# PART III

# OMBUDSMANSHIP

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## I. Introduction

In 2018, the CCAC strictly exercised its statutory duty in ombudsmanship. It carried out investigations into the illegalities and irregularities found in the daily operations of public departments. It also put forward suggestions on improving the internal management of the departments and the public service. In addition, the CCAC invested a considerable amount of resources into the inquiries into the existing problems related to land management as well as investment and technical immigration.

In February 2018, the CCAC released the "investigation report on the construction project at Alto de Coloane", where it pointed out that the parcel where the Alto de Coloane project would be located is a State property instead of a private one, thus urging the Macao SAR Government to recover the relevant land parcel as soon as possible. It went further that the cadastral map, the street alignment plan and the draft of the building proposal related to the parcel and the relevant construction project were invalid, and public works departments should therefore stop the vetting and approval procedure for the relevant construction project.

In July 2018, the CCAC released the "investigation report on the vetting and approval of 'major investment immigration' and 'technical immigration' by the Macao Trade and Investment Promotion Institute", where it revealed that the Macao Trade and Investment Promotion Institute (IPIM) lacked stringent vetting and approval and checking mechanisms for "major investment immigration" and "technical immigration" applications. Many approved applications did not meet the criteria established by the law or the internal ones. Some applicants were even found to have obtained residency through false declaration and document forgery. The

CCAC suggested that the Macao SAR Government make timely amendments to the relevant law to improve the system of attracting investments and talents.

## II. Inquiries

### (1) "Investigation report on the construction project at Alto de Coloane"

In February 2018, the Commission Against Corruption released the "Investigation report on the construction project at Alto de Coloane", which pointed out many doubts existing in the process of the inheritance of the title of the land parcel where the construction project would be located at. One could not rule out the possibility that some people made use of judicial proceedings and falsely claimed to be the parcel owner's descendants and obtained the title illegally. There were obviously mistakes and even frauds made and committed in the process of the land boundary survey and the issuance of the cadastral map. The parcel with a description number 6150 was actually located near Largo do Presidente António Ramalho Eanes in the old Coloane Village instead of being at Alto de Coloane, while the actual area of the parcel was, at the most, only a few hundred square metres instead of 53,866 $m^2$. The parcel where the Alto de Coloane project would be located is a State property and the Macao SAR Government should recover the relevant land parcel following appropriate procedure and method.

In 2016, the CCAC received a few complaints claiming that there might be illegalities in the assessment and approval procedures in relation to the construction project at Alto de Coloane. After an investigation that lasted more than a year, the CCAC held many doubts about the title, location and area of the parcel where the project would be located. It also found that the street alignment plan issued by the Land, Public Works and Transport Bureau (DSSOPT) went against the planning terms laid down in the administrative instructions.

### 1. The doubts existing in the process of obtaining the title

The report indicated the sequence of events of the change of the title in details. The parcel in relation to the construction project at Alto de Coloane had a land description number 6150. The registered parcel owner was "Chui Lan" starting from 1903. In July 1991, residents in Coloane Vong Tam Seng and Vong Tak Heng, represented by lawyer Paulo dos Remédios, brought a suit of confirming their eligibility as the heirs to the court, claiming that they were the sole heirs of their grandfather, Vong Tam Kuong (also known as "Choi Lan") and requested to inherit the title of the parcel with a description no. 6150.

On 2nd April 1992, after hearing the testimony from the witnesses designated by Vong Tam Seng and Vong Tak Heng, the court ruled that they were the heirs of Vong Tam Kuong (also known as "Choi Lan"). Based on the court judgment, they submitted an application to the Real Estate Registry for transferring the title of the parcel with a description no. 6150 to them. They eventually inherited the title of the parcel which was originally owned by "Chui Lan".

The CCAC found in the investigation that in the legal proceedings of heir eligibility confirmation, there was lack of evidence for the verification of statements. Therefore, it was difficult to rule out the possibility that some people made use of judicial procedure to illegally obtain the title by falsely claiming to be the parcel owner's descendants.

In the suit, Vong Tam Seng and Vong Tak Heng did not submit any documents to the court to prove that their grandfather Vong Tam Kuong was also named "Choi Lan". The witnesses stated in the hearing that they did not know their grandfather. Whether Vong Tam Kuong and "Choi Lan" were the same person or not was not proved. In the birth registrations of Vong Tam Seng and Vong Tak Heng, there was no registered information showing that their grandfather was also named "Choi Lan".

From the notarial certificates and the private documents ("*Sá-Shi-Kai*") issued a long time ago, the CCAC found that the Chinese name of "Vong Tang Kong" was 黃譚光 and that of "Chui Lan" was 崔霖. In fact, the fact that a person surnamed Vong has an alternative surname Choi does not fit in Chinese naming customs. In addition, even if Vong Tam Kuong was also named "Choi Lan", there was no evidence proving that "Choi Lan" was the parcel owner 崔霖 shown in the property registration.

According to the information of marital registration of the Civil Registry, Vong Tam Seng's wife was Chau Chu, but he claimed in the suit that his wife was Ho Fong Meng. In the indictment submitted to the court, Vong Tam Seng and Vong Tak Heng claimed that their grandmother was Chan Si, but Vong Tam Seng's birth registration showed that his grandmother was Ho Si. In the court's final verdict, their grandmother became Choi Si.

The CCAC considered that the statements made by Vong Tam Seng and Vong Tak Heng in the litigation were inconsistent with the civil registration data, violating the stipulation about registered civil identity, which states that any facts related to civil registration of a person can only be proved based on the official Civil Registry and cannot be contradicted by any other evidence. Although Vong Tam Seng and Vong Tak Heng deceased in 1995 and 1999 respectively, they already sold the parcel to Chong Fai Properties Investment Company Limited at 150,000,000 patacas in October 1993.

**2. Conducting a land boundary survey and issuing a cadastral map**

After obtaining the title of the parcel with a description no. 6150 as an heir, Vong Tam Seng applied for a land boundary survey in 1992 and 1993 respectively, where he claimed that the parcel was located at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van. He claimed in the two applications that

the area of the parcel was 111,848 $m^2$ and 57,300 $m^2$ respectively. However, due to a complete lack of proof, that the area of the parcel was not indicated in the property registration and that the location of the parcel was obviously at odds with the "four boundaries" recorded in the property registration, the then Department for Cartography and Cadastre refused to issue a cadastral map.

