PART III

OMBUDSMAN ACTIONS

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I. Introduction

It is widely known that the ombudsman's work is very different from the anti-corruption work in terms of procedural measures, investigation directions and solutions. When it comes to the results of investigations, while the former seeks to improve the operation and activities of public services and statutory bodies so that they may better pursue public interests, the latter aims to bring offenders who commits corrupt acts to justice.

The CCAC has all along been strictly and fully exercising the powers and functions vested by the *Organic Law of the Commission Against Corruption* and exercising supervisory powers within the terms of office of the ombudsman. With regard to matters merely concerning personnel management and internal work arrangement, which do not fall within the scope of administrative acts or procedures regulated by the *Administrative Procedure Code*, the CCAC has no power of intervention but can only refer them to or communicate with the relevant departments.

It should be clarified that, according to Article 10 of the *Organic Law of the Commission Against Corruption*, the activity of the Commission Against Corruption is independent from the administrative or judicial remedies established by law and does neither suspend nor interrupt the continuity of any time limits of any nature. Therefore, the role of the CCAC as an ombudsman cannot be likened to that of an appeal body where there are statutory appeal mechanism procedures, including disciplinary procedures, judicial procedures, appeal and administrative appeal. It means that when residents are not satisfied with the decisions made by such procedures, they should, within statutory periods, lodge appeals to the competent authorities according to the law. Obviously, they may also lodge administrative

complaints or reports to the CCAC. The CCAC will carry out investigation into the possible administrative irregularities or impropriety within its jurisdiction with the aim of improving the operation and activities of the public services or statutory authorities/bodies, so that they may better uphold fairness and justice as well as pursue and safeguard public interest.

In the process of handling cases, the CCAC invests a great deal of time and manpower, carefully analyses the collected evidence and data, prudently verifies the existence of administrative illegalities and irregularities in the decisions made and procedures carried out by the public services or statutory bodies or entities and subsequently clarifies to the respective public services the positions of the CCAC through the legal mechanism of suggestion for improvement or recommendation, so as to achieve the objective of urging public services to perform their duties in strict compliance with the law, improving the quality of governance and safeguarding public interest.

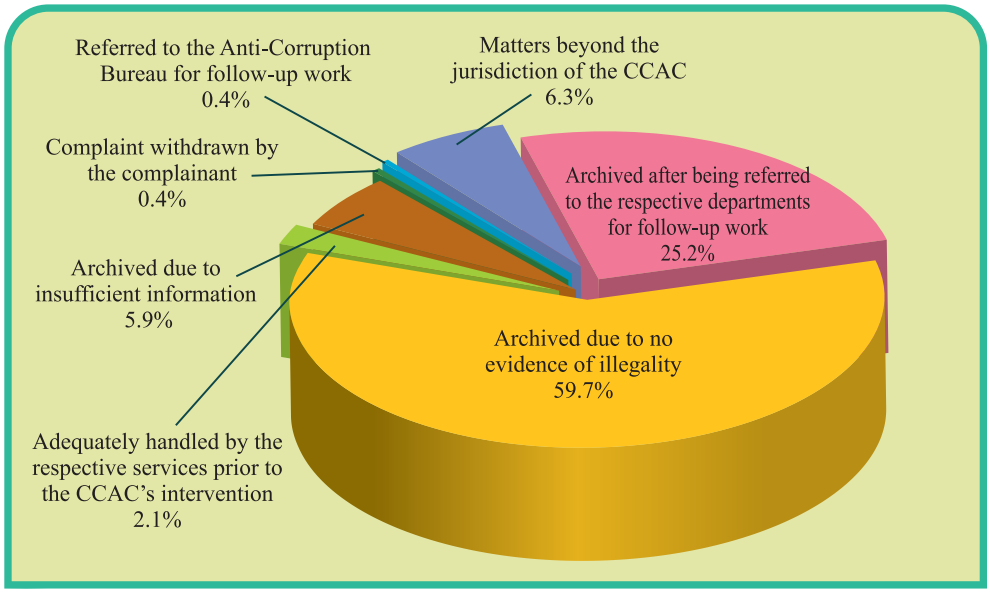
In 2020, during the period of the pandemic, in adherence to the principle of legality, the CCAC took into account the feasibility of inter-departmental cooperation and investigated each case with a pragmatic attitude.

It is encouraging that in the course of the investigations, the investigation measures taken by the CCAC, including the request for documents, inquiry and testimony, were supported by the relevant services or entities in a collaborative manner. In addition, the investigations carried out as well as the suggestions or recommendations individually presented or publicly disclosed by the CCAC were all accepted by the services or entities concerned. Some of them make commitments proactively and even take corrective or improvement measures immediately. Although there is still room for improvement, all this shows that the Macao SAR Government is willing to face the problems related to administrative procedures or acts highly concerned by the society and citizens. Such courage to improve governance deserves recognition and praise.

Up to the end of 2020, a total of 282 cases were placed on file by the Ombudsman Bureau of the CCAC.

Along with the cases carried forward from the previous year, the Ombudsman Bureau concluded a total of 238 cases, of which 60 were archived after the respective services had been requested to handle them and the opinions given had been accepted or promises of handling them had been made, and 178 were archived for other reasons. Of these 178 cases, there are 142 cases that were archived as no evidence of illegality was found upon investigation, five that were adequately handled by the services concerned before the CCAC's intervention, 14 that were archived due to insufficient information, one case where the complaint was withdrawn by the complainant, one case that was referred to the Anti-Corruption Bureau for follow-up work and 15 cases that did not fall within the jurisdiction of the CCAC.

Cases concluded by the Ombudsman Bureau in 2020



In addition, in 2020, the CCAC received a total of 321 requests for consultation and information that fell within the scope of the ombudsman's work. Judging from the requests for consultation and information in 2020, the majority of them was still related to the public service regimes, the handling of breach of traffic regulations and illegal works.

