right to claim monetary compensation for fuel consumption and maintenance costs, can be granted if the public body concerned does not have vehicles or the vehicles they have are unfit for economic utilisation. 2. The cost of fuel consumption, maintenance and insurance authorised relating to the use of such vehicles should be set in relevant orders*". In other words, in principle, public servants are not permitted to use their private cars in the exercise of duties unless permission has been obtained from the Secretaries. Nevertheless, why are the fire officers not allowed to drive their cars to report for duty at the administrative centre? Before the start of the shift work at 09:00, the public servants should be free to use their time as they wish.

4. For this reason the CCAC did not see there was the alleged violation of law of the Chief of Resource Management Department owing to his position on the use of CB's vehicles and private cars in the course of exercising duties.

5. **Nevertheless, from the above information, we can see that even other personnel of CB have had different concepts in terms of the use of personal cars during work. Some do use their own private cars to travel to/from the workplaces and some even requested to travel between home and workplaces by the vehicles of CB. Therefore, the complaint made by the complainant is not completely groundless.**

6. **Judging from the above situation, CB should revise its own system of the use of vehicles in order to avoid unnecessary disputes and the intensifying of the conflicts among its personnel.**

* * *

XXII. The complainant claimed that the Chief of the Resource Management Department accused him of giving work orders to personnel of another department without authorisation

(1) Related facts and statements

1. On 7th November 2011, the Chief of the Material Section of the Resource Management Department, **EE**, wrote the report no. 73/DGR/SMat/2011, reading: "*1. I hereby wish to inform Your Excellency that at 11:30 on 4th November 2011, the Chief Fire Officer (i.e. the complainant) went to the office of the Material Section at the Central Fire Station and required me to deliver a piece of document to the Secretariat and Reception Division. At 15:30, the employee of the Division (...) handed the document to the Secretariat and Reception Division. The document was received by the divisional officer (...).*" (See P. 56 of annex 22).

2. The Chief of the Resource Management Officer, **T**, issued Order no. 13/DGR/2011 on 30th November 2011, reading: "*According to the report no. 73/DGR/SMAT/2011, (…) the Chief Fire Officer (i.e. the complainant) gave a work order to the staff of another division without obtaining the prior authorisation of his direct superior (me). Doubtless the relevant act went against Order no. 11/CB/2011 issued by the Deputy Commissioner on 1st September 2011. According to the normal administrative procedure, one should submit all the documents through his/her direct superior or the Auxiliary Office of the Command when necessary. It is obviously inappropriate that the complainant ordered a staff of another division to submit the document to the Secretariat and Reception Division. In view of this situation, I hereby give my warning to the Chief Fire Officer (i.e. the complainant) again in hopes that he takes note of the problem and corrects it so it will not happen again.*" (See P. 55 of annex 22).

3. On 9th December 2011, the complainant made a complaint to the Deputy Commissioner of CB, **S**, reading: "*By Order no. 13/DGR/2011, the Chief, **T**, pointed out that I ordered a staff of the Material Section to deliver a document to the Secretariat and Reception Division, which went against Order no. 11/CB/2011 issued by the Deputy Commissioner. He ordered me to take note of the problem and correct it (See Order no. 13/DGR/2011 of annex 4).* (Another paragraph) *I think the criticism of the Chief **T** was*

groundless and untrue, as what I did was just to ask a subordinate to do me a favour and deliver a document for me. It turned out that I was criticised for having violated the order of the Deputy Commissioner. In fact, the order of the Deputy Commissioner does not contain such an illogical provision (See Order no. 11/CB/2011 of annex 5). I believe he was just criticising me in particular." (See P. 44 of annex 22).

4. Pursuant to the order of the Deputy Commissioner **S**, **T** gave an explanation in the report no. 22/DGR/2011, reading: "*Regarding the complaint made by the complainant (i.e. The claim that he was accused of having violated Order no. 11/CB/2011 issued by the Deputy Commissioner by giving a work order to a staff of another division without authorisation), I already replied him through Order no. 13/DGR/2011 on 30th November 2011. Since the complainant still does not quite realise his problem, I hereby explain the situation to Your Excellency in detail. On 4th November 2011, at 11:30 in the morning, the Chief Fire Officer (i.e. the complainant) went to the office of the Material Section of our department at the Central Fire Service. He asked a staff of the division to hand a document to the Secretariat and Reception Division. Later, at 15:30, the staff concerned handed the said document to the Secretariat and Reception Division. I would like to call your attention to the following facts: 1) The Chief Fire Officer (i.e. the complainant) has no longer been appointed as the Deputy Commissioner since 1st September 2011 and has not been assigned any duties of a leadership position. He was only assigned to assist me with the research and planning work in our department. It means that there is no subordinate relationship as such between the complainant and other personnel in our department. To put it simply, the complainant is not entitled to give any work order to those who are not his subordinates. He is supposed to talk to me if he has any problem at work, and I will try my best to come up with solutions. The fact that the complainant gave a work order to a staff of our division who is not his subordinate without obtaining prior authorisation of his direct superior (me) undoubtedly went against Order no. 11/CB/2011 issued by the Deputy Commissioner, which mentions that "the Chief Fire Officer **T** is the direct superior of the Chief Fire Officer (i.e. the complainant), who shall directly report all the work assigned to him to the latter and be accountable to the latter." 2) The document that the complainant ordered the staff of the Material Section to deliver was his own annual leave schedule for 2012 and should be considered an internal document. Instead of handing the concerned document to the*

Secretariat and Reception Division (a department that deals with external affairs of CB), the complainant should have, according to the established procedure for document submission, submitted it to his superior (me) or the Documents and Archives Division. The Chief Fire Officer (i.e. the complainant) himself had been the Chief of the Resource Management Department for one year and a half and even the Deputy Commissioner that oversaw the Resource Management Department for five years. He should be very clear about the functions of all the departments of CB and how documents should be submitted. Unfortunately, he still insists that what he did was correct. For these reasons, I believed that the relevant act of the complainant was inappropriate. I therefore reminded him to take note of the problem and correct it so it would not happen again." (See P. 75 of annex 22).

5. In response to the above complaint, the Deputy Commissioner **S** issued Order no. 17/CB/2011 on 27th December 2011, reading: "*(…) After research and investigation, it is found that the complainant has complete misunderstanding of his own rights and obligations, and the content of the complaint did not involve acts infringing his rights, which means the condition provided for in Paragraph 1 of Article 253 of EMFSM has not been met", "Judging from the facts of the statement of the complainant and the defence report of the complained against, it is obvious that the complained against fulfilled his duty lawfully and there was not any irregularity or inappropriate act as such*." (See P. 80 of annex 22).