In December 1993, Vong Tam Seng completed a Miscellaneous Notification Form of Property Tax (M/10) at the Branch Office of the Financial Services of the Islands, where he declared that the parcel with a description no. 6150 had an area of approximately 56,592 $m^2$. Later, his lawyer submitted a transcription certificate of the M/10 form to the court and requested the area of the parcel to be added to a previous lawsuit document in the relevant heir eligibility confirmation dossier. Upon the approval from the judge, the lawyer used a court document as a basis for applying for the addition of a remark to the property registration indicating that "the area of the parcel was 56,592 $m^2$".

In July 1994, lawyer Paulo dos Remédios completed an M/10 form at the Branch Office of the Financial Services of the Islands, where he changed the original "four boundaries" on the property registration to the present location of the Alto do Coloane. He also applied for a transcription certificate of it. In August 1994, Chong Fai Limited that had already purchased the parcel applied for a land boundary survey. As the then Department for Cartography and Cadastre thought the parcel area was added to the property registration and the location of the parcel was confirmed by the transcription certificate issued by the Financial Services, its previous doubts had been resolved. Therefore, it issued a cadastral map for the parcel.

The CCAC pointed out in the report that M/10 form is filled in by the interest parties only and has no other effects but the declaration ones, namely to declare the matters such as change of address. The information filled in the M/10 form would not be automatically substantiated upon the submission and the form had no

probative effect. The issuance of the transcription certificates by the Branch Office of the Financial Services of the Islands was a weird and rare action because it had neither the capability to confirm the authenticity of the declared matters nor the power to issue any certificates related to the identification of a real property.

The Branch Office of the Financial Services of the Islands turned the transcription of the content filled in by the interest party into a certificate, i.e. had the content declared by the interest party "packaged" into a certificate issued by a public department. The court approved the amendment of a suit document according to one of the certificates. The Real Estate Registry added the remark in the property registration based on the court document. Through these acts of "packaging", the area of the parcel, which was not proved by any official documents, was openly added in the property registration.

The report also mentioned that when the court allowed adding the statement that "the approximate area is 56,592 $m^2$" in the schedule of property, the value of the parcel declared by the interest party in the dossier was 57,000 patacas. The CCAC believed that the area of the parcel claimed by the interest party might be fake. If not, the declared value might be wrong because it was impossible that the land price in Coloane would be as cheap as 1 pataca per square metre at that time.

**3. Doubts on the location and area of the parcel**

The CCAC considered that according to the information indicated in the property registration, the east and north of the parcel with a description no. 6150 were on Estrada do Campo. This shows that the parcel should be located near the current Health Station of Coloane and the Academy of Public Security Forces of Macao at Estrada do Campo and thus it was definitely not at Alto de Coloane, because Estrada do Campo was actually on the west and the south of the site of the Alto de Coloane project.

The most important and effective evidence to prove the real location of the parcel was the "four boundaries" in the property registration: north and east on Estrada do Campo, south on House no. 2 and west on Beco da Porta. If we can locate Beco da Porta, we can find out the real location of the parcel through locating the intersection of Estrada do Campo and Beco da Porta.

Although the location of Beco da Porta was not found in the existing maps and information of Coloane, the data of the population census conducted on 31st December 1878 published on the *Official Gazette of the Macao Portuguese Government* shows that there were houses and residents on Beco da Porta, which revealed that when Chui Lan purchased the parcel and houses in 1903, Beco da Porta still existed.

The CCAC also found in the investigation that when Chui Lan purchased the parcel located at Estrada do Campo in 1903, he also purchased three houses located at Rua dos Negociantes at the same time. According to the then sale and purchase deed, the north of one of the houses, which was located at no. 40 of Rua dos Negociantes, was on Beco da Porta, while the south of it was a house located at no. 38 of Rua dos Negociantes. The east was on Estrada do Campo, while the west was on Rua dos Negociantes. This shows that Beco da Porta lied to the south of Estrada do Campo near Rua dos Negociantes, while the parcel with a description no. 6150 was also located there.

However, the cadastral map showed that the parcel with a description no. 6150 was located at Alto de Coloane to the north of Estrada do Campo. The CCAC's report revealed that when lawyer Paulo dos Remédios updated the "four boundaries" in the declaration form in July 1994, he replaced "northeast on Estrada do Campo" with "northwest on Estrada do Campo". It was unable to investigate if he did it intentionally or unintentionally, but the change of only one word had resulted in a "switch" of the location of the parcel from one side of Estrada do Campo to another side which was at Alto de Coloane.

The "four boundaries" updated by lawyer Paulo dos Remédios in the M/10 form was northwest on Estrada do Campo and Estrada de Seac Pai Van, southeast on Estrada Militar, northeast on Seac Pai Van Park and Aldeia da Esperança. He omitted "House no. 2" and "Beco da Porta", which were actually shown in the property registration. Since the parcel at Alto de Coloane is still a wilderness nowadays, it is impossible that there were streets or roads around there. In addition, Estrada de Seac Pai Van and Seac Pai Van Park were built later.

According to the information provided by the Cultural Affairs Bureau to the CCAC, the military blockhouse located within the project site was built in 1884 and served as a supplementary military facility of the fortress of Coloane. In other words, when Chui Lan purchased the parcel at Estrada do Campo in 1903, the military blockhouse already existed. If the parcel purchased by Chui Lan was really located at Alto de Coloane, then the establishment of the blockhouse, no matter it was built before or after the purchase, would be against common sense.

The CCAC stated in the report that the property registration in 1903 did not indicate the area of the parcel with a description no. 6150. However, from the property transactions done at the same time, we can roughly estimate the area of the parcel. When Chui Lan purchased the parcel at Estrada do Campo at 300 patacas, he also bought the house at no. 32-34 of Rua dos Negociantes at the same price. The area of the house, 252 $m^2$, was registered when he sold the house in 1923. Therefore, it was impossible that the area of the parcel was 56,592 $m^2$.

