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(Total : 4 pages)

12 January 2009

Ms. Serena CHU
Clerk to Public Accounts Committee
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong
(Fax No.: 2537 1204)

Dear Ms CHU,

**The Director of Audit's Report on the
results of value for money audits (Report No. 51)
Management of Public Markets (Chapter 6)**

**Follow-up to the Public Accounts Committee Meeting
on 11 December 2008**

I refer to your letter dated 12 December 2008 regarding Report No. 51 – Management of Public Markets (Chapter 6) and provide information on items (j) to (m) therein as follows:

- (j) **It was mentioned at the hearing that the FEHD was following up on 30 plus suspected subletting cases. Please provide a situation report on the follow-up actions taken on these cases as well as their latest positions.**

We are following up on the suspected subletting cases mentioned in Audit Report No. 51. We have interviewed all tenants concerned and they denied subletting.

Some of the cases involved tenants who registered their business in the name of another person. When interviewed, these tenants put up various reasons to explain why they authorised other persons to register their

business (e.g. not knowing that tenants should make business registration in their own name, or were illiterate or busy). Some tenants indicated that they would or had already amend their business registration to bring it under their own names. We have also referred all these cases to the Inland Revenue Department for it to follow up on breach of the Business Registration Ordinance (Cap 310), if any.

Apart from business registration, we also checked records to see if the tenants had personally operated the stall regularly or intermittently. We also requested them to provide employment records, Mandatory Provident Fund contribution records, order and cash records, water and electricity bills, etc. of their stalls to prove that they were in possession and control of the stall business. Based on the information and evidence obtained in each case, we will seek legal advice to establish whether subletting is involved and take follow-up actions accordingly.

- (k) **According to paragraph 4.15(e) of the Audit Report, the FEHD will seek legal advice on how to publicise some blatant subletting cases. Please inform the Committee of the FEHD's implementation plan and timetable in this regards, having considered the legal advice obtained.**

According to legal advice, the name of a tenant, investigations findings of a subletting case and termination of a market stall tenancy agreement as a result of breaching the clause prohibiting subletting are personal data of the tenant. The use or disclosure of personal data is regulated by the Personal Data (Privacy) Ordinance (Cap. 486) (the Ordinance). Data Protection Principle 3 of the Ordinance imposes restrictions on the use of personal data, requiring that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose referred to at the time of the collection of the data. However, section 61 of the Ordinance provides an exemption from Data Protection Principle 3 in any case in which the publishing of the data is in the public interest. As the data user, FEHD must consider whether it is in the public interest to disclose the information on the blatant subletting cases and, if so, the extent of disclosure.

In light of the above legal advice, we plan to publicise the market name and stall number of sublet stalls upon termination of their tenancy agreements, so that the consequence of subletting will be made known to the public and market stall tenants to achieve a deterrent effect.

- (l) **It was mentioned at the hearing that the FEHD had identified about 10 suspected cases where the stall tenants appeared to offer commodities for wholesale, which was not allowed in the tenancy agreements. The FEHD will seek legal advice on whether enforcement actions could be taken. Please inform the Committee of the FEHD's plan in handling these cases, having considered the legal advice obtained.**

It was pointed out in Audit Report No. 51 that several market stalls appeared to have been operated for wholesale business. We have started detailed investigations and are seeking legal advice on establishing evidence of wholesale activities at the stalls. We will take immediate action against any tenant found to have breached the tenancy agreement.

- (m) **The names of the eight new markets commissioned since the FEHD has taken over the management responsibility for public markets, and the current financial status of these markets.**

The names and financial position of markets commissioned after 2000 are as follows:

	<u>Let-out rate</u> (November 2008)	<u>Financial position</u> (2006-07)
<u>Hong Kong Island</u> (Year of commissioning)		
Chai Wan Market (2001)	88%	Operating deficit: \$5.2m
Aldrich Bay Market (2008)	90%	Not applicable
Stanley Waterfront Mart (2007)	100%	Not applicable
Wan Chai Market (2008)	86%	Not applicable
<u>Kowloon</u>		
Lei Yue Mun Market (2000)	78%	Operating deficit: \$1.88m
Tai Kok Tsui Market (2005)	66%	Operating deficit: \$2.84m
<u>New Territories</u>		
Luen Wo Hui Market (2002)	78%	Operating deficit: \$6.38m
Tai Po Hui Market (2004)	93%	Operating surplus: \$1m


(Ms Rhonda LO)

for Director of Food and Environmental Hygiene

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