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Panel on Financial Affairs
Special meeting on 30 June 2008

Background brief on
the Administration's proposal to write off a judgement debt

Purpose

This paper highlights the background and summarizes the views and concerns expressed by members of the Panel on Financial Affairs (FA Panel) when being consulted on a proposal by the Administration to write off a judgement debt owed to the Government by an auctioneer hired by the Government Supplies Department (GSD) (now the Government Logistics Department (GLD)).

Background

2. At the meeting held on 6 June 2005, the Administration consulted the FA Panel on its proposal to write off an irrecoverable debt of \$16.8 million¹ owed to the Government by the Hong Kong Auctioneers & Estate Agency Ltd. (HKAEAL), the contracted auctioneer of GSD for disposal of surplus and unserviceable stores. Key developments of the case as reported by the Administration are as follows:

- (a) HKAEAL had been GSD's contracted auctioneer for the sale of unserviceable or obsolete government stores and confiscated goods from the 1970s till 31 August 1998. In August 1998, GSD discovered that of the 58 auctions conducted during the period of the contract from 1 April 1996 to 31 August 1998, HKAEAL had only reimbursed to the Government the proceeds from the first 43 auctions. The amount in default, inclusive of net sale proceeds and interest for late payments, was about \$15.8 million at the time.

¹ The amount of \$16.8 million was calculated up to 24 June 2005, which was the date on which the Administration had intended to seek the approval of the Finance Committee.

- (b) A Deed of Settlement was concluded with the Managing Director (MD) of HKAEAL on 31 March 1999 with a schedule of payment for full settlement of the outstanding amount. After making several repayments totalling \$6 million towards the debt, HKAEAL and the MD were unable to deliver further. In November 1999, the High Court ordered HKAEAL and its MD to pay the Government the sum of \$10,742,838.17 plus interest from the date of judgement. The Court also awarded costs to the Government.
 - (c) Due to failure of HKAEAL to settle the judgement debt ordered by the Court, a winding-up order was made against the company in June 2000. The Official Receiver was appointed the liquidator. Meanwhile, the MD left Hong Kong in February 2000 and had not returned since then. Upon the application of the Official Receiver, a Warrant of Arrest against the MD was granted by the Court in June 2000.
 - (d) Investigations and searches were made to locate the MD, but all such attempts were futile. The Warrant of Arrest was discharged in March 2004. While the liquidation process had yet to be fully concluded, the Official Receiver had advised that it was unlikely that any dividends would be paid. The Administration therefore considered that the debt had become irrecoverable and should be written off.
3. For cases not involving fraud or negligence, the Financial Secretary (FS) was empowered under section 38 of the Public Finance Ordinance (Cap. 2) (PFO) to write off losses of public moneys, stores, etc. without financial limit. For cases involving fraud or negligence, FS might only exercise his power of write-off subject to such conditions, exceptions and limitations as the Finance Committee (FC) might specify. Section 38 of PFO is at **Appendix I**. The current limit of delegated authority was \$500,000 in each case, or in respect of any one cause. Since staff negligence was involved in the current case and the amount exceeded the financial limit, the approval from FC to write off the irrecoverable debt would be required.

Issues of concern

4. At the FA Panel meeting in June 2005, members considered that more information should be provided by the Administration before the Panel could further consider the write-off proposal. The major views and concerns expressed by members and the Administration's response are summarized in the ensuing paragraphs.

Actions taken to recover the outstanding payment

5. Query was raised on why GSD had not referred the case to the Police when the default in proceeds payment by the auctioneer was discovered in August 1998; and whether GSD, before reaching a Deed of Settlement with the MD of HKAEAL

on 31 March 1999, had consulted the Department of Justice (DoJ) on the feasibility of instituting criminal proceedings against the auctioneer or its MD. As subsequently confirmed by the Administration, GSD did not consult DoJ as its prime concern at that time was recovery of the default payment as soon as possible. Nevertheless, the case had been reported to the Independent Commission Against Corruption but investigation did not reveal any evidence of fraud or corruption. In July 2005, the case was referred to the Police. Upon completion of investigation, the Police advised GLD on 18 April 2007 that there was insufficient evidence to support a charge against any person.

6. Members were of the view that before seeking approval to write off the sum, the Administration should exhaust all practicable means (including taking legal action) to recover the proceeds. Members pointed out that if the MD of HKAEAL took away the proceeds, he should be liable to prosecution. The Administration should pursue its tracing claim to recover the proceeds from the directors including the MD.

7. In its progress report provided to the Panel, the Administration informed members of the series of legal proceedings taken against HKAEAL and the MD. These included the issuance of a winding-up order against the company in June 2000 due to its failure to settle the judgement debt ordered by the Court in November 1999 and the grant of a Warrant of Arrest in June 2000 against the MD who had left Hong Kong. According to the Administration, despite its searches, the MD could not be located and there was no information on the assets of the MD for enforcement of the debt. As there was no evidence to show that the proceeds of the auctions had been used to purchase any assets, no assets could be identified for the purpose of tracing.

