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27 May 2006

Ms Miranda HON
Clerk
Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

[Fax No. 2537 1204]

Dear Ms Hon,

**The Director of Audit's Report on the
results of value for money audits (Report No. 46)**

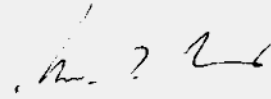
Chapter 7 — RTHK: financial control and resource management

Thank you for your letter of 20 May 2006.

I provide at Annexes 1 to 3 my response to items (a) to (c) of your letter. Regarding item (d) of your letter, my response was provided to you in my letter of 24 May 2006.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David M T Leung', written in a cursive style.

(David M T LEUNG)
for Director of Audit

- c.c. Secretary for Commerce, Industry and Technology (Fax: 2537 3210)
Permanent Secretary for Commerce, Industry and Technology
(Communications and Technology) (Fax: 2588 1421)
Director of Broadcasting (Fax: 2337 2403)
Secretary for Financial Services and the Treasury
(Attn.: Miss Amy TSE) (Fax: 2596 0729)

**Audit's response to item (a) of PAC's letter of
20 May 2006, in which the PAC asked whether, according to the
Finance Committee (FC)'s decisions in March 1982, RTHK's departmental
contract staff (DCS) were allowed to remain on contract for more than a year**

1.1 The FC paper of 24 March 1982 states that:

"14. In effect, the employment of departmental contract staff will normally be temporary pending the completion of formal appointment procedures to the vacant post. There may exceptionally be instances where someone is employed as departmental contract staff but, for valid reasons, is not suitable for eventual appointment to the post, and in these cases the employment on departmental contract staff terms will tend to be of longer duration.

17. In normal circumstances, it is not envisaged that departmental contract staff will remain on contract for more than a year in any individual case. Should this happen, however, the Director of Broadcasting should have the authority to review the fixed point of salary, and to move it up or down on the appropriate pay scale, having regard to his updated assessment of the value of the person concerned – this review would be carried out on the anniversary of the person's first employment."

1.2 Based on the FC paper of 24 March 1982, Audit considers that, **in exceptional circumstances**, the Director of Broadcasting should have the authority to employ DCS on contract for more than a year.

1.3 The PAC may wish to note that in paragraphs 2.40 to 2.47 of Chapter 7 of the Director of Audit's Report No. 46, in February 1997 Audit reported that RTHK employed a large number of DCS I and Category II service providers for prolonged periods of time (see para. 4.10 of Chapter 4 of the Director of Audit's Report No. 28). In November 1997, RTHK stated that it would adopt a phased approach to reduce the number of long serving DCS I and would regularise the employment of DCS III by appointing them on non-civil service contract terms. Audit considers that the DCS structure should have largely been rationalised by 2006. Audit notes that the number of DCS I was indeed reduced from 120 as at April 1998 to 18 as at January 2006 (Note). However, because RTHK has continued to employ DCS III, the number of DCS III remained high, increasing

Note: *In paragraph 4.39 of Chapter 4 of the Director of Audit's Report No. 28 of February 1997, Audit found that the employment contracts for many DCS I were open-ended without stating the period of employment. RTHK has revised its terms of employment and disallowed the employment of DCS I for contractual periods of more than one year, but their employment is subject to annual review and renewal.*

from 120 as at January 1998 to 148 as at January 2006 (see para. 2.46 of Chapter 7 of the Director of Audit's Report No. 46).

Audit's response to item (b) of PAC's letter of 20 May 2006, in which the PAC asked Audit to confirm whether, based on the latest information provided by Company B regarding the years of experience of the outside broadcast (OB) production team on 27 February 2005, Company B would still be awarded the contract

2.1 As stated in paragraph 3.10 of Chapter 7 of the Director of Audit's Report No. 46, the average relevant experience of the crew members for the two episodes of City Forum on 20 and 27 February 2005 according to the experience profiles provided by Company B to Audit were 17.3 years and 12.9 years respectively. Audit noted that the average relevant experience of the crew members on the two episodes were considerably lower than the average of 19.3 years of experience for the eleven core members specified in the tender document.

2.2 Audit also noted that if Company B had used those crew members with an average of 12.9 years of experience (i.e. the OB production team on 27 February 2005) as the core members specified in the tender document, Company B would not have been awarded the contract based on the marking scheme for the tender (see para. 3.11(c) of the Audit Report).