"Real-name reports and tight supervision" is one of the long-term development directions for integrity building. In 2020, through various means of promotion, the CCAC made clarifications to citizens that face-to-face complaints or real-name reports are properly protected by the confidentiality mechanism. Lodging real-name complaints or reports, with provision of contact information, may help the CCAC accurately access information that may become essential in the investigations as well as verify indications of administrative illegality or irregularity, which will minimise the chances of having to archive the cases directly due to the impossibility to meet the conditions for initiation of the respective investigations. The CCAC has all along been exercising discretion in dealing with anonymous complaints and reports. As long as there are preliminary indications in these anonymous complaints and reports, which meet the conditions for initiation of investigations, even if there is no clear and accurate information provided directly by the complainants or informants, the CCAC will always do its best to carry out investigations and collect evidence within its legal authority and try to overcome the difficulties caused by insufficient information so as to handle all complaints and reports seriously, including those lodged anonymously. Nevertheless, it is undeniable that the CCAC needs the support of citizens to obtain information necessary for the initiation of investigations so it may resolve the concerns of citizens as soon as possible.

II. Summary of comprehensive investigation

(1) Investigation Report about 74 Land Concession Leasehold Case Files where the Provisional Concession Leaseholds were Declared Expired

Starting from March 2010, the Public Administration, case by case, reviewed all cases where the land use was not completed within the land use period or by the expiry of the land leasehold period set out in the respective provisional concession leasehold contract. Starting from 2015, the Public Administration successively announced the expiry of provisional concession leaseholds of many plots of land. Later, some people repeatedly told the media that the stipulation that the concession would expire if the land use was not completed by the expiry of the leasehold period prescribed in Law no. 10/2013 (the new *Land Law*) was unreasonable and requested for amendment to the new *Land Law*.

After carrying out a comprehensive analysis of the 74 land concession vetting processes in which the provisional concession leasehold was declared expired, including reviewing over 1,000 land concession vetting case files, building proposals and construction case files, taking statements from relevant personnel and making a comparison with the legal regimes of neighbouring regions, the CCAC considered that all of the concessionaires involved in the cases did not comply with the terms set out in the respective provisional concession leasehold contracts. Some of them requested for change of the land use or did not submit the building proposals to the authority, while some did not take the initiative to follow up the building proposals they had submitted. They had one thing in common, that is, they failed to implement the land use plans. After obtaining the provisional concession of the relevant lots, the concessionaires made one or more than one requests for change of land use or land purpose for various reasons. In fact, the first building proposals submitted by almost all of them did not accord with the respective concession contracts.

Such acts of non-compliance with the contract terms went against the principle of good faith in a contractual relationship. Some of the concessionaires' acts even show that they did not intend to comply with the duties set out in the provisional concession leasehold contracts. Instead, they only attempted to seek the possibility to maximise their interests through repeated requests to the Public Administration for change of land purpose and increase of building scale and height.

Concerning the suspicion that the Land, Public Works and Transport Bureau (DSSOPT) delayed or impeded the concessionaires' completion of land use within the land leasehold period, the CCAC considered that such accusation is groundless, as the failures in all of the cases were due to the fact that the concessionaires did not submit the building proposals which accorded with the terms set out in the contracts in a timely manner or the fact that they did not follow up the building proposals in a timely manner following the approval of the bureau. In addition, if the building proposal submitted by the concessionaire obviously goes against the requirements, the DSSOPT will need to review the urban planning. In this sense, the bureau will inevitably spend more time to deal with the relevant applications and consult other competent authorities. Therefore, it did not mean that the DSSOPT delayed the vetting. Instead, the delay was caused by the concessionaires' violation of the terms set out in the provisional concession contracts.

Both the old *Land Law* and the new *Land Law* confer upon the concessionaire the right to make a request for change of the land use or land purpose, but they also provide for the restrictions. Article 107 of the old *Land Law* stipulates that whether or not to approve the concessionaire's request is at the Public Administration's discretion. Once speculative intention is found, the Public Administration shall reject the request according to the law. In addition, Articles 140 and 141 of the new *Land Law* provide clear stipulation of the period for

making request for relevant change or amendment. Both the old *Land Law* and new *Land Law* stipulate that the concessionaire is obliged to complete the land use within the designated or extended land use period. Even if the building proposal or drawing is not approved, the land use period set out in the concession leasehold contract will not be suspended or terminated, unless the concessionaire makes such request. However, it was not until the Public Administration enforced the stipulations of declaration of expiry of land concession under the *Land Law* that the concessionaires attempted to defend themselves from being blamed for the failure to follow up the concession contracts and fulfil the obligations of land use as set out in the contracts for the excuse that the Public Administration delayed the vetting procedures or failed to fulfil the responsibilities regarding urban planning or infrastructure. The CCAC considered that such accusation was not convincing.

Moreover, the DSSOPT's supervision on the implementation of the land concession contracts was not adequate, and the bureau failed to perform its duty to proactively supervise and follow up the implementation of the provisional concession contracts by the concessionaires. Neither did it promptly follow up the cases where the relevant land lots might have met the conditions of expiry of provisional concession. As a result, the relevant land had all along not been used effectively and had even been left idle for prolonged periods, which caused the society to cast various doubts over the land management work of the government. This situation deserved profound reflection and review by the competent authorities.

Unlike civil contracts, the land concession leasehold contracts are essentially administrative contracts. The Public Administration has the right of supervision and the right of punishment so as to supervise the fulfilment of the obligations set out in the land concession contracts by the concessionaires. However, the concessionaires in quite some land concession case files involved

seemed to be playing the predominant role. It was common that when the concessionaires filed requests such as changing the land purposes and land uses, the DSSOPT would still follow them up. It seldom resolutely rejected those that did not meet the relevant requirements from the outset. The Public Administration should reflect on how to play a predominant role in the land leasehold contracts. It should, in a timely manner, proactively carry out follow-up and supervision work on the fulfilment of obligations set out in the concession contracts by the concessionaires. To safeguard the overall interests of the Macao residents, they should take appropriate measures and maintain a clear and transparent attitude in order to improve their supervision and management of land uses. In response to requests that contravene the laws or concession contracts, they should reject them explicitly so as to ensure that the land resources of Macao will be used effectively and sufficiently according to the provisions of the new *Land Law* and the terms in the concession contracts.