8. Noting that the Warrant of Arrest against the MD of HKAEAL was discharged in March 2004, members were concerned about the liability, if any, on the MD if he returned to Hong Kong. The Administration's advice was that upon the MD's return, GLD might consider initiating action to enforce the judgement debt, such as petitioning for bankruptcy.

Remedial actions and internal investigation

9. Members were concerned whether the incident had revealed that there existed loopholes in the accounting procedures relating to the sale of government properties by auction. Another issue of concern was the responsibility and negligence, if any, of the staff concerned.

10. According to the Administration, its internal investigation revealed that the Senior Accounting Officer (SAO) involved in the case had not complied with the requirements of ensuring prompt collection of proceeds from HKAEAL and reporting late payments to the senior management of GSD. The Administration confirmed that formal disciplinary proceedings had been instituted against the SAO who was punished with a severe reprimand and a fine. Several other officers were given either verbal or written warnings.

11. On ways to improve the system to prevent recurrence, the Administration reported that a general review of the auction arrangements had been carried out in early 2002. Thereafter, the Government had taken over the auction function since November 2002. Under the new arrangements, the auctions were held in-house with the new auctioneer employed to provide the professional service of conducting the auction only. It is no longer responsible for collecting auction proceeds from the successful bidders.

12. The detailed response provided by the Administration is re-circulated at Annex B of LC Paper No. CB(1)1771/07-08(05).

Follow-up action

13. The Secretariat has followed up with the Administration from time to time on the development of the case. According to the recent information provided by the Administration, DoJ has obtained a prohibition order to prevent the MD of HKAEAL from leaving Hong Kong after his return to Hong Kong. DoJ has also concluded the examination of the MD as to his assets for the purpose of enforcement of the debt at the hearing on 22 August 2007. According to the information provided by the MD, the balance in his bank accounts is not sufficient to settle the outstanding debt. A bankruptcy petition was therefore filed against him. The petition was heard on 2 September 2007 and a bankruptcy order with cost against the MD was granted. DoJ would file a Proof of Debt with the Official Receiver for sharing of dividends, if any, resulting from the realization of the MD's assets by the Official Receiver. As advised by the Administration, taking into account DoJ's advice that after a bankruptcy order has been granted, all powers of investigation and realization will be vested and exercisable by the Official Receiver's Office, the prohibition order against the MD has not been extended after September 2007.

14. The Administration considers that all debt recovery actions have now been completed and it can be ascertained that the judgement debt in question has become irrecoverable. In order to seek FC's approval to write off the debt before the end of the current legislative session, the Administration will revert to the FA Panel on its proposal at the meeting to be held on 10 June 2008.

Relevant papers

15. A list of relevant papers is at **Appendix II**.

Section 38 of Public Finance Ordinance (Cap.2)

Chapter:	2	Title:	PUBLIC FINANCE ORDINANCE	Gazette Number:	23 of 2002
Section:	38	Heading:	Abandonment of claims, etc. and write-off of public moneys and stores	Version Date:	19/07/2002

PART VI

MISCELLANEOUS

(1) Without prejudice to section 39A, the Financial Secretary may- (Amended 89 of 1993 s. 29; 23 of 2002 s. 122)

- (a) abandon, remit or waive any claims by or on behalf of the Government;
- (b) write off arrears of revenue;
- (c) write off losses or deficiencies of public moneys, stamps, securities or stores; and
- (d) write off condemned, unserviceable or obsolete stores or other movable property belonging to or provided by the Government.

(1A) In any case involving fraud or negligence, the Financial Secretary may only exercise the powers under subsection (1) subject to any conditions, exceptions or limitations the Finance Committee may specify. (Added 23 of 2002 s. 122)

(2) The Financial Secretary may in writing delegate to any public officer any of the powers conferred upon him by subsection (1) subject to such conditions, exceptions and limitations as are specified in the delegation.

Appendix II

List of relevant papers

Committee	Paper	LC Paper No.
Meeting of Panel on Financial Affairs (FA Panel) on 6 June 2005	✧ Administration's paper on "Write-off of a Judgement Debt" http://www.legco.gov.hk/yr04-05/english/papers/fa/papers/fa0606cb1-1678-6e.pdf	CB(1)1678/04-05(06)
	✧ Minutes of the FA Panel meeting on 6 June 2005 http://www.legco.gov.hk/yr04-05/english/papers/fa/minutes/fa050606.pdf	CB(1)2207/04-05
--	✧ Progress report on proposal to write off a judgement debt provided by the Administration http://www.legco.gov.hk/yr06-07/english/papers/fa/papers/facb1-2055-1-e.pdf	CB(1)2055/06-07(01)