**4. The street alignment plan that went against administrative instructions**

In August 1999, in response to Chong Fai Limited's application, the DSSOPT issued a street alignment plan for the parcel with a description no. 6150, where it stipulated that the parcel owner was only permitted to construct 7-storey buildings not more than 20.5 m (or 33.4 m above sea level) in height along

Estrada do Campo and Estrada de Seac Pai Van. Moreover, the parcel owner was not permitted to carry out massive hill excavation, as an area at Alto de Coloane, covering some 20,000 $m^2$ and adjacent to Estrada do Alto de Coloane and Estrada Militar, should be construction-free and green treated.

In May 2004, Win Loyal Limited and Chong Fai Limited entered into a sale and purchase deed in Macao. The former purchased the parcel from the latter at a price of HKD88,000,000 and then applied for a new street alignment plan in March 2009. According to a preliminary development proposal for the land parcel submitted by Win Loyal Limited, the company planned to construct nine 22-metre high independent villas and nine 115-metre high residential buildings with 37 storeys.

In December 2009, the DSSOPT issued a street alignment plan, where it stipulated that the plot ratio of the parcel concerned should be 5 and it should be divided into three sections for planning: the permitted maximum building height for the section adjacent to Estrada de Seac Pai Van should be 80 m; the section adjacent to Estrada do Campo fell within the area of the planning laid down in Administrative Instruction no. 01/DSSOPT/2009 and the permitted maximum building height should be 8.9 m; for the section adjacent to Alto de Coloane near Estrada do Alto de Coloane and Estrada Militar, only 9-metre high independent villas would be allowed and the surrounding area should be green treated.

Win Loyal Limited applied for a new street alignment plan again in March 2010 and requested the DSSOPT to relax the planning terms by increasing the permitted maximum building height to 198 m above sea level for the construction of 63-storey buildings and changing the plot ratio of 5 to a net plot ratio of 9.

In April 2011, the DSSOPT issued a new street alignment plan and no longer set different building height limits according to the topography of the concerned area. It regulated the overall permitted maximum building height to be 100 m

above sea level and the permitted maximum net plot ratio to be 8, which was equivalent to a plot ratio of 12. Win Loyal Limited submitted a draft of the building proposal according to this street alignment plan. According to the proposal, the project, occupying 48,868 $m^2$ and having a total gross floor area of 668,741 $m^2$, was slated to develop 13 towers comprising not more than 33 storeys.

The CCAC considered that since the southern part of the site of the Alto de Coloane project adjacent to Estrada do Campo fell within the area of the planning laid down in Administrative Instruction no. 01/DSSOPT/2009, the permitted maximum building height should only be 8.9 m. However, according to the street alignment plan issued by the DSSOPT, the permitted maximum building height was 100 m, which obviously contradicted the planning terms set forth in the administrative instruction.

The CCAC's report pointed out that if there was no problem and dispute concerning the title, location and area of the parcel where the Alto de Coloane project would be located, the parcel owner might apply for a new planning proposal according to the *Urban Planning Law* and subsequent approval procedures might follow. However, since the parcel is a State property, whether the relevant street alignment plan was valid became a minor problem.

**5. Lack of legal basis for environmental and greening assessments**

In March 2009, Win Loyal Limited submitted a development proposal, where it planned to construct nine 22-metre high independent villas and nine 115-metre high residential buildings. The Environmental Protection Bureau (DSPA) gave the following advice: "As the development of the project will lead to massive hill excavation, shrinking green area and damages to the hill's role in pollutant filtration, re-assessment of the impacts of the construction on the ecological environment is recommended."

The Civic and Municipal Affairs Bureau (IACM) provided the following opinions: "In order to have the project developed on level land, hill excavation is inevitable. This will cause massive damages to the structure and vegetation of the hill. In addition to the loss of a considerable green area, the excavated part of the hill will become a concreted slope." "Coloane has been the major hill area of Macao all along. Therefore, it needs careful consideration of whether the construction of the project will conflict with the urban planning of the city."

Despite that the DSPA and IACM expressed their concern over the impacts of massive hill excavation and construction of high-rise buildings at Alto de Coloane, according to the street alignment plan issued by the DSSOPT, all the 13 buildings would be at a height of 100 m above sea level. In February 2013, Win Loyal Limited submitted the environmental and landscape assessment reports to the DSSOPT. Later on, the DSPA and the IACM put forward their amendment advices on these reports. They also accepted the assessments of the project's impacts on the environment, landscape and greening in the end.

According to the investigation of the CCAC, as far as the Alto de Coloane project was concerned, there were no clear rules and regulations serving as reference for the assessments carried out by the DSPA and the IACM. There were only some internal guidelines formulated by the departments themselves. Due to the lack of the relevant statutory competence, their technical opinions about environmental protection, landscape and greening did not have any binding effect on the application for approval of the construction project and the approval made by the DSSOPT. Furthermore, as they were not able to enter the site for observation and confirmation, it was not possible to monitor whether the developer would fulfil the terms it had promised in the technical reports such as the environmental impact assessment report. As a result, they could only conduct the assessments basing on the information provided by the developer.

### 6. Conclusion and recommendation

According to the conclusion made by the CCAC, the parcel with a description no. 6150 was actually located near Largo do Presidente António Ramalho Eanes in the old Coloane Village instead of being at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van, while the actual area of the parcel was, at the most, a few hundred square metres instead of 53,866 $m^2$.

Since the information that the land boundary survey was based on was obviously at odds with reality, the administrative act of the confirmation of the boundary was groundless. Therefore, the cadastral map issued by the then Department for Cartography and Cadastre was invalid. Moreover, the street alignment plan and the official building plan approved based on the relevant cadastral information was also invalid. The street alignment plan of the Alto de Coloane project went against the planning terms provided for in the administrative instruction. Therefore, the DSSOPT should reject the application for the official building plan.

Finally, the CCAC believed that the parcel at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van, where the construction project at Alto de Coloane would located, was not registered in the Real Estate Registry. Therefore, according to Article 7 of the *Basic Law of the Macao Special Administrative Region*, it is a State property. The CCAC suggested the Macao SAR Government recovering the land parcel following appropriate procedure and method.