6. The Chief of the Material Section (already retired), **EE**, presented a statement to the CCAC, reading: "*According to **EE**, in the morning on that day, the complainant went to the division and handed a document to him (**EE** had no clue what the document was about), and then asked him to deliver it to the Secretariat and Reception Division at the Headquarters at Sai Van Lake; as the complainant himself was a Chief Fire Officer, I regarded it as a work order from him. Since the document did not need urgent delivery, a staff of the division (…) delivered it, along with other usual documents, to the Headquarters at Sai Van Lake in that afternoon." "**EE** added that the Material Section is the only subunit that is under the Resource Management Department at the Central Fire Station. All the other subunits under the department are located in the Headquarters. The Material Section usually has the personnel drive its cars to deliver its documents to the Headquarters. It never resorts to the personnel of the*

*Operation Department of Macao of the Central Fire Station." "According to **EE**, (…) received the order from the Chief of the Resource Management Department, **T**, who requested him to write a report on the said matter. Therefore, (…) notified **EE** about the order of **T**. Subsequently, (…) drafted the report and was then read and signed by **EE**." "(The CCAC staff asked **EE** if the Chief **T** had ever told him to disregard the orders of the complainant) **EE** said the Chief **T** did not say so. However, **T** did instruct that **EE** should report to him whenever the complainant has contact with **EE** for work-related reasons; **EE** said **T** did not explain the reason for such instruction though*." (See P. 521).

(2) Analysis

1. This complaint concerns whether or not the act of the complainant (i.e. asking **EE**, the Chief of the Material Section under the Resource Management Department to deliver a document to the Secretariat and Reception Division at the Headquarters at Sai Van Lake) went against Order no. 11/CB/2011 issued by the Deputy Commissioner **S** (i.e. *"The Chief Fire Officer **T** is the direct superior of the Chief Fire Officer (i.e. the complainant), who shall directly report all the work assigned to him to the latter and be accountable to the latter.*")

2. First of all, the document concerned is the information about the annual leaves for 2012 of the complainant, which is palpably irrelevant to "*all the work assigned to the complainant*". Therefore, we cannot infer from the Order that the complainant should also obtain the authorisation of the Chief **T** before submitting his annual leave information.

3. **Furthermore, according to the statement of EE, the Material Section is the only subunit that is under the Resource Management Department at the Central Fire Station, and that all the documents of the division (i.e. the Resource Management Department) are delivered to the Headquarters at Sai Van Lake by its personnel. Since the complainant was himself a member of the Resource Management Department, it was justifiable for him to have asked his document to be delivered by the Material Section to the Headquarters, along with other documents**

of the division. There was no harm or inconvenience as such caused to the operation of the division.

4. **Also, taking account of Subparagraph f) of Article 194 of EMFSM ("*The fundamental principles of discipline are: (…) f) Obedience to personnel of a higher rank or with higher seniority when carrying out work-related duties or in the exercise of specialised functions*"), the complainant, as a chief fire officer, should be entitled to order the divisional officer EE to deliver his document to the Headquarters at Sai Van Lake along with other documents.**

5. **For these reasons, T's "accusation" against the complainant was groundless and the Deputy Commissioner S's statement that "*there was not any irregularity or inappropriate act*" of T is debatable.**

* * *

XXIII. The Secretary for Security's rejection of the appeal of the complainant

(1) Related facts

1. As mentioned above, in response to the complaints lodged according to Article 253 of *EMFSM* against the Chief of the Resource Management Department, **T**, the Deputy Commissioner **S** indicated in Orders no. 16/CB/2011 and 17/CB/2011 that the complaints were "*groundless"* and *"there was not any irregularity or inappropriate act*" of **T**.

2. In response to the above orders of the Deputy Commissioner **S**, the complainant lodged an appeal to the Commissioner of CB on 9th January 2012 according to Paragraph 1 of Article 155 of the *Code of Administrative Procedure* (See P. 699 and P. 700).

3. The Commissioner of CB issued an order on 20th January 2012, stating: "*After my perusal on all the related information and basing on the opinions from the legal advisory office (incorporated in this order), I*

hereby determine: 1. There is no evidence or information showing that the complained against had been hard on the complainant or had given work orders that were detrimental to his rights. 2. Regarding Orders no. 16/CB/2011 and 17/CB/2011 mentioned in the appeal, the issuer of the orders already carried out necessary investigation and made comments and decisions in a comprehensive, objective way. The alleged defects in the concerned orders, which should lead to the annulment of them, cannot be seen. 3. In view of these reasons, I hereby determine, according to Article 292 of EMFSM, that the decisions in the concerned orders should be maintained." (See P. 697).

4. On 6th January 2012, the complainant received a notification about the above order, reading: "According to Article 292 of *EMFSM*, if the complainant dissents from the decision of the above order, he/she may, within 5 days upon the receipt of this notification, lodge administrative appeal to the Secretary for Security if necessary." (See P. 698).

5. On 30th January 2012, the complainant lodged an appeal to the Secretary for Security, where he restated the unfair and unreasonable treatment he received from **T** and made the following appeal: "*1) To annul the decisions made in Order no. 04/CB/2012 issued by the CB Commissioner Ma Io Weng on 20th January 2012 and Orders no. 16/CB/2011 and no. 17/CB/2011 issued by the Deputy Commissioner S on 21st December and 27th December 2011 respectively, particularly with regard to the initiation of disciplinary proceedings against me. 2) To look into my complaint and carry out investigation into the acts of the relevant leaders and chief that were targeting me so that they can be corrected; to initiate proper investigation process in order to ascertain the truth, so that I can be relieved of emotional distress and my legitimate rights and interests can be protected*." (See P. 696).

6. The Secretary for Security issued Order no. 9/SS/2012 on 23rd February 2012, reading: "*The complainant, Chief Fire Officer, sent an appeal letter by mail on 31st January this year to request the annulment of Order no. 04/CB/2012 issued by the CB Commissioner and Orders no. 16/CB/2011 and no. 17/CB/2011 issued by the Deputy Commissioner regarding the disciplinary penalty imposed on him. A request for investigation in an issue has also been brought up in the letter.* (Another paragraph) *As appeals*

should merely target at administrative behaviour, only the administrative behaviour referred to in the appeals will be assessed and handled and will, according to Paragraph 6 of Article 292 of EMFSM, be submitted to the contested authority to give opinions and provide information. (Another paragraph) *After analysis of the opinion and report of CB, it is found that the contested authority has not imposed any disciplinary penalty on the complainant yet, which means the alleged administrative behaviour does not exist, that is, the object of the appeal does not exist*. (Another paragraph) *To sum up, given the object of the appeal does not exist, this appeal is inadmissible according to Subparagraph e) of Article 160 of the Code of Administrative Procedure*." (See P. 692).

(2) Analysis

1. First, as mentioned above, the complainant had certain grounds for the issues raised in the complaints against **T** presented to the Deputy Commissioner **S**. Therefore, there was a lack of legal basis when the Deputy Commissioner **S** indicated in Orders no. 16/CB/2011 and no. 17/CB/2011 that the complaints were "*groundless*" and "*there was not any irregularity or inappropriate act*" of **T**. It is also groundless that the Commissioner of CB stated the decisions in the concerned orders of the Deputy Commissioner should be maintained.