The CCAC suggested that when vetting the building proposals submitted by the concessionaires, the Public Administration should also consider the balancing of public interest and private interest. In particular, the approval should depend on whether they meet the primary objectives of making full and timely use of land resources and achieving sustainable urban development.

The CCAC added that the 74 decisions on the land concessions involved were all made by the then Portuguese Government of Macao. Some provisional land concession leaseholds were granted through exemption from public tender. Moreover, neither the relevant grounds nor the application of the relevant legal provisions could be seen in the submissions. The CCAC emphasised that public tender should be a common practice while a concession should only be directly granted under special circumstances. When carrying out a procedure of granting a provisional land concession in the future, the Public Administration must carry

out a public tender before granting the provisional land concession according to the new *Land Law*. Only under certain circumstances may public tender be exempted. In addition, Article 166 of the new *Land Law* should be executed in a timely manner. When a concessionaire fails to finish the land use within the land use period, without having to prove his fault, the possibility of executing the relevant penalty system may be studied immediately, including imposing a fine and declaring expiry of the provisional concession leasehold. Upon completion of the land leasehold period, the provisional land concession leasehold must even be declared expired compulsorily. It will allow the relevant lots to be released for proper use again. This is how the law is applied correctly in a timely manner and how the interests of public resources can be safeguarded effectively.

In response to the aforesaid investigation conclusions released by the CCAC, the Secretary for Transport and Public Works publicly stated that he attached great importance to them and promised that he would review and reflect on the relevant matters, holistically improve the land management mechanisms and ensure that land resources may be used reasonably according to the law. He also said that the Macao SAR will continue to strictly manage the state-owned land under the *Land Law*. Regarding the land parcels whose concessions have been declared expired under the law and other available land parcels, the Macao SAR will, according to the needs of overall development of the society, use the land resources effectively and reasonably in order to achieve the objective of sustainable development.

III. Summaries of inquiries

(I)

Careful approval of public money applications and non-negligent supervision

In July 2018, the CCAC received the information of Viva Macau's loan case transferred to it by the Industrial and Commercial Development Fund (FDIC). It subsequently conducted an inquiry in order to review the loan processes from the perspectives of criminal illegality, administrative illegality and disciplinary liability.

After finding out the processes of the granting of five loans totalling MOP212 million to Viva Macau by the FDIC between 2008 and 2009, the CCAC found that Air Macau, which was affected by the financial crisis at the same period, also sought financial aid from the SAR Government. In 2009, the SAR Government, as a shareholder of the airline, injected a sum of MOP215 million into it. As far as Viva Macau was concerned, given that the close-down of the privately held company would have negative impact on travellers who had booked tickets with it as well as the tourism of Macao, the SAR Government decided to offer interest-free financial aid to it through the FDIC. While the then members of the Administrative Council of the FDIC did not have professional knowledge of operation and financial management in the aviation industry, neither an evaluation committee with individuals with professional experience was formed nor persons whose presence would be conducive to the decision making were invited to attend the meetings.

When it comes to whether any of the acts of Viva Macau as well as its shareholders and executive members violated any of the provisions of the criminal law (including the provisions of fraud, issuance of bad cheque, intentional bankruptcy, unintentional bankruptcy, frustration of credits,

favouring of creditors and active bribery), following analysis, it was found that those persons might have committed the offence of unintentional bankruptcy. However, the right of complaint became extinct due to expiry of prescription. Also, there was no sufficient indication that the other acts could be considered constitutive element of the relevant crimes. Regarding the acts of the members of the Administrative Council of the FDIC and other public servants involved, the existing evidence could not prove that the relevant acts should be considered constitutive elements of passive bribery to perform licit acts, power abuse and dereliction of duty.

However, after the investigation the CCAC found that the documents of Viva Macau were disorganised. The controlling shareholder, Eagle Airways Holdings Limited, used promissory notes as guarantees, but the competent authorities had never carefully scrutinised its repayment ability. Neither had the financial status of Viva Macau been checked or followed up. While Viva Macau had never fulfilled any of the loan repayment agreements, it repeatedly requested to extend the repayment periods and used part of the financial aids to repay the loans earlier provided by its executive members in their own names instead of using them directly for the purpose of improving the operation as required by the agreement signed with the FDIC. The company even failed to submit the loan spending report in time as required by the agreement. These violations of loan agreement may have constituted the relevant civil contractual liabilities. The negligent attitude of the members of the Administrative Council of the FDIC caused the Public Administration to be in a passive position in the incident.

In addition, as Viva Macau was not an SME as prescribed by the relevant laws in effect, there was no legal basis directly applicable to the vetting and handling of the applications for financial aids. Moreover, there was a lack of analysis of the financial condition of Eagle Airways Holdings Limited as the guarantor of such considerably huge amounts of loan, which was exactly the key

to the FDIC's failure at recovering the repayment from the guarantor after Viva Macau was declared bankrupt. Obviously, in the vetting and approval processes for the applications for loans made by Viva Macau, there was a serious lack of requirement for and supervision of document searching, analysis and quality of the reports. In other words, there was no effective and close follow-up. The imprudent, careless and neglectful acts and omissions carried out by the relevant public servants could definitely constitute disciplinary liability and reflected that they failed to fulfil their due responsibilities and obligations of supervision.

Therefore, the CCAC suggested that the legislation for the supervisory of use of financial aid offered by the FDIC should be promoted and enhanced as soon as possible. Especially, it should establish a robust loan guarantee mechanism and clearly require that loans involving large sums should be guaranteed by assets with adequate repayment capacity. The guarantor's assets should be strictly examined in order to ensure that the loan can be repaid with the assets when the debtor is unable to repay the loan by the deadline and to avoid waste of resources to take unsuccessful legal action to dun for the payments. Meanwhile, necessary risk warning and control mechanism should be set up in order to ensure that public funds will not be abused due to loose supervision of credit. The CCAC also hoped that all officials and public servants of the Macao SAR should bear in mind that regardless of their ranks and positions, in execution of public duties, they should ensure that the duty of impartiality is carried out effectively in order to uphold the impartial and just image of officials and public servants.