## (2) Investigation report on the vetting and approval of "major investment immigration" and "technical immigration" by the Macao Trade and Investment Promotion Institute

The report pointed out the Macao Trade and Investment Promotion Institute (hereinafter "IPIM") lacked stringent vetting and approval and checking mechanisms for "major investment immigration" applications, the investment

amounts in some projects were too low or too large proportion of the investment amounts in them were about immovable property investment. When processing the "technical immigration" applications, there were such problems as lack of stringent vetting and approval criteria, applicants rarely stayed in Macao and obtaining temporary residency through fictitious employment.

The CCAC stated that once it had continuously received reports and complaints pertaining to "major investment immigration" and "technical immigration" in recent years, and there were indications of problems in the relevant systems and implementation, the Commissioner Against Corruption ordered an inquiry into the vetting and approval procedures for "major investment immigration" and "technical immigration" applications carried out by the IPIM.

### 1. Situation of vetting and approval of applications for "major investment immigration" and "technical immigration"

In accordance with Administrative Regulation no. 3/2005, *Temporary Residency Regime for Investors, Management Personnel and Specialised Technicians*, non-locals may apply for temporary residency by "major investment" or being employed as management personnel or specialised technicians, which is commonly known as "major investment immigration" and "technical immigration". Apart from the applicant, his spouse, co-habiting partner or minor children may also apply for temporary residency at the same time. When the applicant and his family members have resided in Macao as temporary residence permit holders for seven years, they are eligible to apply for permanent residency in Macao in accordance with relevant laws.

According to the information on the IPIM's website, between 2008 and 2017, it received a total of 574 applications for "major investment immigration", of which 186 were approved after assessment, with 410 people granted temporary residency. During the same period, the IPIM received a total of 5,039 applications for

"technical immigration", of which 3,296 applications were approved and a total of 5,376 people were granted temporary residency.

**2. Problems found in the vetting and approval procedures for "major investment immigration"**

Although the IPIM had improved the vetting and approval procedures for "major investment immigration" applications through introducing the points scheme and increasing the reference minimum investment amount, the CCAC found that the IPIM lacked stringent vetting and approval and checking mechanisms for the investment amount and implementation of the investment projects. The problems are presented in the following aspects:

**1) Investment amount of some "major investment immigration" investment projects being too low**

"Major investment immigration", as its name suggests, requires the applicants to make significant investment before temporary residency may be granted. When it comes to significant investment, either the field of the investment project should be a more important one or there is a larger investment amount. However, during the investigation, the CCAC found that many approved applications for temporary residency did not meet the relevant standards.

Although Administrative Regulation no. 3/2005 does not have definite provisions for the minimum investment amount for "major investment immigration", according to the IPIM's internal guidelines, the reference minimum investment amount used to be MOP1.5 million prior to 2015 - same as that required for the applications for immigration through purchase of immovable property. However, according to the data provided by the IPIM, in the 186 approved initial applications for temporary residency between 2008 and 2017, the investment amounts declared in 28 of the applications were less than MOP1.5 million, accounting for 15.07% of the total.

The CCAC considered that the social and economic benefits brought by an investment cannot be evaluated merely by the investment amount. However, before the IPIM raised the reference minimum investment amount to MOP13 million in November 2015, the investment amounts in the approved applications of "major investment immigration" were, in general, relatively low, while many of them involved traditional businesses such as catering, tourism, trading, investment and construction. These investment projects could not fully reflect the "significance" of the investments and made it difficult to achieve the legislative objective to enhance the economic development and diversify the industries of Macao.

**2) Too large proportion of the investment amounts in some of the projects in "major investment immigration" applications were about immovable property investment**

When processing the applications for "major investment immigration", the IPIM includes the expenses of purchase or rental of immovable property and refurbishment of operation facilities into the investment amount. Since the investment amounts were relatively low in general and the prices and rentals of immovable properties in Macao were relative high, a very large proportion of the investment amounts in the investment projects in the "major investment immigration" applications was related to property. In the 186 approved initial applications for temporary residency by "major investment immigration" between 2008 and 2017, the businesses run by 11 companies were about "real estate investment and development" or similar ones. Moreover, in one application, the business ran by the relevant company was merely "property investment".

According to Administrative Regulation no. 3/2005, there are two types of "major investment immigration". One may apply for temporary residency by "major investment" or "major investment plan". The CCAC found in the investigation that some applicants firstly submitted a so-called "investment plan" and were granted temporary residency. When applying for renewal, they submitted the property

registration certificates proving purchase of immovable properties under the names of the companies in order to create a false impression that the investment plans had already been implemented. They made use of the IPIM's practice of attaching importance to immovable property investment when processing the applications and managed to obtain temporary residency with fictitious investment projects.

For example, an applicant submitted to the IPIM a "major investment plan", which was to establish a construction company. The intended investment amount was MOP2,842,290. When applying for renewal, the applicant submitted property registration information about the purchase of two office units under the name of the construction company as proof of implementation of the investment plan. Without carrying out any site inspection to confirm whether or not the aforesaid units were used as the office of the company and further verifying the authenticity of other documents related to the operation of the company, the IPIM eventually approved the application for renewal of temporary residency. However, the CCAC found in the investigation that the two units had been leased out upon the purchase and never served as the office of the company as claimed by the applicant.

On 3rd April 2007, the Macao SAR Government promulgated Administrative Regulation no. 7/2007, which suspended the implementation of the regulation on application for temporary residency by purchasing immovable property. The CCAC considered that some people might not truly intend to invest in Macao. Instead they packaged purchase of property into a major investment project. The ultimate purpose of "disguising purchase of property as investment" was to obtain the right of abode in Macao. Therefore, the IPIM should not consider an investment project as "major" simply because the applicant had purchased immovable property as major investment. Otherwise, "major investment immigration" would simply become "immigration by purchase of property". In this sense, such practices have contradicted not only the legislative intention to attract major investments from other places but also the SAR Government's policy of suppressing property price.

### 3) Lack of stringent vetting and approval and checking mechanisms

According to the requirements of the IPIM, applicants of "major investment immigration" should provide business registration, business licenses, financial statements and tax payment of their companies as well as proof of the investment amount and business revenues. Nevertheless, the IPIM usually only conducts formality checking on these documents submitted by the applicants without verifying the authenticity of the documents and the truthfulness of the facts in a serious manner. They do not send staff off to the claimed operating locations of the companies to verify their operations either.

