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本署檔號 OUR REF : (85) in CP/IA 20/10/2 SF (15) 05-06
來函檔號 YOUR REF : CB(3)/PAC/R46
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24 May 2006

Clerk to Public Accounts Committee
(Attn : Ms Dora WAI)
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Wai,

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

Chapter 1 - Collection of fines imposed by Magistrates' Courts

Thank you for your letter of 17 May 2006 requesting us to provide additional information to facilitate Public Accounts Committee's consideration of the above subject. The information is set out below :-

(a) Direction of the review to be carried out by the Administration on the existing criteria for application of distress warrants relating to parking contraventions

Under the present mechanism, the most effective means to enforce payment of outstanding parking fines is Transport Department's (TD) control in refusing renewal of annual vehicle licence under the defaulter's name. In majority of cases, after the defaulters were informed about their outstanding fines when applying for renewal of licences in TD, they would pay the fines to the Judiciary so that they can renew their licences in TD.

In cases the defaulters fail to settle the outstanding fines, the fines will be accumulated and distress warrants will be issued for execution when any one of the criteria for applying distress warrants is met. Currently, the criteria for applying distress warrants relating to parking contravention are as follows:-

- (a) the ownership of the offending vehicle has been transferred;
- (b) the vehicle licence of the offending vehicle has expired for two years; or
- (c) the total amount of outstanding fixed penalty and court cost due from the defaulter has accumulated to over \$50,000.

Under criterion (b), if the defaulter does not renew the vehicle licence of the offending vehicle, outstanding fixed penalty and court cost would accumulate for more than 2 years before application of distress warrants. After consultation with Department of Justice and Transport Department, the Police proposes criterion (b) be revised from when the vehicle licence of the offending vehicle has expired for two years to **as soon as the vehicle licence expires**. With the revision of criterion (b), all cases of outstanding parking fines should be addressed upon expiry of the defaulters' vehicle licences.

Regarding criterion (c), a review of the existing threshold of \$50,000 will be conducted pending more statistics and information about the impact on the number of warrants if the threshold is to be revised. The following points will be taken into consideration in the review of the threshold of \$50,000:-

- Under the current rate of parking fines of \$320, in case of non-payment, an ex parte court order of \$1,080 (i.e. \$320 (fine) + \$320 (penalty) + \$440 (court cost)) will be issued to the defaulter. With the existing threshold of \$50,000, a distress warrant would be issued to a defaulter when a total of 47 court orders of parking fines have been issued on him. The review will consider whether the threshold of \$50,000 is at a too high level. At present, there are only a few cases in a year of which the warrants are issued because of this criterion. The majority of warrants (about 500 to 600 annually) are issued as they meet either criterion (a) or criterion (b).
- Since vehicle licences have to be renewed annually, it may not be cost effective to issue distress warrants to defaulters with a relatively small amount of fines, knowing that most defaulters would pay the outstanding fines upon their renewal of vehicle licences in TD.
- The purpose of criterion (c) should be restricted to tackle really serious cases which warrant earlier recovery actions before the expiry of the defaulters' vehicle licences and it is reasonable to set the threshold at a relatively high level.

(b) (i) Breakdown of the \$30.5 million of fines relating to moving offences and parking contraventions written off in 2005-06

Breakdown for the \$30.5 million written off in 2005-06 as uncollectible fines relating to the moving offence and parking contraventions is detailed at the **Appendix A**.

The sum of \$30.5 M covered a total of 28,330 cases for which fines were originally issued during the period from April 1996 to March 2000 but payment remained outstanding in the year 2005. During the period from April 1996 to March 2000, in total 7,306,317 fixed penalty tickets were issued and 28,330 cases therefore represented a very small % of the number of fines to be collected during the period.

(ii) Reason for writing off

The reason for writing off fines is in line with the government policy and practice to be prudent for accounting purpose to write off long outstanding fines for which the chance of recovery is very low.

(iii) Recovery actions after writing off

After writing off of the debts, recovery actions will still continue. If there are non-payment or distress warrants on the cases, the warrants will remain valid. According the latest figures, of the \$30.5 M, in total \$1.3 M for 1,433 cases had been recovered, after they had been written off in year 2005. Breakdown of the amount and no. of cases is shown in the **Appendix A**.

(c) Reasons for not writing off fines between 2001-02 and 2004-05

When the power of writing off fines was transferred to the Police in year 2000, Secretary for Financial Services and the Treasury had actioned the writing off up to fines originally due in 1995-96.

There is no restriction on the period of time should an outstanding fine be considered as non-recoverable and the writing off action be initiated under Financial Circular No. 6/2000 or any other regulations. The Police did not authorise any writing offs during the years 2001-02 to 2004-05 because the department was prudent and cautious and had taken time in setting the procedures and policy for exercising the delegated power.