Several principal officials in the Macao SAR Government publicly stated that they attached great importance to the investigation results released by the CCAC. The Chief Executive personally urged the Secretary for Economy and Finance to carry out a comprehensive review of the vetting and approval procedures for loans granted by the FDIC, to improve the vetting and approval

criteria and the respective supervisory mechanisms and to rigorously monitor the vetting and approval of large loans or loan guarantee applications. It was expressly required that loans be guaranteed by assets with effective repayment capacity so the risks to be borne by the Government in settlement difficulties will be minimised. It was also required that the legislation applicable to the FDIC be reviewed holistically, including the current regulation of the FDIC as well as other special regulations related to the granting of loans and items subsidised by the FDIC, so that contents such as vetting and approval conditions, supervisory mechanisms, and sanctions for contravention will be clearly provided for in the regulations. The Secretary for Economy and Finance has also instructed the FDIC to carry out a holistic review and correct the defects in order to improve the vetting and approval procedures for the granting of loans, establish risk prevention and control mechanisms and improve the regulations to effectively plug the loopholes – all in a bid to ensure that public money will be used reasonably and appropriately according to the law.

In order to consolidate the effects of the investigation, the CCAC specially organised a meeting with representatives of all public funds in Macao, where it took the loan granting case of Viva Macau as reference and presented its opinions and suggestions on how the autonomous funds in Macao may use public assets in a sensible way. The Public Administration also promised to start improving the laws and regulations related to the vetting and approval mechanisms of the funds, thus requesting persons in charge of the funds to present any inadequacies of the respective legislation and problems detected in practice and to give their opinions, which will be compiled and followed up by the SAR Government.

(II)

Do not attempt to do part-time jobs as it is a disciplinary offence

The CCAC received a report claiming that a police officer from the Public Security Police Force (CPSP) sold beauty products on a part-time basis illegally through Internet platforms. The CCAC was therefore requested to intervene in and investigate the incident.

Following the investigation, it was found that in 2018 the aforesaid police officer started to set up a dedicated page on an Internet platform and sell beauty products through a few buying and selling platforms. The police officer was also found to have frequently uploaded photos and videos on the Internet platforms showing himself displaying the beauty products in order to highlight and promote the effects of the relevant products. In addition, it was also confirmed that he had sold beauty products to a few colleagues at the workplace.

After the CCAC informed the CPSP of the relevant situation, the latter initiated a disciplinary procedure against the aforesaid police officer and subsequently proved that he had violated the obligations provided for in Subparagraph f) of Paragraph 2 of Article 12 and Subparagraph b) of Article 16 of the *Statute of the Militarised Personnel of the Security Forces of Macao*. A fine was imposed on the police officer concerned as disciplinary punishment.

(III)

Consistent standards demonstrate fairness

A citizen filed a complaint where he stated that he had already completed the work of installing air-conditioner drain pipes in an interior space within the stipulated period and according to the requirements of the Municipal Affairs Bureau (IAM) so as to improve the problem of water dripping from the air-conditioners. However, as the complainant did not proceed to remove the disused drain pipes that remained

exposed, even though they no longer dripped, he received punishment from the IAM during the subsequent inspection work carried out by the latter for the reason that "the drain pipes are still exposed". The complainant considered the punishment imposed by the IAM unfair and therefore requested intervention and investigation by the CCAC.

Following the investigation, it was found that the IAM, when carrying out the subsequent inspection, confirmed that there was no water dripping, but as the air-conditioner drain pipes were still exposed, the IAM immediately decided that the complainant had yet to comply with its technical recommendations to avoid the problem of water dripping from the air-conditioners within the time limit it had set. Subsequently, the complainant was punished according to the *General Regulations Governing Public Spaces* and the respective *List of Infringements*.

Judging from the content of the notification about improving the problem of water dripping from air-conditioners, the CCAC considered that the IAM aimed to urge the complainant to carry out, within the set time limit, necessary repair works to prevent the air-conditioners from dripping. Installation of air-conditioner drain pipes in an interior space was one of the examples listed as a technical suggestion. Therefore, as long as the measure may prevent water dripping from air-conditioners onto public areas, it should be considered that the requirement in the notification is met. Since the complainant completed the repair works to prevent water dripping from the air-conditioners within the set time limit, there was no legal basis for the IAM to punish the complainant simply due to the existence of the disused drain pipes that were exposed. At the prosecution and punishment stage, the complainant reiterated the improvements that had been made, but the IAM ignored them and did not analyse the reported improvements until the complainant had issued a statement of objection against the punishment decision.

The CCAC also believed that if the IAM had analysed the improvements reported and the photographs provided as evidence by the complainant, particularly taking measures to verify the actual situation with a pragmatic attitude, it not only would have avoided unnecessary disputes and doubts but would have avoided unnecessary subsequent procedures and thus saving manpower. In addition, it was also found that the IAM's view at the prosecution stage was not exactly the same as its view after the complainant had issued a statement of objection. It was even found that different persons responsible for handling the case might have different decisions on it. In order to avoid doubts about its laxity in deciding illegal acts or unlawful facts at the prosecution against the problem of water dripping from air-conditioners, the IAM must adopt measures to standardise the position of its personnel on the identical situations.

Therefore, the CCAC informed the IAM of the situations and gave the respective opinions. The IAM stated in its response that it accepted the CCAC's opinions and would review the statement of objection of the complainant and the information submitted at the hearing stage. Finally, it was concluded that the improvements made by the complainant were sufficient to prevent the problem of water dripping from air-conditioners onto public areas. As a result, the respective punishment decision was withdrawn.