For instance, an applicant submitted the "financial statements" of his company between 2009 and 2014 in order to prove that the investment plan was already implemented. During the investigation, the CCAC found that when comparing these "financial statements" with the tax affairs application submitted to the Financial Services Bureau and the Social Security Fund contribution records, one can easily find that there were such situations as fictitious incomes and expenditure, false declaration of undistributed profits and wage rolls of employees on these statements.

During the investigation, the CCAC also discovered the following situations: the companies claimed by the applicants had no actual operation or had stopped operation; the locations of the claimed companies were left empty for a long while or used for other purposes; phone calls made to the claimed companies were unanswered or the phone numbers were not in service; no information about the claimed companies could be found on the internet, etc. In response to such phenomena, the IPIM once opined that the bureau itself was just an administrative department without inspection and law enforcement powers. It was therefore difficult for them to carry out holistic inspections and verifications. However, in the CCAC's opinion, as a department responsible for vetting "major investment immigration" applications and making approval suggestions, the IPIM is duty bound

to verify the authenticity of the application documents and check the implementation status of the projects. After all, such issues are not only the prerequisites for application approval but also the duties of a public department.

### 3. Problems found in the vetting and approval procedures for "technical immigration"

According to the investigation of the CCAC, during the IPIM's processing of the "technical immigration" applications, there were such problems as lacking stringent vetting and approval criteria, applicants not staying in Macao for a long period of time and obtaining temporary residency by means of fictitious employment.

#### 1) Lack of stringent vetting and approval criteria for "technical immigration"

According to Administrative Regulation no. 3/2005, the category of "technical immigration" covers two types of persons, namely management personnel and specialised technicians. The prerequisite for approval is that the academic qualifications, professional qualifications and experience possessed by the applicant are particularly beneficial to the Macao SAR. After the investigation, the CCAC found that there were applicants who did not possess professional or academic qualifications, whose professional backgrounds did not match with their work positions, or whose jobs had nothing do with managerial or professional skills.

For example, an applicant applied for "technical immigration" as the general manager of an offshore company operating plastic product business, while he only had a graduation certificate issued by a secondary school in Guangdong province; another applicant, a director of an offshore copper foils company, did not have any academic qualification documents in his application dossier for "technical immigration". As another example, someone made an application for "technical immigration" as a deputy director of a medical centre and it was approved. As the

medical license of the centre was terminated by the Health Bureau, the applicant left the position less than one month after joining it. Subsequently, he was employed as a security manager at a construction company. The applicant claimed that he was "responsible for healthcare management of all staff members of the company and organising regular medical seminars for the staff", but the fact was that there were only a dozen workers in the construction company, and his professional healthcare management background was a far cry from that of a security manager. Despite that he stayed for no more than 14 days each year during three years' time, his renewal application for temporary residency was still approved by the IPIM.

During the investigation, the CCAC also found that the positions of some applicants were questionable. Some were found to only list their past work experiences without submitting any proof, while the IPIM, without making any verification, directly based on the work experiences and seniority claimed by the applicants and suggested approvals for their "technical immigration" applications.

With regard to the problem that the work performed by the applicants was not considered a "professional skill", the CCAC believed that the technical immigration applications should not be approved. Otherwise, it will blur the boundary between management personnel/specialised technicians and non-resident workers. This will also be a departure from the original intention of attracting managerial and technical professionals through "technical immigration".

**2) Applicants for "technical immigration" rarely stayed in Macao**

The CCAC analysed the travel records of over 600 applicants for "technical immigration" and discovered that over 100 of them rarely stayed in Macao or only stayed for a very short period of time every year. Even some of them stayed for less than 10 days every year. Following an in-depth investigation, the CCAC found the situations in which the actual duty of the applicant was not consistent with his job title as declared in the application or he was doing a job not related to Macao.

For example, an applicant was granted a "technical immigration" permit as the deputy general manager and chief financial officer of a fresh food and grocery trading company. However, he only stayed in Macao for only 37 days between 2010 and 2014 and was even away in the entire year of 2015. It was found in the investigation that the person usually resided in the Chinese mainland and his job was simply to provide the information about tendering and opinions to the owner of the company.

Another applicant was granted a "technical immigration" permit as the chief financial officer of a travel agency. Although the employment contract indicated that the work location was in Macao and that he worked for fixed hours. However, between 2013 and 2016, the applicant stayed in Macao for no more than 37 days every year. It was found in the investigation that actually he was not responsible for financial works. In fact, his job was to promote group travel for the agency in the Chinese mainland.

According to the internal legal opinions of the IPIM, the law presumes that Macao SAR Resident Identity Card holders usually reside in Macao. Also, the law on residency by investment does not deem the length of time the applicant stays in Macao as one of the criteria for the vetting and approval of application for "technical immigration". Therefore, when processing the applications for renewal of temporary residency, the IPIM did not check whether or not the applicant had stayed in Macao and the length of time of his stay.

The CCAC considered that applicants for "technical immigration" should stay in Macao to serve local companies and institutions. If the applicant can work for a Macao company outside the territory, normal employment is enough and it is not necessary to apply for temporary residency in Macao by "technical immigration". The fact that the applicants merely stay in Macao has gone against the legislative intent to attract management personnel and specialised technicians to Macao in order to enhance local economic and social development.

### 3) Obtaining temporary residency through fictitious employment

The CCAC discovered in the investigation that some applicants for "technical immigration" obtained temporary residency permits through alleged fictitious employment relationship.

For example, a person who used to study a course in design in Macao applied for "technical immigration" as the "business development manager" of a shop selling mobile phones and electronic products and his application was approved. When applying for renewal, he claimed himself as the "chief executive officer" of the shop. According to the employment contract, the applicant's monthly salary was MOP50,000. However, according to the documents submitted for the application, the total after-tax profit of the shop in the previous year only amounted to MOP520,000. Following investigation, the CCAC discovered that the applicant was not in Macao for years and the staff of the shop never seen the "CEO" or even knew there was such a person. Moreover, the shop owner even failed to provide the proof of payment of his salary, which raised many doubts on the employment.