2. According to the above information, the complainant lodged an appeal to the Secretary for Security according to Article 292 of *EMFSM*. The following requests are stated in the appeal:

   1) To annul the decisions made in Order no. 04/CB/2012 issued by the CB Commissioner Ma Io Weng on 20th January 2012 and Orders no. 16/CB/2011 and no. 17/CB/2011 issued by the Deputy Commissioner **S** on 21st December and 27th December 2011 respectively, particularly with regard to the initiation of disciplinary proceedings against him.

   2) To look into his complaint and carry out investigation into the acts of the relevant leaders and chief that were targeting him so that they can be corrected; to initiate proper investigation process in order to ascertain the truth, so that he can be relieved of emotional distress and his legitimate rights and interests can be protected.

3. According to Order no. 16/CB/2011 of the Deputy Commissioner **S**, CB "**will**" impose disciplinary penalty on him. This suggests that, according to Paragraphs 2-4 of Article 258 of *EMFSM*, the complainant has the opportunity to defend himself before any penalty is imposed on him. Therefore, the Commissioner and the Deputy Commissioner of CB had yet to hand down any penalty on the complainant. For this reason, the Secretary for Security's rejection of accepting the complainant's appeal requesting the annulment of disciplinary penalty to be imposed by the Commissioner and the Deputy Commissioner of CB was legally justifiable, basing on Subparagraph e) of Article 160 of the *Code of Administrative Procedure*.

4. Nevertheless, it should be noted that Article 292 of *EMFSM* states: "*1. The suspect, the informer or the complainant may lodge an appeal against the order issued by any of the bodies referred to in Paragraph 1 of Article 207 (i.e. superiors vested with power to impose disciplinary sanctions (…) 3. Appeals against the decisions by the chiefs and secretaries may be lodged to the Governor.*" (As the appeal of the complainant was about the decision of the commissioner of CB, it can be lodged to the Secretary for Security).

5. The issuing of the two orders (i.e. Orders no. 16/CB/2011 and no. 17/CB/2011) by the Deputy Commissioner of CB stating the complaint made according to Article 253 of *EMFSM* was not substantiated led to the issuing of the order (i.e. 014/CB/2012) by the Commissioner stating the decisions made in the said two orders by the Deputy Commissioner should be maintained. In response to this, the complainant lodged an appeal to the Secretary for Security according to Article 292 of *EMFSM*.

6. In fact, in the appeal lodged by the complainant, he requested "*to annul the decisions made in Order no. 04/CB/2012 issued by the CB Commissioner Ma Io Weng on 20th January 2012 and Orders no. 16/CB/2011 and no. 17/CB/2011 issued by the Deputy Commissioner S on 21st December and 27th December 2011 respectively"* and the Secretary for Security *"to look into his complaint and carry out investigation into the acts of the relevant leaders and chief that were targeting him so that they can be corrected; to initiate proper investigation process in order to ascertain the truth*".

7. Regarding the above requests, the Secretary for Security did not make any decision or give any feedback in Order no. 9/SS/2012. **Therefore, it can be understood that the Secretary for Security has yet to deal with all the requests stated in the complainant's appeal in the said order.**

* * *

Part V: Conclusion and recommendations

I. Complaints regarded not admissible after investigation

1. In view of the fact that the complainant did not report for duty to the Commissioner on 12th April 2010 (i.e. the day following the sick leave), and the lack of evidence that the referred absence has been verbally authorised by the Commissioner, the act of the complainant did violate the provisions of Subparagraph e) of Paragraph 1 and Paragraph 2 of Article 76 of the *Internal Regulations of the Fire Services Bureau*; also, after investigation, we found there was no sufficient evidence showing the Commissioner once publicly said that the complainant would have to bear criminal liabilities for committing this act.

2. There is no such regulation in *EMFSM* that a superior must not criticise a subordinate in the presence of the latter's subordinates or personnel of a lower rank. Therefore, the complaint, which claims the Commissioner should not have criticised him before his subordinates and that the relevant act constituted a violation of *EMFSM*, is not admissible.

3. Whether it be *EMFSM*, the *Internal Service Regulation of the Fire Services Bureau* or the *Statute of Personnel of the Public Administration of Macao*, there is no regulation mandating the publication of the annual leave plan in the functional order. Therefore, the complainant, which claims it was necessary for the Commissioner of CB to approve his annual leave plan for 2011 and publicise it in a functional order according to law, is not admissible.

4. It is true that the Commissioner of CB, on some occasions, did not pass some leadership documents to the complainant but the Deputy Commissioner **S**. Nevertheless, such documents concerned the operations of CB and the Commissioner of CB has the power to decide which deputy commissioner is responsible for those operations and thus receiving the relevant documents. In addition, the secretary to the Commissioner **O** would usually distribute those documents concerning the activities organised by the Welfare Association to the complainant. Therefore, the claim that the complainant had no access to information is not admissible.

5. The internal regulations of CB oblige its personnel, including the leadership and management staff, to sign the attendance book at the start and the end of the normal working hours. Therefore, there was no breach of the principles of "equality" and "good faith" as was alleged. The complaint, which claims that it was unlawful to request the complainant to comply with the fixed work schedule, is not admissible.

6. Since the guard also registers the entry and exit of other chiefs whenever they leave their workplace during the normal working hours, the complaint is not admissible considering it claims that "according to the guidelines on attendance, division chiefs or personnel of a higher rank are exempted from the registry of entry and exit by the guard. Therefore, the complainant considers the act of the Commissioner was against him only".

7. It was due to the existence of problems relating to the attendance of the complainant that the Commissioner of CB requested the subordinates to specially keep the video records of the entries and exits of the complainant. For this reason, there was no irregularity regarding the act of the Commissioner of CB.

8. The Chief of the Resource Management Department **T** stated that the complainant was not allowed to summon meetings for the staff of the Department nor order them to participate in the compilation of the Administrative Guide carried out by the Department. **T** informed the complainant that, if necessary, he would have to seek instructions and obtain his prior authorisation. There was no gross illegality in this act.

9. The Chief **T** ordered **AA** to send by fax, at 09:01 and 14:31 each day, the timesheet from the Central Fire Station to the Resource Management Department and the Secretariat and Reception Division at the Headquarters at Sai Van Lake. This was a special request rather than a usual one and was only put into practice after the complainant was transferred to the Resource Management Department. However, taking into consideration that the timesheet of the other personnel in the same department at the Headquarters at Sai Van Lake was also collected at 09:00 and 14:30 and submitted to the Chief of the Department for checking immediately, there is no condition at present to conclude that these measures adopted by the Chief of the Department **T** constituted a violation of the principle of good faith and a lack of justice.