(IV)

Doubts about legality arising from too much leniency

A construction technician, who was registered with the Land, Public Works and Transport Bureau (DSSOPT) and had been working in that area for several years, lodged a complaint where he stated that after the entry into force of Law no. 1/2015 (*Regime of Qualifications in the Fields of Urban Construction and Urban Planning*), the Bureau still granted "conditional approval" to applicants who requested registration as technicians but did not meet the respective legal requirements. Believing the practice was lack of legal basis and unfair towards

other applicants who met the legal requirements, he requested intervention and investigation of the CCAC.

According to Law no. 1/2015, holders of academic degrees legally provided for and those who have been registered with the DSSOPT on 5th January 2015, or those who have been engaging in the fields of urban construction and urban planning in Macao, are exempted from meeting the requirement of completing the internship and passing the accreditation examination and thus being able to obtain a professional certificate in the field of construction, provided that they have applied for registration with the Council of Architecture, Engineering and Urban Planning within two years from 1st July 2015. If they have yet to register on the aforesaid date or have registered for less than one year from the aforesaid date, they may only, according to the law, register or renew the registration after completion of a special training organised by the DSSOPT.

Following the investigation, it was found that, after the entry into force of Law no. 1/2015, the DSSOPT did, in fact, grant "conditional approval" to applicants who did not meet the legal requirements. Also, there was no information showing the relevant legal basis. For cases of registration for less than one year or applications for new registration of applicants who had yet to complete the special training, the DSSOPT took the provisional measure to grant "conditional approval" as it took into account that Law no. 1/2015 was the first legislation introducing the professional qualification accreditation regime for the construction sector of Macao, and that during the enforcement of the new law, the sector once reflected that as some technicians specialising in construction works initially did not, during their career planning, consider making the registration for the purpose of performing the related work, when encountering opportunities to practice their profession, they would usually miss those opportunities as they did not have enough time to complete the special training. As a result, they could not obtain a professional certificate. Therefore, by allowing these individuals to

complete the special training within a designated period and then approving their applications for registration or renewal of registration, it would help the sector to get prepared for the implementation of the new regime smoothly. Nevertheless, the participation of applicants in the special training depended on several factors, such as whether the DSSOPT would organise a training session, when these training sessions would start, or whether the applicants would make it to classes after application due to different reasons. Furthermore, the DSSOPT required technicians to attend, on two consecutive Saturdays, a training session lasting a total of 10 hours, and only after that they would be recognised for having completed the training. For this reason, the situation of not having completed the special training at the time the application for registration or renewal of registration was submitted (therefore not meeting the requirements of the law) could not be fully attributed to the applicants. This is the reason why there was "conditional approval" – registration or renewal of the registration would only be allowed after the applicants successfully completed the respective training.

Following analysis of the provisions of Law no. 1/2015, the CCAC considers that, since the legislator of the law did not make any exceptional transitional provision, according to the principle of legality, the registration or renewal of registration may only be approved when the interested parties meet all the legal requirements. Therefore, the CCAC considers that the DSSOPT's practice of granting conditional approval to registration or renewal of registration lacked a legal basis and violated the principle of legality. As a matter of fact, the sector has clearly known from the outset that technicians who have not yet registered on the date of the entry into force of Law no. 1/2015 or have registered for less than one year from it need to complete the special training organised by the DSSOPT before registration or renewal of registration. Furthermore, the number of special training sessions currently organised by DSSOPT is sufficient to meet the relevant needs, so DSSOPT must strictly execute the respective legal provisions, and it should not continue to grant "conditional approval".

After the CCAC stated its position to the DSSOPT and presented its opinions, the latter replied that it fully accepted them, adding that the aforesaid provisional measure of "granting conditional approval to registration" was no longer taken. Regarding the technicians who were once granted "conditional approval" for registration or renewal of registration and whose registration is still within the validity period, they have completed all the special training currently.

(V)

Reasonable price consultation periods are conducive to fair competition

According to a report, the Macao Polytechnic Institute (IPM), during its two price consultation procedures for the purchase of removal services, asked the invited companies to submit their written quotations before 17:30 on the day following the explanation sessions. As one day was a too short duration for submission of a quotation, the complainant doubted if the institute only adopted the method of "invitation to tender" nominally while it had predetermined the suppliers of the services internally. Therefore, the CCAC was requested to investigate if there was transfer of benefits.

Following the investigation, it was found that during its procurement, the IPM usually gave companies a very short period (usually one or two days) to prepare their quotations in writing, so there was no illegality in the procedure in question or other evidence that allows to conclude that the companies that won the tenders were predetermined internally or that there was transfer of benefits. However, such short preparation time would often give rise to a situation where the number of companies submitting quotations in writing represents only a half or less than a half of the total number of companies invited to give a quotation. While other possible reasons for the failure to submit the quotations are not discussed here, the reasonableness of this practice needs reviewing.

In addition, the CCAC considers that in a procurement process, it is necessary to ensure that all competitors, including "novice" competitors, have sufficient time to prepare their tenders, or it might lose potential qualified competitors in the market, which not only causes services to lose choices but is also not conducive to fair competition. Therefore, the CCAC urged the IPM to take the necessary improvement measures.

The IPM agreed on the opinions and suggestions presented by the CCAC, adding that new internal guidelines have been issued after a holistic review of the procurement procedures, which require that the deadlines for submission of written quotation for acquisition of goods and services and for works should not be less than five and seven work days respectively. This aims to improve the existing procurement mechanism.

(VI)

Convenience and prudence; balance and appropriateness

There was a complaint alleging that according to points 7.2 and 7.5 of the announcement on the economic housing allocation scheme launched by the Housing Bureau (IH) in November 2019 and the "Application Notice", applicants with incomes from business activities were required to submit a financial report (including the income statement and the balance sheet) signed by an accountant together with the application form, which caused doubts that the requirement might violate the *Economic Housing Law*. The complaint also alleged that making a financial report signed by an accountant was time and money consuming. Therefore, the CCAC was requested to intervene into the matter.