Another example is that a person was granted a "technical immigration" permit as the general manager and deputy editor-in-chief of a newspaper publisher and claimed that his monthly pay was MOP40,000. However, the newspaper was a weekly newspaper which was not issued regularly. Sold at around MOP2 for each copy, the newspaper had as annual circulation of 4,000 to 5,000. It was found in the investigation that the annual pay of the owner and president of the publisher was only MOP60,000, but the applicant's annual pay reached MOP480,000. In accordance with the employment contract, his working place was located at a shop in a building in the northern district of Macao and his working hours were fixed. However, the CCAC found in the investigation that the longest period of his stay in Macao was only 10 days every year between 2013 and 2017. These signs showed that the relevant employment relationship did not exist.

The CCAC considered that when assessing the applications for "technical immigration" or renewal, the IPIM would have easily found the doubts about fake employment in the above cases. Therefore, the IPIM should be very alert to the illegal acts which might exist and promptly follow up the doubtful cases. If necessary, it may seek help from the departments with criminal investigative competence to investigate whether the situations of "fake talent" or "fake employment" exist in order to ensure that the legal regime of "technical immigration" will not be abused.

**4. Opinions and suggestions**

The CCAC stated that the purpose of carrying out the inquiry into the IPIM's vetting and approval of applications for "major investment immigration" and "technical immigration" is to review the problems existing in the relevant administrative procedures and the operation of the department and thus enhance the improvement of the relevant mechanisms. To sum up, the CCAC considered that the following matters deserve the attention of the relevant department:

**1) To timely revise the law in order to plug the loopholes in the mechanisms**

The CCAC has noticed that over the recent years, the policy of "major investment immigration" and "technical immigration" and the assessment and approval of the applications have been more stringent. Also, the IPIM has conducted stricter analysis and investigation of the cases with doubts. However, the loopholes existing in the mechanisms cannot be plugged simply by restricting the policy and assessing the applications stricter. The CCAC believed that since the legal regimes of "major investment immigration" and "technical immigration" have been implemented for over ten years, the SAR Government should comprehensively review the idea of the regimes and the implementation and make amendments to the obsolete stipulations and solve the problems existing in the regulations as soon as possible.

**2) To make the procedures transparent in order to minimise the occurrence of irregular situations**

The CCAC stated that the public lacked understanding of "major investment immigration" and "technical immigration" and the IPIM rarely took the initiative to publicise the policy in Macao over years. The CCAC considered that the IPIM should strictly assess the applications for "major investment immigration" and "technical immigration". However, being strict did not mean that the policy and related information might be made secret. Otherwise, it would be difficult to achieve the goal to attract investments and talents from other places. Only ensuring the transparency and openness of the application procedures and the results of vetting and approval to the largest extent may prevent the irregular and even illegal acts.

**3) Attracting talents to Macao through mechanism overhaul**

Today, the surrounding regions are facing fierce competition for talents and employ different means to lure talents. Macao should utilise and optimise the current "technical immigration" policy and create a synergistic effect by introducing outside talents and nourishing locals. In the CCAC's opinion, doubting the effectiveness of the "technical immigration" system and even denying its significance simply because there are problems in the vetting and approval process is just a case of "not eating for fear of choking" or "trimming the toes to fit the shoes". To sustain development Macao should not exclude the idea of introducing talents from other places. Being too complacent with its existing talent policy or making it confined to locals will be no different from giving up its own competitiveness.

According to the recommendations of the CCAC, the IPIM should optimise the vetting and approval procedures for "major investment immigration" and "technical immigration" applications, establish checking mechanisms for the relevant cases, carry out promotion of the relevant policies and publicise the criteria and results in a timely manner. The SAR Government should also make timely amendments to Administrative Regulation no. 3/2005 and optimise the relevant legal regimes.

# III. Summaries of cases

## I

The CCAC received a complaint from the vendor of a vegetable stall in a market, who had been accused by the Civic and Municipal Affairs Bureau (IACM) of selling uninspected vegetables and thus whose tenancy of the stall had been withdrawn. The complainant considered that the IACM's treatment was unfair and therefore requested the CCAC to investigate the matter.

In January 2018, the Food Safety Centre (CSA) of the IACM found in an investigation that the aforesaid vendor had allegedly purchased uninspected vegetables for sale. Subsequently, the CSA opened a file for investigation and notified the Division of Markets of the IACM. Following receipt of the notification, the Division commenced an administrative sanction procedure for the reason that uninspected vegetables had been seized from the stall and decided to withdraw the tenancy in March 2018.

However, following an investigation, the CSA archived the relevant procedure for the reason that the evidence seized could not prove that the vendor of the aforesaid stall had sold uninspected vegetables. However, it did not notify the Division of Markets. It was not until the CCAC intervened into the case that the Division realised the result of the investigation carried out by the CSA. Since the accusation that the stall had sold uninspected vegetables could not be proved, the decision to withdraw the tenancy was rescinded.

The CCAC considered that although the investigation carried out by the CSA and the administrative sanction procedure commenced by the Division of Markets were independent from each other, since both of them were based on the same alleged offence of selling uninspected vegetables, the departments should not come up with contradictory treatments of the same matter due to lack of communication.

The IACM stated that it would optimise the internal operation procedures in order to prevent similar cases from occurring in the future.

**II**

The CCAC received a complaint alleging that the Civic and Municipal Affairs Bureau (IACM) charged the users of a car park in a private building administration fees, but it failed to fulfil its responsibility to administer the car park properly. The complainant questioned the legality of public department's operation of private car park and requested for CCAC's intervention.

The CCAC discovered in the investigation that the parking spaces in the building involved were the common parts of the building. Since the former Municipal Council owned most of the flats in the building in the past, it was entrusted by the remaining residents with administering the car park. However, as time went by, the IACM only possessed a few flats in the building. Given that it was unable to elect an administrative committee of the building, the IACM still assisted in the administration of the car park and charged the users a fixed amount every month for payment of water and electricity bills and equipment maintenance.