10. It is not unreasonable for the Chief **T** to point out that the complaint was late for work.

II. Administrative illegalities and irregularities detected after investigation

Those concerning the Commissioner of CB

1. In the *Leadership Performance Appraisal Report* drafted on 6th May 2011, the Commissioner of CB used several events taking place prior to 18th August 2010 (i.e. outside the evaluation period) as reference **to evaluate the performance of the complainant. Moreover, the evaluation report was also found to contain contradictory information and show a lack of grounds.**

2. Before conducting any proper hearing of the defence of the complainant, the Commissioner of CB considered, in the *Leadership Performance Appraisal Report* of 6th May 2011, **that some unproved comments or conversations of other CB personnel and situations against the complainant as facts. The act violated the provisions of Article 10 of the *Code of Administrative Procedure* (Principle of participation).**

3. Without initiating any **disciplinary proceedings to discover the truth of some incidents**, the Commissioner of CB stated in the ***Leadership Performance Appraisal Report*** of 6th May 2011 **that the complainant violated the obligations enshrined in *EMFSM*.**

4. The Commissioner of CB claimed that the complainant should not have requested the staff (drivers) to give him rides between his home and the workplace for this had nothing to do with work, and thus he violated the legislation concerning the use of government vehicles and Order no. 38/SS/2002 of the Secretary for Security. **Objectively, there was no legal basis for such claim.**

5. Some CB staff stated that they have received orders and implications by the Commissioner that they should avoid any personal or work-related contact with the complainant. Some others claimed they had been pressured into boycotting the complainant by the threat of the Commissioner that their grade of behaviour (appraisal grade) would be lowered or there would be a slimmer chance for promotion if they did not do so. Some even said that their close relationships with the complainant made them not able to be appointed to the positions of leadership, get a lower grade of behaviour (appraisal grade), have to withdraw from the tasks for which they were initially responsible, reduce to a "figurehead" or not able to enjoy regular promotion.

6. Several CB personnel claimed that the Commissioner, without sufficient evidence, alleged that the complainant went for meals with another leader and some other influential figures and even set up businesses with them to "obtain advantages".

7. One of the higher officials of CB stated explicitly in writing that the Commissioner once told him/her that he/she had, by using his/her power, prevented the complainant from taking annual leave in December 2010.

8. The Commissioner of CB did not inform the participants at the meeting that the document submitted by the complainant was actually the application for bringing forward his remaining annual leave to the following year. This made the participants under the mistaken impression that the complainant deliberately changed his holiday plan so that his annual leave

would coincide with that of the Commissioner, which was unfair to the complainant.

9. The Commissioner of CB requested the complainant, by his own order, to carry out the study and analysis of the overall internal operation of the Bureau "individually and confidentially", which is contradictory and unreasonable. In his statement, the Commissioner explained that the work distributed to the complainant through his order was a routine task requiring the preparation for the annual activity report and the planning of activities for the following year. However, judging from the content of the order in question, such explanation can hardly be justified. This shows that the Commissioner failed to convey his work orders and instructions to his subordinates properly through his orders.

10. The Commissioner asked the department chiefs of CB not to report to the complainant on the work of the Bureau when the complainant was serving as the Acting Commissioner, which clearly violated the provisions of Article 42 of the *Code of Administrative Procedure*.

Those concerning the internal management and operation of CB

11. It should be noted that it was not appropriate that the registration of the complainant's attendance had to be checked and approved by the Commander of the Central Fire Station. There were also problems existing in the internal communication of CB, since the complainant was not unequivocally notified after the timesheet template was modified and approved by the order of the Commissioner. Thus, after the modification of the timesheet template, the problem regarding "register of attendance of senior staff having to be checked and approved by the lower category personnel" no longer exists. Therefore, if the complainant was already expressly notified by the Commissioner that he had to sign the timesheet, even if the complaint had doubts regarding who approved the new template, the complainant may seek clarification from the Commissioner.

12. The time of arrival for work and getting off work of the complainant was recorded intentionally, which has apparently disregarded his dignity and violated the principle of good faith.

13. There has been no specific and clear guidance in CB with regard to the use of private cars to perform public duties. In reality there are various practices – in the course of performing their duties, some do use their own private cars to travel to/from the workplaces and some even requested the use of vehicles of CB to travel between home and workplaces. CB should revise its own system of the use of vehicles in order to avoid unnecessary disputes and the intensifying of conflicts among its personnel.

14. The CB must review the *Internal Regulations of the Fire Services Bureau* and seek for improvement of the relevant provisions.

Those concerning the Chief of the Resource Management Department of CB

15. In the course of compiling the *Administrative Guide of the Fire Services Bureau*, the complainant was not provided with due and adequate support in terms of manpower and information by the Chief of the Resource Management Department **T**.

16. The Chief of the Resource Management Department **T** did not arrange a suitable workplace for the complainant. He was allocated to a place unfit for working.

17. **T** claimed that the complainant did not report for duty to him in accordance with Subparagraph e) of Paragraph 1 of Article 76 of the *Internal Regulations of the Fire Services Bureau*. This allegation was not supported by any fact and legal basis.

18. The Chief of the Resource Management Department **T** claimed that the complainant gave work orders to personnel of another department without authorisation. The allegation was groundless and unreasonable.

Those concerning CB's handling of the complaints against the Chief of the Resource Management Department T and the related appeals

19. The complainant had certain grounds for some issues raised in the complaints against **T** presented to the Deputy Commissioner **S**. Therefore,

there was a lack of legal basis when the Deputy Commissioner **S** indicated in Orders no. 16/CB/2011 and no. 17/CB/2011 that the complaints were "*groundless*" and "*there was not any irregularity or inappropriate act*" of **T**. It is also groundless that the Commissioner of CB stated the decisions in the concerned orders of the Deputy Commissioner should be maintained.

20. With regard to the complainant's request to annul the decisions made in Order no. 04/CB/2012 issued by the CB Commissioner on 20th January 2012 and Orders no. 16/CB/2011 and no. 17/CB/2011 issued by the Deputy Commissioner S on 21st December and 27th December 2011 respectively, and to carry out investigation into the acts of the relevant leaders and chief that were targeting him so that they can be corrected, the Secretary for Security has yet to deal with it or make any decision.

III. Suggested measures

Given that it is within the competence of the Secretary for Security to initiate disciplinary proceedings against the leadership and chiefs and to supervise the internal operation of CB, the CCAC hereby presents the Chief Executive and the Secretary for Security its findings on the illegalities and administrative irregularities of the Bureau, as well as the alleged practices of disciplinary infringement by its personnel. In addition, according to Subparagraphs 6) and 7) of Article 4 of the *Organic Law of the Commission Against Corruption of Macao Special Administrative Region,* we hereby request the Secretary for Security to take appropriate follow-up measures, namely:

1. To initiate disciplinary proceedings, basic or case-based investigation procedures into the alleged practices of disciplinary offences by the Commissioner of CB and the internal operation problems according to the provisions of *EMFSM*.

2. To assess and investigate the complaints filed by the complainant against the Chief of the Resource Management Department **T** again according to Article 253 of *EMFSM*.

* * *

Given that this report reveals a number of serious problems relating to the operation and management of CB, the CCAC proposes that the Secretary for Security consider the application of the mechanism of inquiry provided for in Paragraph 2 of Article 354 of the *Statute of Personnel of the Public Administration of Macao* with the objective to solve the various problems currently existing in the bureau.