Following an investigation, it was discovered that the IH took the said measure based on the experience in the scheme of allocation of one-bedroom and other types of economic housing units carried out in 2013 and a review

of the problems encountered in practice. It was because in the vetting stage of the previous schemes, the IH always found that many applicants were excluded because they were not able to provide relevant proof for various reasons (e.g. the applicants did not keep the data of incomes from business activities, loss of documents, closing down of companies, having difficulties in providing the data, etc.). The IH even found situations of making false declaration where the applicants filled in the data of their financial status and incomes in an arbitrary way. In order to conduct the process in a prudent manner, the IH decided to request applicants to submit relevant documentary proof when making the application in order to prevent such situations that would cause exclusion. Meanwhile, applicants with incomes from business activities were also requested to submit a financial report signed by an accountant in order to ensure that they filled in the data such as the amount of income and value of assets with clear knowledge of their own financial status and to prevent situations of false statement or filling of untrue data.

Following an analysis, the CCAC considered that the said measure was taken by the IH in good faith and in the hope that applicants for economic housing could fill in the data on their financial situations prudently, correctly and factually so that they would not be excluded for such reasons. However, it seems that the IH overlooked the financial burden and inconvenience that the requirement for financial report had caused to the relevant applicants. In fact, the requirement went against the principle of appropriateness provided for in the *Administrative Procedure Code*.

During the investigation, the IH also received relevant complaints and opinions from the public. Then it actively adopted measures for follow-up and improvement according to the situations and amended the relevant requirements of application for economic housing. In March 2020, the bureau published an

announcement allowing applicants who ran their own business to submit a financial report that only indicated the incomes from sale or service provision, expenses, costs and gains, losses and other incomes before tax, while accountant's signature was not required.

The CCAC paid close attention to the Government's reaction to the matter and found that the IH still has not provided the public with the sample format of the financial report. In particular, it did not regulate the contents, the degree of specificity and the scope of the declaration. Therefore, the CCAC sent a letter to the IH, where it requested the latter to provide the public with the sample of the financial report and the declaration guidelines.

The IH replied that it agreed on the CCAC's opinions and suggestions. Subsequently, the bureau formulated the sample of the relevant documents and the guidelines and made the information available on its website.

(VII)

Follow-up on and punishment for violation of duty of assiduity

There was a report alleging that a worker of the Municipal Affairs Bureau (IAM) was always absent from duty without punching out and wearing uniform during a certain period of time every day. Therefore, the CCAC was requested to investigate into the matter.

It was found in the investigation that the IAM also received the same report. According to the IAM's finding, the worker left his workplace without his superior's approval on a total of 10 days in March 2019. Therefore, a disciplinary procedure was initiated against the worker and he was sentenced to suspension from work. However, when the IAM made the punitive decision, the worker had already resigned for retirement. Therefore, the IAM replaced the penalty of suspension with a fine.

Following an analysis on the *Statute of Personnel of the Public Administration of Macao*, the CCAC considered that written reprimand, fine, suspension, compulsory retirement and dismissal are disciplinary penalties at different levels. The penalty is measured and determined depending on the situation, the degree of the offender's fault and his personality. There is neither substitutional relationship between different disciplinary penalties nor any mechanism enabling replacement. Nevertheless, for retired workers, Paragraph 2 of Article 300 and Paragraph 1 of Article 306 of the statute stipulate that suspension shall be replaced with loss of pension with an amount equivalent to that of the salary for the period of the suspension. In the event that it is replaced with a fine, the amount shall not exceed that equivalent to 20 days' pension. There is no stipulation allowing replacement of the penalty of suspension sentenced to workers in such situation with a fine.

Therefore, the CCAC sent a letter to the IAM pointing out the said problem concerning application of law. Later, the IAM expressed its agreement in its reply and rectified the relevant disciplinary procedure report. At the same time, it also promised to strengthen the supervision on its workers' attendance.

(VIII)

Responsibility for supervision of effective provision of service under the contract

There was a report alleging that over the years, the Government Information Bureau (GCS) directly awarded the contracts of reporting and editing services for the Chinese, Portuguese and English versions of *Macao Magazine* respectively to three companies without public tender and inquiry for price. The service costs for each version totalled some MOP10 million to some MOP20 million. Moreover, the GCS also directly awarded the contract of operation of the economic and trade information website to one of the companies without tender and price inquiry. The content of the website was merely transcription of local news from

other media, but the cost for the contract reached several million patacas every year, giving rise to suspicion that the practice of the GCS was inappropriate. Therefore, the CCAC was requested to investigate into the matter.

The CCAC first carried out an investigation within its scope of competence and ruled out the possibility that the direct award of the contracts by the GCS to the said three companies involved inappropriate exploitation of duty, corruption or power abuse committed by public servants.

Meanwhile, it was found in the investigation that between 2005 and 2009, the GCS made the first award of the contracts of reporting and editing services for the Chinese, Portuguese and English versions of *Macao Magazine* through public tender. After that, the contracts were then awarded directly to the companies every year due to satisfaction with the services they had provided and good cooperation between both sides in accordance with the stipulation of exemption of public tender and price inquiry provided by Subparagraphs a) and b) of Paragraph 2 of Article 7 and Paragraphs 1 and 4 of Article 8 of Decree-Law no. 122/84/M.

In October 2005, the GCS directly awarded the contract of operation of the economic and trade information website for the reasons that the construction of the website was still in the experimental and initial stage and Macao lacked companies with professional experience in journalism in Asia, Europe, Africa and South America. After that, the GCS continued to directly award the contract to the same company every year for the reasons that the company was one of a few companies having the relevant professional experience in Macao, the service it had provided was satisfactory and the cooperation between both sides was good as well as for the purpose of maintaining consistency of the operation style in accordance with the aforesaid provisions under Decree-Law no. 122/84/M.

Although the GCS renewed the relevant service contracts every year through direct award by taking account into the performance of the companies, and the benefits of the good operation between both sides to the maintenance of the reporting, editing and layout style and the sustainability and stability of the distribution and promotion network, following the investigation, the CCAC did not find that the said three companies clearly accorded with the conditions of exemption prescribed in Subparagraphs a) or b) of Paragraph 2 of Article 7 of Decree-Law no. 122/84/M.