In addition, the CCAC also found that the IACM, for the reason that the administrative committee of the building had not yet been elected, had paid for the structural maintenance, drainage repairs and installation of surveillance equipment in the car park many times, involving a sum of over MOP300,000. Moreover, when outsourcing the security guard service for the parks and recreational areas in different districts, the IACM included the car park in the list of the places to be covered by the service and paid for the relevant costs.

The CCAC considered that the car park, indeed, was not a property owned by the IACM or the Government. Instead it was commonly owned by all owners of the

building. Therefore, in accordance with the *Civil Code*, the responsibilities for the administration, maintenance and security should be shared by all of the owners. The IACM should not pay for the operation of the car park with public money. Instead it should urge the owners to form an administrative entity as soon as possible and recover the advance payments it had made.

The IACM replied that it agreed on the CCAC's suggestions and had taken actions to urge the establishment of the administrative committee of the building. Since 2018, the IACM has stopped administering the car park and explained to other owners the maintenance expenses it has ever paid for in order to recover the relevant payments.

**III**

The CCAC received a report alleging that there were long-standing problems concerning the promotion and recruitment of workers by the Macau Productivity and Technology Transfer Centre (CPTTM) including nepotism and mismanagement and therefore requested for the CCAC's investigation.

The CCAC found in the investigation that up to April 2017, among the 101 workers of the CPTTM 16 workers were related, such as father and son, father and daughter, husband and wife, brothers and sisters, while three of them had already resigned. The CPTTM failed to provide the CCAC with the documents of employment of some of the workers and even the proposals and orders about the employment.

In the past, when the CPTTM recruited workers, it neither carried out open recruitment procedures nor publicised the information about recruitment. Instead, the vacancies were filled by those recommended by its workers. In the recruitment processes, the department managers of the CPTTM could decide not only which candidates might be admitted to the selection stage but also to select the right

candidates only by interview without requiring them to take written or skill tests, showing the wilfulness existing in the recruitment processes. Moreover, the CPTTM lacked a set of objective and clear standards for the determination of a new recruit's salary and promotion. The salary and benefits of workers were determined by the leadership after taking into account some factors, showing that the discretion they had was excessive.

Although the CPTTM has already improved the recruitment and promotion mechanisms over recent years, the CCAC, following an analysis, considered that there were still some problems. For example, a recusal system is not laid down in the internal regulation which regulates recruitment and thus the risk of conflict of interest may increase. Although there is already an internal regulation on promotion, there has been a number of inconsistencies between the practice and the provisions.

The CCAC considered that although the CPTTM is not a public service in a traditional sense and has its own internal regulations, as an administrative public utility person mainly funded by the Government, it should also follow the principles of openness, fairness and justice in terms of recruitment and promotion of workers. The recruitment practices of the CPTTM were too arbitrary. Moreover, since there was a too large proportion of employees that were related, which inevitably aroused doubts on nepotism. Following the CCAC's intervention, the CPTTM admitted that there were inadequacies in the recruitment and promotion of workers and took measures to redress the problems brought up by the CCAC.

**IV**

The CCAC received a report alleging that in some open recruitment procedures, the Cultural Affairs Bureau (IC) cancelled the list of candidates following publication and subsequently publicised a new list. The complainant suspected that the IC's practices enabled the eliminated candidates to enrol in the recruitment exams again and therefore requested for the CCAC's investigation.

The CCAC found in the investigation that in a process of open recruitment of officers for community education in 2016, the IC indicated in the recruitment notice that candidates should have tertiary qualification in "performing arts, arts education, community education, social education, education administration or similar kinds". Subsequently, in the provisional list of candidates publicised by the jury penal, only 28 persons were qualified and a majority of the candidates were eliminated for the reason of not having qualified education background.

Later, the jury panel received a complaint from a citizen indicating that he had been admitted to the recruitment process opened previously for the same post and therefore questioned the inconsistency of the requirements for education background. Following a meeting, the jury panel decided to loosen the criteria for assessing education background, to accept those who only had tertiary qualification in Chinese, English or social science, etc. and to publicise a new provisional list of candidates. However, the minutes did not indicate the reason for changing the criteria for assessing education background.

The CCAC also discovered that in other two recruitment processes opened by the IC in 2016, the jury panel, after the deadline for submission of missing documents, contacted a candidate and requested him to submit a copy of ID card and proof of education so that he became a qualified candidate. The jury panel even accepted the education qualification which a candidate obtained after the expiration of the registration period and admitted him as a qualified candidate.

The CCAC considered that, among the aforesaid practices by the jury panel in the open recruitment processes, one had violated the law, while another one did not accord with the requirements in the recruitment notice. Even though the latter were not serious enough to affect the validity of the recruitment processes, they still had negative impact on the fairness and justice of recruitment of public positions. After the CCAC brought up the issues to the IC, the latter replied that it accepted the CCAC's opinions and promised to take measures for improvement.

**V**

The CCAC received a complaint alleging that an illegal construction were being carried out in a house in a district filled with villas in Coloane despite that the prohibition of construction had been posted at the site. The complainant suspected that the handling by the Land, Public Works and Transport Bureau (DSSOPT) was ineffective and therefore requested for the CCAC's investigation.

In June 2016, after receiving a complaint from a citizen, the DSSOPT dispatched staff members to the site for inspection and found that there were refurbishment and unauthorised construction underway without building licence in the house involved, which was clad in bamboo scaffolding and canvas, allegedly violating the relevant provisions under the *General Regulation of Urban Construction*. Therefore, the DSSOPT posted the prohibition of construction at the site and sealed the house.

The CCAC found in the investigation that the illegal construction in the house did not stop after the DSSOPT issued the prohibition. Therefore, the CCAC sent a letter to the DSSOPT to request for follow-up. In August 2017, the DSSOPT replied to the CCAC that it classified the cases of illegal construction to be processed according to the urgency and this case had been classified as priority. However, due to a large number of illegal constructions, the DSSOPT was following up the cases given priority in an orderly way.

The documents provided by the DSSOPT revealed that the bureau dispatched staff members for site inspection several times and confirmed that there were signs and noise of construction in the house. The individuals allegedly carrying out the illegal construction ignored the prohibition of construction issued by the DSSOPT, while the bureau did not take any further measures to follow it up. The CCAC sent several letters to the DSSOPT to inquire about the progress of the follow-up, but the DSSOPT only replied that the case had been classified as priority and did not take any actions.