* * *

I hereby make the following orders:

1. **The Chief Executive shall be notified of the publication of this report;**

2. **The Secretary for Security shall be notified of the publication of this report so that follow-up measures will be taken.**

* * *

Commission Against Corruption, 7th December 2012[48]

Commissioner Against Corruption
Fong Man Chong

48 Although the report was finished and submitted to the Secretary for Security on 7th December 2012, it was not published in the same year since the Secretary for Security had not yet made any response by the time and the CCAC received new related complaints. The report was revealed on 26th December 2013 after the related works were completed and therefore it is included in the Annual Report for 2013.

Case V

Analysis and Conclusion on the Responses of the Secretary for Security in relation to the "Investigation Report on the Basis for Termination of Fixed-Term Appointment of Deputy Commissioner of the Fire Services Bureau and the Relevant Complaints"

Key points:

- The entity to which recommendation has been rendered does not accept it and rebuts the charges with insufficient reasons;
- Initiating of disciplinary proceedings is a binding act;
- The mistake of making judgements without going through necessary procedures;
- Unfairness caused by wrong application of law;
- Mismanagement affects operation of the department.

* * *

Introduction:

The report and the analysis of the responses of the Secretary for Security were already completed in as early as June 2013. However, as the CCAC has still received new complaints from a few other senior fire officers, with many of which closely relating to the problems (of internal operation and personnel management) raised in the report, we decided to postpone the publicising of this report, so the new complaints would not be affected and they would be handled with neutrality and impartiality.

Given that the new complaints received recently reflected that the management and personnel problems of the Fire Services Bureau (CB) have yet to be solved, and that no concrete measures have been taken to deal with them, the CCAC decides, taking account of protecting the public's interests, to publicise the report concerning the problems of the Commissioner of CB and the operation of the bureau, the responses of the Secretary for Security on the report and the stances of the CCAC on the relevant issues.

* * *

Part I: Background

Part of the responses of the Secretary for Security to the "Investigation Report on the Basis for Termination of Fixed-Term Appointment of Deputy Commissioner of the Fire Services Bureau and the Relevant Complaints" is as follows:

"In addition to the above, we must emphasise that despite that the Investigation Report ***reveals the irregular acts or wrongdoings of certain personnel, we do not think it is necessary to initiate disciplinary proceedings against the concerned leadership of CB after our careful analysis***[49] *. As a matter of fact, when we look at the issue globally, it is not appropriate to initiate disciplinary proceedings against the Commissioner of CB due to his irregular acts or wrongdoings as there are*

[49] Emphasis added by the CCAC.

nearly 1,000 personnel under his command. Besides, the imposition of disciplinary sanctions does not necessarily depend on disciplinary proceedings.

As always, we will support and respect the work of the CCAC. Again, we appreciate the sending of this report to us and we believe that it will greatly contribute to the improvement of the services of CB."

The CCAC gave an analysis of the responses and announced the report pursuant to Subparagraph (13) of Article 4 of the *Organic Law of the Commission Against Corruption*.

* * *

Part II: Analysis

Point I: The initiating of disciplinary proceedings – a discretionary act or a binding act?

1. **With regard to the obligation to initiate disciplinary proceedings, the Secretary for Security believed that the *Statute of Militarised Personnel of the Public Security Forces of Macao*** (approved by Decree Law no. 66/94/M of 30th December and amended by Administrative Regulation no. 13/2004 of 29th March) **has laid down a special regime, stating:**

> *"1. There is a designated disciplinary regime for the militarised personnel of the Public Security Forces, which is governed by the rules of the Statute of Militarised Personnel of the Public Security Forces of Macao (EMFSM), and, when certain rules are absent, the current disciplinary system for employees of Public Administration and the criminal procedure law of Macao shall apply (see Article 256 of EMFSM).*
>
> *(...)*
>
> *3. Whether to initiate a disciplinary proceeding or not shall also be decided by the authority with disciplinary powers depending on the nature and severity of the act, the length of service and the past performance of the actor.*

4. Therefore, we can understand from the above that, when due respect for other opinions can be ensured, whether or not a disciplinary proceeding is initiated is at the discretion of the competent authority."

2. However, the CCAC does not agree with this point of view.

1. First, Article 325 of the *Statute of Personnel of the Public Administration of Macao* states that:

"Article 325
(Preliminary order)

*1. **An authority with disciplinary powers shall initiate the relevant proceeding upon** the receipt of a written record, report or complaint, except those meant for archiving.*

2. The written record, report or complaint shall be archived if the proceeding is inadmissible.

3. If the authority with disciplinary powers regards the initiating of disciplinary proceedings inappropriate, or the penalty applicable to the facts contained in the written record, report or complaint is beyond its competence, it shall refer the matter to the competent sanctioning entity for making decisions."

On this matter, Leal Henrique writes the following in his book *Manual de Direito Disciplinar (Manual of Disciplinary Law):*

"First, we should note that a broad right to complaint is ensured in the legal system of the Macao SAR government (i.e. Anyone who has knowledge that a civil servant has committed a disciplinary offence may report it to the superior of the latter so that the respective disciplinary proceeding can be initiated – Paragraph 1 of Article 290 and Paragraph 1 of Article 325); on the other hand, the obligation to report is established (i.e. The civil servant shall report any disciplinary offence that comes to his/her knowledge or he/she will be subject to disciplinary responsibility – Paragraph 2 of Article 290, Subparagraph c) of Paragraph 2 of Article 313 and Subparagraph i) of Paragraph 2 of Article 314).

In addition, Paragraph 1 of Article 325 (i.e. An authority with disciplinary powers shall immediately initiate the relevant proceeding) and Paragraph 6 of Article 341 (i.e. Ensuring the legality of lodging an administrative appeal for the archived complaint in a preliminary order).

Judging from these provisions, it seems that the lawmakers in Macao tend to adhere to the principle of legality when it comes to disciplinary proceedings, which means whether or not a disciplinary action is taken does not depend on whether or not the Public Administration thinks it fit.

If this were not so, the right to complaint and the obligation to report would not be protected – but may be subject to the judgement of the one with the right to complaint or the one with the obligation to report, thus losing their effectiveness.

Furthermore, granting the Public Administration the complete discretion to decide whether to take disciplinary actions or not may give rise to discriminatory acts, thus jeopardising the principle of equality."

Therefore, after receiving reports or complaints the competent departments shall initiate disciplinary proceedings immediately, unless objective conditions are absent or the initiating of disciplinary proceedings against the matters concerned is obviously not justifiable.

In the latter case, the respective complaint shall be archived with evident justification (subjective or objective reasons) for why disciplinary proceedings are not to be initiated or why it is regarded inadmissible.

2. To put it simply, in the legal system of Macao, **the initiating of disciplinary proceedings is a binding act (*acto vinculado*) rather than a discretionary act *(acto discricionário)***. Whether the respective proceedings will entail accountability for the behaviour in question is another issue. The competent authority shall initiate disciplinary proceedings provided that the prerequisite exists.

3. Regarding personnel of the public security forces, Article 267 of *EMFSM* reads:

"Article 267
(Preliminary order)

1. An authority with disciplinary powers shall initiate disciplinary proceedings to decide whether disciplinary actions are to be taken upon the receipt of a written record, report or complaint.