2.3 RTHK pointed out at the public hearing that according to the latest information provided by Company B, the relevant experience of the crew members for the episode on 27 February 2005 was longer than that mentioned in paragraph 3.10 of the Audit Report. At Audit's request, RTHK confirmed with Company B that the average relevant experience of the crew members concerned was revised to 14 years (instead of 12.9 years), taking into account experience outside Company B. **The 14 years' experience was counted up to August 2004 (i.e. when the contract was extended by one year after it was awarded in August 2003).**

2.4 Assuming that the revised figure of 14 years of average relevant experience (as at August 2004) had been used by Company B in the tender submission, Company B might have been awarded the contract. However, if Company B had used those crew members of the OB production team on 27 February 2005 as core members in the tender submission on 4 August 2003, Audit considers that the average relevant experience of the members should have been only about 13 years (i.e. 14 years less 1 year) at that time. **Audit has re-calculated Company B's scores according to the marking scheme for the tender based on this revised figure of 13 years of average experience as at August 2003, and reached the same conclusion as stated in paragraph 3.11(c) of the Audit Report that Company B would not have been awarded the contract.**

2.5 That said, the PAC may wish to note that Audit's main concern in paragraphs 3.9 to 3.11 of the Audit Report is that the replacement of more than five of the

eleven core members specified in the contract in nearly all occasions (i.e. 46 of a total of 47 episodes in 2004-05) constituted a breach of the terms of contract. Audit selected two episodes (20 and 27 February 2005) as examples to assess the consequence of such a breach of contract. The average relevant experience of the crew members concerned was found to be considerably lower than the average experience for the eleven core members specified in the tender document (see para. 3.10 of the Audit Report). Given limited audit resources, and without ready access to Company B's records, Audit did not examine the other 44 cases (i.e. 46 episodes less 2 episodes).

2.6 Audit has recommended that the Director of Broadcasting should closely monitor the provision of OB services in order to ensure that the contractor fully complies with the terms of the contract (see para. 3.14(a) of the Audit Report). The Director of Broadcasting agrees with this audit recommendation and Company B confirms that it will provide the appropriate personnel for OB events in future (see para. 3.15 of the Audit Report).

Audit's response to item (c) of PAC's letter of 20 May 2006, in which the PAC sought Audit's view on RTHK's response at the public hearing that as the Technical Services Agreement (TSA) had not yet expired, there was little scope for requiring Company A to re-schedule the rest days of the TSA staff

3.1 Audit fully recognises that the current TSA was signed by the Government and Company A, and RTHK was only one of the user departments of the TSA.

3.2 As mentioned in paragraph 4.7 of Chapter 7 of the Director of Audit's Report No. 46, in March 1999 Audit conducted a review of the management of TSA services by government departments and the cost-effectiveness of the Government's spending under the TSA. The 1999 audit revealed that there was room for improvement in a number of areas, including the control of OT payment under the TSA in the Civil Aviation Department (CAD) and RTHK (see paras. 33 to 50 of Chapter 7 of the Director of Audit's Report No. 32). Audit recommended in March 1999 that both the Director of Civil Aviation and the Director of Broadcasting should (see para. 45 of Chapter 7 of the Director of Audit's Report No. 32):

- (a) ascertain whether there was a genuine need for TSA staff to work OT;
- (b) find ways (e.g. by a staff rotation schedule) of ceasing the practice of setting Sundays as rest days for the TSA staff; and
- (c) examine whether there was scope for re-scheduling the working hours of the TSA staff to match with the work requirement in order to reduce OT work to the minimum.

3.3 Although there are no specific provisions in the TSA governing the working hours and rest days of the TSA staff, since the 1999 audit, RTHK has been able to reduce OT payments under the TSA by taking various measures. As mentioned in paragraph 4.8 of Chapter 7 of the Director of Audit's Report No. 46, RTHK's OT payments under the TSA decreased by 39%, from \$7.5 million in 2000-01 to \$4.6 million in 2004-05. While recognising RTHK's efforts in reducing OT payments under the TSA, Audit's recent review has found that there is scope for RTHK to further reduce OT payments (see paras. 4.9 to 4.21 of the Audit Report). In particular, Audit's analysis of the rest days of TSA staff in RTHK for the period September 2004 to March 2005 showed that 39% of TSA staff still had their rest days on Sundays (see para. 4.19 of the Audit Report). Taking into account RTHK's work pattern (see para. 4.20 of the Audit Report), Audit has recommended that the Director of Broadcasting should urge Company A to consider re-scheduling the rest days on Sundays of TSA staff to better match with the work requirements (see para. 4.23(a)(iii) of the Audit Report).

3.4 It is relevant to point out that, in response to the audit recommendations mentioned in paragraph 3.2(b) and (c) above, the CAD reached an agreement with Company A to treat public holidays as normal working days, apart from curtailing the practice of setting Sundays as rest days for TSA staff and re-scheduling their working hours to minimise OT work (paragraph 47 of the Government Minute in response to the PAC Report No. 32 dated 13 October 1999 refers). Audit considers that, if Sundays had been treated as normal working days for TSA staff in RTHK, a smaller percentage (compared with 39% mentioned in para. 3.3 above) of TSA staff should have taken their rest days on Sundays.

3.5 Notwithstanding that the TSA has not yet expired, given that 39% of TSA staff in RTHK still had their rest days on Sundays (see para. 3.3 above), there is still scope for RTHK to further negotiate with Company A to re-schedule some of the rest days of TSA staff to better match with the work requirements on Sundays (which constitute about 20% of the TSA workload — see para. 4.20 of the Audit Report).