In fact, during the investigation into the GCS's supervision on the operation and quality of the economic and trade information website, the CCAC found that although the GCS mentioned in some proposals for direct award that the contractor had professional reporting teams and networks of experienced journalists in different countries and regions and that the company was different from other companies which only provided users' companies with information simply collected on the internet through application software, the bureau did not have the concrete data on the situation in hand for the reasons that the contractor adopted various ways to edit the articles and that classification of the articles was difficult. The CCAC also did not find that the GCS had any clear requirement for how to collect and organise the contributions and that it had regularly supervised and verified whether the service provided by the contractor was worth the money paid by the Public Administration, which reflected that the supervisory measures currently taken by the GCS are inadequate.

In addition, the CCAC also challenged the terms of the contracts of the relevant service, which was only one year, since reporting and editing services for a magazine are long-term services in general. The GCS should consider extending the terms of the relevant contracts from the perspective of streamlining administrative procedures and formalities.

Therefore, the CCAC expressed the aforesaid opinions to the GCS and suggested the latter reviewing and improving the current supervisory approach. At least it should classify and carry out statistics and supervision of the articles published on the website and the sources of information. Later on, the GCS expressed its agreement and stated in its reply that it would initiate a public tender process for the reporting and editing services for the magazine and the operation of the website in an orderly way. The GCS also planned to extend the terms of the contracts of reporting and editing services for the magazine appropriately and review and improve the supervision on the operation of the website.

(IX)

Listen to public opinion for the sake of openness and transparency

According to a complaint, the website of the Urban Planning Council (CPU) only kept the videos of the latest six plenary meetings, but the minutes of the plenary meetings were not made available on the website for the public. In addition, the explanations for drafts of urban condition plans and public opinions on the urban planning information website of the Land, Public Works and Transport Bureau (DSSOPT) were removed after the expiry of the consultation periods of the plans. Only the drafts of the plans were kept on the website, giving rise to suspicion that such practices went against the principles of transparency and promotion of public participation and publicity. Therefore, the CCAC was requested to follow up the matter.

In accordance with Administrative Regulation no. 3/2014, in non-confidential situations, the plenary meetings of the CPU are held publicly. Those who are interested may attend the meetings upon prior registration. Although it is not mandatory in accordance with the law, the council still publicises the minutes and videos of the latest six plenary meetings on its website. Therefore, it seems that there was no violation of the principles of transparency and promotion of

public participation and publicity. Regarding citizens' expectation for access to information, the CCAC has sent a letter to the CPU, stating the opinions and suggesting that more live videos of plenary meetings being kept on the website. The CPU replied that it would keep on obtaining opinions from different sectors in society and optimising and reinforcing the functions of the website.

Regarding the request for keeping the explanations for drafts of urban condition plans and public opinions on the website, based on an analysis on the provisions under the *Regulations for the Implementation of the Urban Planning Law*, the availability of the urban condition plans on the website and in the database of the DSSOPT was mandatory. Apart from that, the act of the bureau to make other information such as the explanations for drafts of urban condition plans and public opinions available on its website was carried out solely based on the principles of good faith, convenience to the public and publicity and transparency of information. Therefore, the CCAC considered that the regular removal of the information whose availability was not mandatory was not an administrative illegality or irregular act.

Nevertheless, the CCAC agreed that since the drafts of urban condition plans only indicated the urban conditions and the relevant grounds were only mentioned in the explanations for the drafts during the public consultations carried out by the DSSOPT, the bureau should publicise the respective explanations together with the drafts of the urban condition plans so as to fully satisfy the intent of the relevant provisions under the *Regulations for the Implementation of the Urban Planning Law* and facilitate the public to raise opinions on the plan. In addition, due to the fact that the explanations for the drafts and public opinions were not confidential data, if the DSSOPT could continue to keep the relevant information available to the public after the urban conditions plans were publicised in order to let the public know the complete process and information of the making of the plans, the principles of good faith, convenience to the public and publicity and transparency of information would be better implemented and realised.

Therefore, the CCAC expressed its stance and raised the relevant opinions to the DSSOPT. The bureau stated in the reply that it accepted the opinions and had already taken actions to optimise the content of the urban planning information website. Since 2020, the urban condition plans made by the bureau and the relevant information including the plans, the drafts, the explanations for the drafts and public opinions have been made available within the respective periods of validity.

IV. Retrospective review

In order to put into practice the "retrospective review" mechanism mentioned in Policies and Measures, the CCAC has been closely following up the cases on the list of the "retrospective review", maintaining communication with the services or entities involved and carrying out the handling work. Some of these cases will be announced to the public in due course.

(I)

In order to enhance the vetting of applications for investment residency, in July 2013, the CCAC suggested the Macao Trade and Investment Promotion Institute (IPIM) that before the Identification Services Bureau (DSI) grants the right of permanent residency to applicants, the IPIM should take steps to review the applications in order to confirm whether there have been any changes in the status of the immovable property used to apply for temporary residence permits.

In order to review the implementation of the retrospective review mechanism, the CCAC carried out the respective follow-up work.

According to the information obtained, following the recommendation of the CCAC, the IPIM communicated with the DSI and established a regime for confirming temporary residency in September 2013. According to the regime,

when applicants for investment residency have completed seven years of temporary residence in the Macao SAR and intend to apply to the DSI for the issuance of the Permanent Resident Identity Card (BIRP), they must first apply to the IPIM for a "Confirmation Declaration" which proves that, during the seven years of temporary residence (between the approval of temporary residence and the application for issuance of a BIRP), the applicants maintain the status that their temporary residence is approved. The DSI will only handle the application for the issuance of the BIRP after receiving the "Confirmation Declaration". It was expected that the aforesaid regime will help strengthen the inspection of applicants' compliance with the legislation on investment residence.