2. The authority shall archive the written record, report or complaint if it believes that no disciplinary action should be taken.

3. Otherwise, the authority referred to in Paragraph 1 shall initiate the respective disciplinary proceedings or caused them to be initiated.

4. In the case where the authority with disciplinary powers regards the initiating of disciplinary proceedings inappropriate, or the penalty applicable to the facts contained in the written record, report or complaint is beyond its competence, it shall refer the matter to the competent sanctioning entity for making decisions."

According to Article 325 of the *Statute of Personnel of the Public Administration of Macao*, the competent authorities are obliged to make decisions. Nevertheless, there are no criteria for making such decisions (i.e. criteria for determining whether or not disciplinary procedures should be initiated). Does this mean that the principle of "rationality" (i.e. "appropriateness" or "timeliness") should apply in decision making?

We do not think so.

It is because that:

(1) Both the *Statute of Personnel of the Public Administration of Macao* and the *Statute of Militarised Personnel of the Public Security Forces of Macao* stipulate the obligation to make decisions (i.e. to decide whether or not disciplinary proceedings should be initiated) – this is to laid down in Article 11 of the *Code of Administrative Procedure*. It is therefore impermissible not to make decisions (which may constitute an omission).

(2) According to Article 256 of the *Statute of Militarised Personnel of the*

Public Security Forces of Macao, when certain provisions are absent or deficient, the provisions of the *Statute of Personnel of the Public Administration of Macao* should apply. Therefore, there should be adequate criteria for deciding whether or not disciplinary proceedings should be initiated.

(3) When there is a lack of expressly laid down provisions, the fundamental rule must apply, which is the principle of legality - the principle that must be followed in the carrying out of all activities of public administration, rather than the principle of rationality, as Paragraph 1 of Article 3 of the *Code of Administrative Procedure* states:

"Article 3
Principle of Legality

1. Public Administration bodies must act in accordance with the law and legal principles, within the limits of those powers which may be attributed to them and in conformity with the aims for which the same powers were granted.

(…)."

(4) **The principles regarding reasonability, such as the principle of "timeliness" and the principle of "appropriateness", shall only apply when the law permits it. Article 267 of the Statute of Militarised Personnel of the Public Security Forces of Macao does not provide that decisions may be made basing on this criterion.**

(5) Therefore, if the initiating of disciplinary proceedings is deemed not possible, the objective justification must be stated.

The initiating of disciplinary proceedings cannot be considered a discretionary act. Rather, the imposition of disciplinary sanction may possibly be considered a discretionary act, once the necessity of holding someone accountable is verified after the initiation of disciplinary proceedings and investigation. Still, the disciplinary proceedings must be initiated as a gesture of observing the principle of defence.

Regrettably, without initiating any disciplinary proceeding or

in-depth investigation, the Secretary for Security concluded the case is as matter of discretion. The CCAC hereby expresses its disappointment and indignation to this.

* * *

Point II: Evaluation of work performance of leadership and the principle of participation

The response of the Secretary for Security to the issue stated in B1 is as follows:

> ***"B1 – The Commissioner of CB presented contradictory and groundless content in the Leadership Performance Appraisal Report of 6th May 2011, which violated the "principle of participation":***
>
> *(…)*
>
> *7. In addition, according to Article 14 of the Leadership Performance Appraisal Report, the work performance evaluation of leadership is presented in reports and submitted to the Chief Executive. Such reports cannot be regarded as decisions or administrative acts, and therefore hearing is not mandatory. Furthermore, unlike the general regime for the assessment of work performance of civil servants, the system for assessing the performance of the leadership does not entail review meetings, self-appraisal or consultation from assessment committees. There is neither such thing as "statement of objection" in this case. According to Paragraph 4 of Article 14 of the Fundamental Provisions of the Leadership and Management Personnel, the respective persons shall be **notified** of the content of the reports.*
>
> *8. **Given the above, we do not agree that the Commissioner of CB violated the "principle of participation" in the course of preparing the Leadership Performance Appraisal Report. There was no defect in the respective performance assessment procedure."***

1. Part of the above response seems to be justifiable. However, according to Paragraph 5 of Article 14 of Law no. 15/2009 of 3rd August:

"5. The information referred to in the preceding paragraphs shall be treated with confidentiality and is intended for notifying the Chief Executive of the performance of the leadership of all public departments and entities of the Macao Administrative Region, particularly for the purpose of serving as bases for the following:

1) The decision on the renewal of fixed-term appointments;

2) The decision on appointment or placement in another public office, according to the demonstrated capability and the needs of overall policy of the Macao SAR;

3) The decision on giving compliment or awards publicly;

4) The decision on terminating fixed-term appointments immediately."

Law no. 15/2009 does not set forth provisions with respect to the procedure of participation of any administrative agent. However, the competent entity shall decide the respective participation, or it violates one of the principles of administrative activity - the principle of participation.

Paragaraph 4 of Article 2 of the *Code of Administrative Procedure* expressly states:

"Article 2
(Scope of application)

(...).

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

(...)."

Article 10 of the Code of Administrative Procedure states:

"Article 10
(Principle of participation)

The entities of Public Administration shall ensure the participation of individuals and associations whose objective is to defend their interests when making the respective decisions, including through their hearing provided for in this Code."

2. **Therefore, we consider that the response of the Secretary for Securty is lack of grounds. As a matter of fact, only through the participation of the stakeholders in the relevant procedures can the administrative authorities (especially those with decision making powers) grasp the information in a comprehensive way and take corresponding measures. Particularly, when the issue being dealt with concerns the evalution of the performance of a particular person, or when negative conclusion has to be drawn against him/her, it is important that the one being subject to the evaluation is provided with the opportunity to "defend" or explain.**

* * *

Point III: Making judgements without going through necessary procedures

The response of the Secretary for Security to the issue stated in B2 is as follows:

"B2–The Commissioner of CB suggested directly or impliedly that the other chiefs should not befriend the complainant but treat him like an outsider. He even defamed the complainant before other chiefs.

(…)

13. It is true that several CB personnel expressed in their statements that they had the similar sensations. As indicated in the "Investigation Report" of the CCAC, from an empirical point of view, there are reasons to believe that problems do exist. We however believe that they are simply

interpersonal issues and have something to do with interpersonal skills. There is no direct relation with the internal management system of CB. As a matter of fact, the interpersonal relationship is bilateral. We cannot simply say the Commissioner of CB is the one to blame for the said problem.

14. Even if the Commissioner of CB did not use words and expressions carefully, which might have made the people feel stressed and unfair, we do not believe that the initiating of disciplinary proceedings against the irregular situations is justified."

1. Subparagraph 6) of Article 4 of Law no. 10/2000 (*Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*), as amended by Law no. 4/2012 of 26th March, expressly states:

"Article 4
Powers

(…)

6) Upon completion of investigation, report any findings of illegal acts to the authorities with disciplinary powers;

(…)."