In year 2005, the Police accepted a lapse of 5 years to be a reasonable period in acknowledging that the chance of recovering the outstanding fines is low and writing off action should be initiated and had written off a total amount of outstanding fines of \$30.5 M originally due in 1996-97 to 1999-2000.

Thereafter from year 2006 and onwards, the Police will conduct annual exercise in writing off fines that have been outstanding for more than 5 years.

(d) (i) Whether the \$1,500 threshold is the only criterion for issuing warrants in respect of moving offences.

Yes, the \$1,500 threshold is the only criterion for issuing warrants in respect of moving offences.

(ii) Reasons for the great difference between the two thresholds, i.e. \$1,500 and \$50,000.

The Police cannot trace the history about the setting of the two thresholds. Audit's review also could not ascertain which department(s) had made such thresholds and the basis of them. There may be a number of considerations contributing to the difference between the two thresholds. One of the considerations can be the difference in process and cost of recovery actions for the two categories of fines. Also the thresholds may be set for different purposes in the process of recovery actions.

For distress warrant with threshold of \$50,000 relating to parking contraventions

In executing a distress warrant relating to parking contraventions, a bailiff of the Judiciary will seize the goods and chattels of the defaulter at the latter's address to the limit that the value of the seized items will cover the outstanding fines and the cost of seizure. The defaulter is allowed to pay the outstanding fines and the cost of seizure within 5 days. Otherwise, the seized items will be sold by public auction. The sales proceeds will be used to settle the outstanding fines and the cost of seizure.

As explained in our reply to (a), under the present mechanism, the major means to enforce payment of outstanding parking fines is TD's control in refusing renewal of annual vehicle licence under the defaulter's name. Since vehicle licences have to be renewed annually, it is definitely the most economical way to recover the outstanding parking fines upon expiry of the vehicle licences. It is reasonable to guess the threshold of \$50,000 for applying distress warrants is purposely set at a high level to screen only those really serious cases that warrants earlier actions before the renewal of the licences.

For non-payment warrant with threshold of \$1,500 relating to moving offences

For non-payment warrants relating to moving offences, Police will take actions to arrest the defaulter. Upon the arrest of the defaulter, he will normally be bailed to appear in court.

As fines for moving offences are imposed on the drivers, TD will also refuse the renewal of driving licences of the defaulters. However, driving licences will normally be renewed every 10 years, the control on renewal will not be an effective means for recovery of the outstanding fines. For this reason, the major means of recovery action is the issue of non-payment warrants. As such, the threshold for issuing non-payment warrants is set at relatively low level justifiable by cost effectiveness of the recovery actions.

(iii) Timing and direction of the review regarding the \$1,500 threshold.

Currently the majority of the moving offence tickets issued are in the category of \$450. In case of non-payment, upon issue of an ex parte court order, the amount of penalty can be up to \$1,340 (i.e. \$450 (fine) + \$450 (penalty) + plus \$440 (court cost if applicable)). With the present threshold of \$1,500, for penalty tickets of \$450 or below, non-payment warrants will only be issued on offenders with two outstanding court orders. Whereas for penalty tickets of over \$450, non-payment warrants may be issued on offenders with one outstanding court order.

It is possible to consider to remove the existing threshold of \$1,500, which would result in non-payment warrant being issued for every outstanding case of fines relating to moving offences. However there will be implication on resources and cost effectiveness and the Police will in consultation with Department of Justice review the existing criterion of issuing non-payment warrants relating to moving offences.

(e) The reason why the distress warrants were issued 20 months after the defaulter had committed the first parking contravention.

In the particular case mentioned in paragraph 3.12 of the Audit Report, it met neither criterion (a) that the ownership of the offending vehicle had been transferred nor criterion (b) that the vehicle licence of the offending vehicle had expired for two years. It was criterion (c) that the total amount of outstanding fixed penalty and court cost has accumulated to over \$50,000 to trigger the mechanism for the issue of distress warrants to the defaulter.

The first exparte court order was issued against the defaulter on 2003-01-20 for parking contraventions committed in October 2002. Additional exparte court

orders were issued to him thereafter for subsequent tickets. On 2004-03-29, the 45th to 48th ex parte court orders were issued simultaneously against the defaulter. The 47th application triggered a distress warrant when the total amount of outstanding fixed penalty and court cost due from the defaulter has accumulated to over \$50,000. The 48th ticket then followed the same legal process. As a result, two distress warrants were issued against the defaulter on 2004-06-09 and 2004-06-11 respectively.

(f) (i) Up-to-date position of the cases of the 8 defaulters for whom 57 non-payment warrants had been issued

2 defaulters have been arrested and a total of 19 warrants were executed. Repeated attempts in different periods of the day have been made to locate the 6 other defaulters at their last known addresses but to no avail. Further enquiries have been made to check if they have other addresses. Their particulars have also been entered into the Police's list of wanted persons. Police's actions to locate the 6 defaulters are ongoing.