However, during an investigation and a review carried out by the CCAC, it was found that starting from September 2014, the IPIM changed the criteria and the interpretation of the "confirmation", which was only adopted for one year. Instead of reviewing and confirming whether the applicants maintained the status that temporary residence was approved during the seven years, the IPIM believed that the passage of seven years from the approval of temporary residence already starts to produce full effects and to justify the legality of the residence of the applicants in the Macao SAR, which means the legality of the applicants' residence in Macao does not arise from the temporary residence permits – it is a right directly conferred by law. Therefore, the IPIM, from then on, issued "Confirmation Declarations" to the applicants due to the mere fact that seven years has passed since the granting of the temporary residence permits.

In the CCAC's opinion, the aforesaid handling approach of the IPIM went against the legislation in force, since when there is a change or extinction of the legal situation that justifies the approval of the application for investment residence, the IPIM should verify these situations and follow them up according to the law. Therefore, prior to the issuance of the "Confirmation Declarations", the IPIM should be responsible for verifying and confirming if, from the approval

of temporary residence permits to the application for the BIRPs, the applicants still meet the requirements for investment residence and the approval conditions. In other words, the IPIM should not, without taking into account other reasons, directly issue the "Confirmation Declarations" merely based on the fact that the duration of the approved temporary residence permits has reached seven years.

Given the above situation, the CCAC presented its opinion to the IPIM. The latter replied that starting from May 2018 it did not use the reason that the duration of the applicants' temporary residence permits has reached seven years as the legal basis to maintain its approval of investment residence, adding that it would vet and handle cases in strict accordance with the legislation on investment residence.

Also, regarding the situation where applicants of investment residence had managed to obtain the BIRPs, it was later verified that the respective approval of renewal of temporary residence permits by the Public Administration might have violated the principle of legality. Therefore, the CCAC suggested the IPIM that it should inform the Public Prosecutions Office of the cases as soon as possible so that they would be followed up appropriately. In addition, the CCAC also presented opinions and suggestions to the IPIM on amending the legislation in question.

In its reply the IPIM stated that it agreed on the opinions of the CCAC and that when amending Administrative Regulation no. 3/2005 in the future, the inspection upon approval of temporary residence permits should be strengthened and the respective work should also be improved.

(II)

In an inquiry carried out by the CCAC upon receipt of a complaint against a functional head of the Macao Government Tourism Office (MGTO) who was found to have been absent from the service during office hours many times, it was found that the MGTO detected the irregularity as alleged in the complaint and did open disciplinary proceedings against the personnel concerned. However, although it was ascertained that the personnel had been absent from the service without justification for seven intermittent days, only the penalty of written reprimand was imposed on him. According to the MGTO, given the proven fact did not meet the circumstances referred to in Subparagraph e) of Paragraph 2 of Article 314 of the *Statute of Personnel of the Public Administration of Macao* (ETAPM), that is, absence without justification for five to nine consecutive days or 10 to 19 intermittent days in the same calendar year, the penalty of suspension could not be imposed. In addition, the MGTO considered that the circumstances referred to in Paragraph 2 of Article 313 of the ETAPM only involve the performance of functions and that there is no concrete provision for circumstances related to the violation of the duty of assiduity. Therefore, the penalty of a fine could not be imposed in this case. Finally, given that there was no loss caused to or discredit brought on the service, the functional head in question was only subject to written reprimand according to Article 312 of the ETAPM.

Beyond doubt, considering the various circumstances of the facts found in the disciplinary proceeding and taking into account the degree of fault of the offender and his personality, the Public Administration can legally apply, among the different penalties provided for (written reprimand, fine, suspension, compulsory retirement and dismissal), a lower or higher penalty. However, with full respect for the MGTO's understanding, it excluded the application of penalty of fine provided for in Paragraph 2 of Article 313 of the ETAPM, based

on the grounds that the circumstances described in the aforesaid article only involve the performance of functions and there is no concrete provision for the circumstances related to the violation of the duty of assiduity. The CCAC did not agree on the application of the law to the facts.

It is widely known that the circumstances foreseen by the legislator and included in the ETAPM for the various disciplinary penalties are not exhaustive (except the penalty of written reprimand). Paragraphs 1 of the articles in question, which provide for the penalties, refer to their general legal application requirements (see Paragraphs 1 of Article 313, Article 314 and Article 315). Regarding the application of the law to the facts, the Public Administration does have a certain degree of discretion.

In the opinion of the CCAC, the duty of assiduity is one of the functional obligations that civil servants must fulfil. In this specific case, as a functional head, the personnel was absent from work without justification for seven intermittent days. Despite that the number of days of unjustified absence did not reach the number of days provided for in Subparagraph e) of Paragraph 2 of Article 314 of the ETAPM for the application of the penalty of suspension, the situation was far more serious than those provided for in Article 312 of the ETAPM. Therefore, the MGTO should at least consider the application of the fine penalty.

Given the above situation, the CCAC presented its opinions and suggestions to the MGTO. The MGTO responded that the disciplinary proceeding was filed after the execution of the penalty of written reprimand. In accordance with the principles of legality and *ne bis in idem* enshrined in Article 3 of the *Administrative Procedure Code*, Article 40 of the *Basic Law of Macao* and Paragraph 7 of Article 14 of the *International Covenant on Civil and Political Rights*, the disciplinary proceeding should not be reopened, unless the accused

requests a review according to Article 343 of the ETAPM. In addition, without a legal basis, neither the penalty for the disciplinary offence in question could be revoked nor another penalty could be imposed for the same facts.

Judging from the handling of the aforesaid disciplinary proceeding by the MGTO, it is likely that the MGTO might deviate from the ETAPM's legislative intent again when applying the law, so it might not accurately impose disciplinary penalties or achieve the purpose of the establishment of disciplinary proceedings and the respective penalties. Therefore, according to the powers provided for in Subparagraph 7) of Article 4 of the *Organic Law of the CCAC*, the CCAC requested that the MGTO should, in the following two years, inform the former of the establishment and handling of all its disciplinary proceedings, so that they can be subject to its review.

In July 2020, the CCAC received the first notification from the MGTO relating to the carrying out of an inquiry of disciplinary nature. The MGTO also promised that it would continue to communicate with the CCAC on the relevant matters. To date, the work in relation to the retrospective review is still being followed up.