The above article expressly states: the competent authorities shall be notified of the **findings** (rather than substantial evidence) of illegal acts. Whether or not the evidence is adequate and sufficient is decided by the preliminary investigator in the course of disciplinary investigation. One **may not and should not jump to the conclusion that evidence is lacking or insufficient in the absence of disciplinary proceedings.**

2. In most cases, only after investigation can the authority conclude whether there is sufficient evidence to establish the truth.

No disciplinary sanction may be imposed basing on only the signs of illegal acts.

Therefore, the CCAC concludes that some of the reasons stated in B2 of the Responses are lack of grounds.

* * *

Point IV: Rebutting the charges without going through necessary procedures

The response to the issue stated in B3 is as follows:

"B3– The Commissioner used his power to make the complainant not able to enjoy his planned annual leave in December 2010:

15. The holiday entitlement is subject to the consideration of public interest and the enjoyment of holiday should not affect the normal operation of the services. Usually, it is necessary for managerial staff to work out the annual leave arrangements among themselves so that the operation will not be affected. A balance must be achieved under the principle of good faith to ensure the legitimate interests of staff.

16. In the Investigation Report, there are major differences with regard to the statements made by various individuals, especially those provided by the Deputy Chief Fire Officers D and J and the Commissioner of CB. Given the lack of sufficient evidence, it is difficult to make an objective and justifiable judgment even if the Commissioner did not go to Hong Kong for medical treatments during his vacation in December 2010.

17. Despite that Deputy Chief Fire Officer D drafted a written record of his/her conversation with the Commissioner of CB on 30th July 2010, it is merely a document made by him/herself. In addition, from an empirical point of view, if the Commissioner of CB intended to harm the legitimate interests of the complainant, why would he reveal it to his subordinate?

18. *Anyhow, the holiday entitlements of the persons concerned were enjoyed and treated according to the law. We therefore consider that it is not necessary to initiate disciplinary proceedings merely because of the vacation issue between the Commissioner and the complainant (i.e. the former Deputy Commissioner).”*

Similarly, drawing a conclusion on the probative facts of any of the documents without the initiating of disciplinary proceedings – this should be the judgement of a preliminary investigator. A body with decision making power may not do what is supposed to be done by a preliminary investigator.

Given the above, the reasons stated in the Reponses are considered insufficient.

* * *

Point V: Leadership misapplying the law without bearing any consequence

The response to the issue stated in B4 is as follows:

“B4 – In his order , the Commissioner of CB ordered that the complainant carry out study of the work of CB and submit a report on it, requiring that confidentiality be maintained and no assisstance be sought from others:

19. *Regarding the afore-said subject, the opinion expressed in the Investigation Report is basically identical to that stated in our analysis. We totally agree with the content of the Investigation Report. Obviously, the Commissioner of CB failed to take appropriate measures to facilitate the work of the complainant when appointing the latter to carry out a mission requiring confidentiality. The Commissioner should have handled the work distribution in a better way.*

20. *Regarding the order of the Commissioner of CB about the termination of the powers delegated to the complainant (i.e. the former Deputy Commissioner), doubtless the Commissioner misinterpreted the law.*

> *However, given that the issue falls within the professional legal area, the neglect is excusable. Moreover, considering that the termination of the fixed-term appointment of the complainant as the Deputy Commissioner was based on the need of the service, and that any change of status of the position holder can cause the extinction of the right of delegation or the right of sub-delegation, we do not think it is necessary to spend any more time discussing this matter."*

Again, how can the Responses be considered the carrying out of investigation, or a judgment made in the disciplinary process? ***Obviously, this judgment is lack of reasoning and made too soon. Such "prejudgement" is unfair to both the complainant and the complained against, and it has also failed to comply with the legal provisions.***

* * *

Point VI: The Commissioner exercising powers even when being substituted

The response to the issue stated in B5 is as follows:

> ***"B5 – When being substituted by the complainant, the Commissioner of CB demanded all the department chiefs that they should not report on their work to the complainant:***
>
> *21. With our respect for the opinion stated in the Investigation Report, we would like to point out that it is the duty of the Commissioner to direct and oversee the work of CB and distribute work according to the related needs. There was nothing inappropriate about him making work arrangements before going on his annual leave, or following up and directing the work of the bureau during his holiday. The arrangements in question cannot be considered a violation of the provisions of Article 42 or 43 of the Code of Administrative Procedure. (Note: The Investigation Report states that there was a violation of Article 42 (extinction of the right of delegation or the right of sub-delegation) and Article 13 (relating to substitution))*

22. *Due to his greater seniority in the post of Deputy Commissioner, the complainant was positioned as the Acting Commissioner according to law and thus was vested with the powers of the one being substituted (i.e. the Commissioner). The powers of the Commissioner, however, were not removed or extinguished when he was on holiday. Nevertheless, the Acting Commissioner still had the appropriate powers to deal with matters that had not been planned or directed by the Commissioner. Therefore, the work arrangements or supervision of the Commissioner on the work of the bureau should not be considered a violation of Article 42 or 43 of the Code of Administrative Procedure."*

May the orders of the Commissioner of CB be executed when he is on holiday?

According to Article 43 of the *Code of Administrative Procedure* in force:

"Article 43
(Substitution)

1. *Except as provided by special law, in cases of absence or impossibility to exercise duties, the position holder shall be substituted by a legal substitute. When there is no such legal substitute, the position holder shall be substituted by an organ or a personnel designated by him/her.*

2. *The functions exercised by a substitute position holder shall cover the delegated or sub-delegated functions of the substituted."*

Article 3 of *EMFSM* also states:

"Article 3
(Principle of command)

1. *The militarised personnel of the Public Security Forces of Macao shall be subject to the principle of command.*

2. *The principle of command, which entails a strict hierarchical framework and a special duty of obedience, aims at achieving maximum efficiency and technical-professional coordination in the performance of missions."*

In addition, Articles 45 and 46 of *EMFSM* state:

"Article 45
(Command function)

1. *The command function is reflected in the exercise of authority conferred upon a militarised staff to direct, coordinate and control forces or subunits of an operational nature.*

2. *In the exercise of authority conferred by laws and regulations, accompanied by the respective responsibility which may not be delegated, the commander shall be, in all circumstances, solely responsible for the execution of the tasks assigned to the forces or subunits."* And

"Article 46
(Function of directorship or chief)

1. *The function of directorship or chief is reflected in the exercise of authority conferred upon a militarised staff to direct, coordinate and control organs or subunits of an administrative, logistical, technical nature or with training duties.*

2. *In the exercise of authority conferred by laws and regulations, accompanied by the respective responsibility which may not be delegated, the directorship or chief shall be, in all circumstances, solely responsible for the execution of the tasks assigned to the subordinate organs or subunits."*

Also, Article 7 of Administrative Regulation no. 24/2001 of 22nd October expressly states:

"Article 7
Competence of the Commissioner

1. *The Commissioner of CB is responsible for the fulfilment of its mission.*

2. *The Commissioner of CB is responsible for:*

1) Directing, coordinating and controlling all the activities of CB;

2) Complying with and ensuring the compliance with the laws, regulations and directives of the superiors;

3) Reporting on and submitting the matters that require decisions to be made by the superiors;

(…);

3. The Commissioner of CB may delegate his/her own powers as he/she deems appropriate to the command and leadership personnel."