Later, the CCAC sent staff members to the site for inspection and found that the scaffolding and canvas had been removed and the renovation of the external walls and a four-storey unauthorised building work had been completed. In November 2018, the CCAC sent a letter to DSSOPT to request for explanation. In response to the request, the DSSOPT stated that it would notify the offender that he should remove the unauthorised building work and restore the house or apply for legalisation of the illegal construction.

The CCAC considered that although there was a large number of illegal constructions and the DSSOPT might face difficulties in entering the sites, it should adopt effective measures to stop the illegal constructions instead of simply advising the offenders to remove the unauthorised building works after completion or even accepting the applications for legalisation of the illegal constructions. Otherwise, such practices will not only infringe on the dignity of the law but also encourage the occurrence of more illegal situations.

**VI**

The CCAC received a complaint from a resident of an economical housing flat, who said that the Housing Bureau (IH) voted for the increase of the administration fee proposed by the administration company. The complainant considered that the handling by the IH was inappropriate and therefore requested for the CCAC's intervention.

Following the investigation, it came to light that the IH possessed 366 flats in the building. Therefore, the IH sent a representative to attend and vote in the meetings of the general assembly of owners of the building. In the end of 2015, the administration company proposed to the IH an increase of the administration fee of each flat from MOP240 to MOP316. Since the increase rate was similar to that of salary, the IH agreed on the proposal.

Subsequently, the administration company posted a notice to convene a meeting of the general assembly of owners, in which the proposal of administration fee adjustment would be discussed and put to a vote. However, the notice indicated that the proposed amount after adjustment was MOP326. The company explained that the extra 10 patacas would be the expense for antenna and the explanation was accepted by the IH, who eventually voted for the increase of the administrative fee for each flat to MOP326, effective from 1st January 2016.

The CCAC found in the investigation that before 2016, the administration fee for each flat was actually MOP230 every month instead of MOP240 claimed by the administration company and it already covered the expense for antenna at MOP10. According to the calculation based on the rate of increase in salary, the administration fee after adjustment should be MOP306 instead of MOP326. In this sense, the owners were overcharged MOP20 for each every month. In addition, the CCAC also discovered that the same problem also existed in other two buildings of economic housing. There were a total of 4,416 flats in these three buildings. Up to the end of 2018, the undue charge amounted to MOP3.17 million in total.

The CCAC considered that the IH should not accept the reason and proposal of administration fee increase raised by the administration company without making clear the amount of the monthly administration fee paid previously and the services it covered because it not only mattered to reasonable use of public money but also affected the owners' legal rights and interests. The IH accepted the CCAC's suggestions and took actions to deal with the problem concerning the unreasonable increase of the administration fee for the three buildings.

## VII

A complainant reported to the CCAC that an instructor teaching heavy motorcycle riding at a driving school did not have the required qualification but the Transport Bureau (DSAT) failed to send staff members to enforce the law after receiving his complaint. Therefore, the complainant requested for the CCAC's intervention.

The CCAC sent a letter to the DSAT to ask for the details. In the reply, the DSAT confirmed that it had received a complaint from the complainant. Since the Centre for Driving Lessons and Exams was overloaded with various types of driving tests every day, it was impossible for the bureau to send staff members to the site for inspection and evidence search whenever requested by citizens and therefore the relevant complaint was archived for the reference of the future inspection works. Soon after that, the police carried out an investigation and verified a case of driving lesson taught by unqualified instructor. Therefore, the DSAT commenced a sanctioning procedure against the driving school and the instructor in accordance with the *Regulation of Road Traffic*.

Moreover, the CCAC found in the investigation that the driving school involved had applied for subsidy under the Continuing Education Development Plan of the Education and Youth Affairs Bureau (DSEJ) for the heavy motorcycle riding course which the complaint was against. In accordance with the relevant regulation, only the courses taught by qualified instructors may be funded. Therefore, the CCAC reported the case to the DSEJ so that the latter would follow up the situation. The DSEJ replied to the CCAC that it had imposed a sanctioning procedure on the driving school involved and requested the school to return the subsidy.

The CCAC considered that the DSAT, as the department responsible for management of the Centre for Driving Lessons and Exams, should have followed

up the complaint actively instead of simply ignoring the complaint and letting the things happen for the reason of manpower shortage. Otherwise, the quality of driving lessons will be affected and hidden dangers will be posed to road safety.

## VIII

The CCAC received a complaint alleging that soon after the opening of the Taipa Ferry Terminal, the public toilet near the public bus parking area was out of service due to clogged drainage. The complainant had lodged several complaints to the Civic and Municipal Affairs Bureau (IACM) but the problem had not yet been solved and therefore requested for the CCAC's intervention.

The Taipa Ferry Terminal was put into service on 1st June 2017. In July 2017, there was a serious blockage of drainage and backflow of sewage in the public toilet near the public bus parking area on the ground floor. Therefore, the IACM put it out of service.

The complainant stated that since October 2017, he had repeatedly informed the IACM of the problem concerning the long-term closing of the aforesaid toilet, hoping that the repair would be carried out as soon as possible, while the IACM replied that it was following up the matter. Subsequently, in a reply to the complainant, the IACM stated that the matter had been passed to the Infrastructure Development Office (GDI) for proper follow-up. However, when the complainant called the GDI for further details, he was told that the matter was being followed up by the IACM.

In the investigation, the CCAC found that since July 2017, the IACM had made several written requests to the GDI for handling the matter. However, it was not until April 2018 that the latter began to follow it up. Following an inspection, it was confirmed that the blockage of the manhole was caused by damage to the drainage pipes in the toilet. After that, the GDI contacted the building contractor to replace the

pipes and eventually the relevant repairs were completed in August 2018. Following a site inspection, the CCAC found that the repairs had already been done and the toilet had been reopened to the public.

The CCAC considered that when public toilets are closed due to clogged drainage, public departments should cooperate closely with each other to repair them in a timely manner instead of leaving the problem unsolved for over a year. Proper functioning of public amenities not only matters to users' actual needs but also affects citizens' and visitors' perceptions on the capability of the Government.