(ii) Information relating to the timing of the execution attempts carried out by the Police and the success rates of attempts carried out in different periods of a day

The Police does not keep statistics relating to the timing of the execution attempts carried out by the Police and the success rates of attempts carried out in different periods of a day.

Alternatively, the Police had conducted a data sampling exercise on the successful execution of 2,830 non-payment warrants relating to traffic offences on 1,495 defaulters between February and April 2006 to study the rates of successful execution in different periods of a day. Please see the table at **Appendix B** for the results of the exercise.

During the period, a total of 1,495 defaulters were arrested. Warrants of 894 defaulters (59.8%) were executed between 0900 and 1700 hours; warrants of 350 defaulters (23.4%) were executed between 1700 and 2400 hours; and warrants of 251 defaulters (16.8%) were executed between 2400 and 0900 hours.

Of the 1,495 defaulters, 68 defaulters had 5 or more warrants. Statistics of these defaulters are similar to the overall figures. Among these 68 defaulters, warrants of 32 defaulters (47%) were executed between 0900 and 1700 hours; warrants of 21 defaulters (30.9%) were executed between 1700 and 2400 hours; and warrants of 15 defaulters (22.1%) were executed between 2400 and 0900 hours.

(g) A review, in consultation with Immigration Department and the Department of Justice, to see if certain categories of defaulters should be placed on the Immigration Department's watch list

In considering Audit Commission's recommendation, the Police is in the process of consulting Department of Justice and Immigration on the following issues:-

- (i) The propriety of the definition of serious cases of payment defaulters;
- (ii) The setting of the threshold, whether it should be determined by the number of warrants or the total amount of fines, to trigger the mechanism;
- (iii) Legal basis to include only those exceeding the threshold in the watch list;
- (iv) The proportionality of the suggested measure on human right consideration; and
- (v) Other issues, such as resources implication, management of control points and acceptance by the public.

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

Yours sincerely,



(Mrs. Kitty CHENG)
for Commissioner of Police

c.c. Judiciary Administrator
Deputy Director of Public Prosecutions
Commissioner of Transport
Director of Immigration (paragraph (g) is relevant)
Secretary for Financial Services and the Treasury (Attn: Miss Amy TSE)
Director of Audit

Breakdown of traffic fines written off in 2005-06

Year when the Court Orders were issued	No. of cases	Outstanding fines and fixed penalties	Outstanding court cost	Total
Apr 96 – Mar 97	8,483	\$5,412,720	\$3,717,062	\$9,129,782
Apr 97 – Mar 98	6,550	\$4,189,920	\$2,882,640	\$7,072,560
Apr 98 – Mar 99	8,142	\$5,210,890	\$3,580,130	\$8,791,020
Apr 99 – Mar 00	5,155	\$3,298,702	\$2,268,960	\$5,567,662
	28,330	\$18,112,232	\$12,448,792	\$30,561,024

Breakdown of fines remaining outstanding after written off in 2005-06 as at 2006-05-20

Year when the Court Orders were issued	No. of cases	Outstanding fines and fixed penalties	Outstanding court cost	Total
Apr 96 – Mar 97	8,187	\$5,225,840	\$3,587,080	\$8,812,920
Apr 97 – Mar 98	6,063	\$3,880,320	\$2,668,360	\$6,548,680
Apr 98 – Mar 99	7,867	\$5,034,890	\$3,461,330	\$8,496,220
Apr 99 – Mar 00	4,780	\$3,059,130	\$2,103,960	\$5,163,090
	26,897	\$17,200,180	\$11,820,730	\$29,020,910

Breakdown of fines recovered after written off in 2005-06 as at 2006-05-20

Year when the Court Orders were issued	No. of cases settled	Percentage of cases settled	Amount of fines* recovered	Percentage of fines recovered
Apr 96 – Mar 97	296	3.5%	\$316,440	3.5%
Apr 97 – Mar 98	487	7.4%	\$421,200	6.0%
Apr 98 – Mar 99	275	3.4%	\$267,780	3.0%
Apr 99 – Mar 00	375	7.3%	\$340,360	6.1%
	1,433	5.1%	\$1,345,780	4.4%

* There are some cases where the Court had ordered a different fine/Court Cost to be paid or imprisonment in lieu of payment.

Successful Execution of Traffic Arrest Warrants
For the period from 1 February 2006 to 30 April 2006

Hours	No. of Traffic Warrants Executed	No. of Defendant Arrested	No. of Defendants Arrested with 5 or more warrants*
0900 – 1700	1,612 (57.0%)	894 (59.8%)	32 (47.0%)
1700 – 2400	685 (24.2%)	350 (23.4%)	21 (30.9%)
2400 – 0900	533 (18.8%)	251 (16.8%)	15 (22.1%)
Total	2,830 (100%)	1,495 (100%)	68 (100%)

* 68 defaulters, out of the 1,495 defaulters arrested during the period, had 5 or more warrants