Obviously, all the powers are centralised in the hands of the Commissioner of CB, who shall coordinate and direct all the related activities.

When the Commissioner is on holiday or not able to fulfil the duties, these powers should be exercised by the Acting Commissioner rather than the Commissioner himself. Otherwise, the substitution system just becomes meaningless.

Therefore, the issues mentioned in B5 are also lack of reasoning.

* * *

Point VII: Rebutting, without going through necessary procedures, the analysis of the CCAC on the ground that they were merely personal acts

The response to the issue stated in B6 is as follows:

"B6– When being substituted by the complainant, the Commissioner of CB demanded all the department chiefs that they should not report on their work to the complainant:

23. The Secretary for Security agrees with the opinion stated in the analysis of the above subject matter in the "Investigation Report".

24. The Chief of Resource Management Department was empowered to assign research and planning work to the complainant and ask him to produce the Administrative Guide of the Fire Services Bureau. Nevertheless, the complainant was not provided with administrative support (he was not even allowed to consult information from colleagues). Therefore, we can conclude that the execution of the work was not supported by appropriate means of implementation.

25. It is true that there was inappropriateness with respect to the work arrangement made by the Chief. However, they were merely personal acts of the Chief rather than internal management problems. There was not a causal relationship between them.

26. Regarding whether or not the complainant should be accountable for lodging a complaint against the Chief of the Department or there should be any disciplinary action, it is noteworthy that, after investigation, there was no evidence showing the violation of disciplinary rules by the complainant. Therefore, the respective disciplinary proceedings were already archived."

We do not understand why the afore-said acts were considered as personal acts that had nothing to do with internal management. **We believe that the acts in question were all work-related, taking account of the timing when these acts were carried out and their content, motive and purpose.**

It is totally incomprehensible why such acts could be considered by the disciplinary forces as personal acts!

Despite that the respective complaint has already been archived, it should be noted that, just because the legality and reasonableness of the decision was dubious, the competent authority should remain a more cautious attitude towards it.

Once again, the non-acceptance of the CCAC's advice is lack of reasoning.

* * *

Point VIII: Acknowledging the facts but not taking any follow-up measures

The response to the issue stated in B7 is as follows:

> ***" B7 –The Chief of the Resource Management Department failed to arrange a proper workplace for the complaint but had him work in a place unfit for working***
>
> *27. The Secretary for Security agrees with the opinion stated in the analysis of the above subject matter in the "Investigation Report".*
>
> *28. The Chief of the Resource Management Department arranged a proper place for the complainant to work after the latter raised the issue to him. While the Chief followed up the matter and also arranged other rooms for the complainant, the room initially distributed to the complainant should have maintained basic hygienic conditions, even if there was no other room available as an alternative for the complainant.*
>
> *29. We should regard the Chief's making the decisions on the distribution of offices as a personal act. It had nothing to do with the management system of the bureau. We understand that distributing resources can indeed be a very complicated task, which may include the distribution of computers, electronic goods, desks and chairs, office supplies and the like. Nevertheless, we believe that the related problems can be solved so long as the principle of good faith is followed."*

Like what is mentioned in Part I, the response here is lack of reasoning.

* * *

Ponit IX: Failure to carry out a comprehensive and in-depth analysis on the complaint

The response to the issue stated in B8 is as follows:

" B8 –The Secretary for Security's rejection of the appeal of the complainant

30. In response to the Orders no. 16/CB/2011 and 17/CB/2011 issued by the Deputy Commissioner, the complainant lodged an appeal to the Commissioner of CB. Afterwards, the Commissioner replied in Order no. 04/CB/2012 that the alleged defects in the concerned orders that should lead to the annulment of them cannot be seen. He therefore concluded that the decisions stated in the orders in question should be maintained, and there was no evidence or information showing that the complained against had been hard on the complainant or had given work orders that were detrimental to his rights.

31. In fact, Orders no. 16/CB/2011 and 17/CB/2011 do not involve the carrying out of any administrative act. However, according to the notification letter to the complainant, the appeal was inadmissible and he may, within 5 days upon the receipt of this notification, lodge administrative appeal to the Secretary for Security if necessary. Therefore, it is necessary to ascertain whether the objective of the appeal exists or not.

32. As a matter of fact, the object of the appeal does not exist.

33. In his appeal letter the complainant requested the Commissioner to "look into his complaint and carry out investigation into the acts of the relevant leaders and chief that were targeting him so that they can be corrected, and to initiate proper investigation process in order to ascertain the truth". However, we do not think this claim should be examined in such an appeal.

34. It is noteworthy that any of the personnel may present their suggestions, requests or appeals in writing. Nevertheless, whether or not they are accepted or investigated is not subject to their requests. As this case involved only individual acts and relationships between colleagues, we do not think it is necessary to handle it.

35. We believe that it is not appropriate for us to intervene into in the internal operation of CB, except when the normal operation of the department is affected or the public interest suffers due to unsatisfactory service quality. In fact, there has been significant improvement in the overall service quality of CB since the handover of Macao to China."

The CCAC's report targets the two following acts:

(1) The disciplinary proceedings against the complainant;

(2) The complaint against the Chief of the Resource Management Department lodged by the complainant.

Regarding point (1), since the grounds presented by the complainant were not sufficient, the CCAC did not make any recommendation on it.

Regarding point (2), it should be noted that the Chief of the Department rejected the request of the complainant for several times and held that the claims were lack of reasoning.

All these acts are indicated in points 23 to 28 of the Responses of the Secretary for Security. Whether or not the reasons of the complaints were admissible and whether or not disciplinary action should be taken can be only decided after the carrying out of disciplinary investigation. Otherwise, it will be unfair to both the complainant and the complained against.

Since no justification could be found in the Responses, we consider there were no grounds for rejecting the recommendations of the CCAC. In fact, the conclusion was drawn merely from some information obtained in the previous intervention – no comprehensive and thorough investigation was carried out according to legal procedures to substantiate the respective responses.

* * *

Part III: Conclusion

For these reasons, the CCAC believes that the responses of the Secretary for Security are lack of sufficient reasons. Furthermore, as the CCAC still received a few complaints about the management and operation of CB over the last few months, we believe the problems indicated in this report have not been fully resolved. This may continue to impede the normal operation of CB and obstruct the bureau from implementing its statutory duties (as such an important public department) lawfully and in an orderly fashion. Therefore, the CCAC decides to publish the report in hopes that the leadership of the Fire Services Bureau will take the existing problems seriously and resolve them.

* * *

1. **The Chief Executive shall be notified of the publication of this report.**

2. **The Secretary for Security shall be notified of the publication of this report.**

* * *

This report shall be archived after execution.

* * *

Commission Against Corruption, 19th December 2013.

The Commissioner Against Corruption
Fong Man Chong